

SENATE BILL 781

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CF 11r1900

By: **Senators Muse, Benson, Ferguson, Manno, Montgomery, and Ramirez**
Introduced and read first time: February 4, 2011
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Displaced Building Service Workers Protection Act**

3 FOR the purpose of requiring certain employers who have been awarded a building or
4 food service service contract as a successor employer to retain certain service
5 workers for a certain transition employment period; requiring certain employers
6 to provide a list containing employee information to certain employers and to
7 post certain information; requiring certain employers to maintain a preferential
8 hiring list for certain workers not retained during the transition period;
9 requiring certain employers to make certain offers of employment to certain
10 employees; requiring certain employers to perform a written performance
11 evaluation for each employee retained during the transition period; requiring
12 certain employers to retain employees with satisfactory performance
13 evaluations after the transition employment period ends; creating a certain
14 right of action for certain employees under certain circumstances; providing for
15 the construction of this Act; establishing certain penalties; defining certain
16 terms; and generally relating to displaced building service workers.

17 BY adding to

18 Article – Labor and Employment

19 Section 3–1101 through 3–1106 to be under the new subtitle “Subtitle 11.
20 Displaced Building Service Workers”

21 Annotated Code of Maryland

22 (2008 Replacement Volume and 2010 Supplement)

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

25 **Article – Labor and Employment**

26 **SUBTITLE 11. DISPLACED BUILDING SERVICE WORKERS.**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **3-1101.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "BUILDING SERVICE EMPLOYEE" INCLUDES A JANITOR, A SECURITY
5 OFFICER, A GROUNDSKEEPER, A WATCHMAN, DOOR STAFF, A MAINTENANCE
6 TECHNICIAN, A HANDYMAN, A SUPERINTENDENT, AN ELEVATOR OPERATOR, A
7 WINDOW CLEANER, OR A BUILDING ENGINEER.

8 (C) "CONTRACTOR" MEANS ANY PERSON, INCLUDING A
9 SUBCONTRACTOR, THAT ENTERS INTO A SERVICE CONTRACT.

10 (D) "COVERED EMPLOYER" MEANS ANY PERSON WHO:

11 (1) OWNS, RENTS, LEASES, PROVIDES SERVICES AT OR MANAGES
12 REAL PROPERTY, EITHER ON ITS OWN BEHALF OR FOR ANOTHER PERSON
13 WITHIN THE STATE, INCLUDING OFFICE PARKS CONSISTING OF A SERIES OF
14 BUILDINGS UNDER COMMON MANAGEMENT, CONTROL OR OWNERSHIP,
15 HOUSING COOPERATIVES, CONDOMINIUM ASSOCIATIONS, MANAGING AGENTS,
16 TENANTS, AND A CONTRACTOR OR SUBCONTRACTOR; OR

17 (2) HIRES AN INDIVIDUAL TO PERFORM WORK IN CONNECTION
18 WITH THE CARE, MAINTENANCE, SECURITY, OR PROVIDING OF SERVICES AT AN
19 EXISTING:

20 (I) SCHOOL;

21 (II) HOSPITAL OR NURSING CARE FACILITY;

22 (III) INSTITUTION, INCLUDING A MUSEUM, CONVENTION
23 CENTER, ARENA, OR AIRPORT; OR

24 (IV) ESTABLISHMENT THAT IS SIMILAR TO LOCATIONS
25 LISTED IN ITEMS (I) THROUGH (III) OF THIS ITEM.

26 (E) (1) "FOOD SERVICE WORKER" MEANS A PERSON PERFORMING
27 WORK IN CONNECTION WITH THE PREPARATION AND SERVICE OF FOOD AND
28 BEVERAGES.

29 (2) "FOOD SERVICE WORKER" INCLUDES WAIT STAFF OR A
30 CAFETERIA ATTENDANT, COOK, PREPARATORY COOK, BUTCHER, BAKER,
31 SERVER, CASHIER, CATERING WORKER, DINING ATTENDANT, DISHWASHER,
32 FOOD OR MERCHANDISE VENDOR, OR PANTRY WORKER.

1 **(F) “PERSON” MEANS ANY INDIVIDUAL, BUSINESS ENTITY, OR**
2 **GOVERNMENT UNIT THAT EMPLOYS EMPLOYEES OR ENTERS INTO SERVICE**
3 **CONTRACTS.**

4 **(G) “SERVICE CONTRACT” MEANS A CONTRACT WITH ANY COVERED**
5 **EMPLOYER FOR SERVICES FROM A SERVICE EMPLOYEE, INCLUDING A**
6 **CONTRACT WITH A SUBCONTRACTOR FOR THOSE SERVICES.**

7 **(H) (1) “SERVICE EMPLOYEE” INCLUDES A PERSON EMPLOYED FULL**
8 **TIME OR PART TIME BY A COVERED EMPLOYER AS:**

9 **(I) A BUILDING SERVICE EMPLOYEE;**

10 **(II) A FOOD SERVICE WORKER; OR**

11 **(III) A NONPROFESSIONAL EMPLOYEE PERFORMING HEALTH**
12 **CARE OR RELATED SUPPORT SERVICES.**

13 **(2) “SERVICE EMPLOYEE” DOES NOT INCLUDE:**

14 **(I) A MANAGERIAL OR CONFIDENTIAL EMPLOYEE;**

15 **(II) AN EMPLOYEE WORKING IN AN ADMINISTRATIVE, AN**
16 **EXECUTIVE, OR A PROFESSIONAL CAPACITY;**

17 **(III) AN EMPLOYEE EARNING MORE THAN \$30 PER HOUR; OR**

18 **(IV) AN EMPLOYEE REGULARLY SCHEDULED TO WORK**
19 **FEWER THAN 10 HOURS PER WEEK.**

20 **(I) “SUCCESSOR EMPLOYER” MEANS A COVERED EMPLOYER THAT:**

21 **(1) HAS BEEN AWARDED A SERVICE CONTRACT TO PROVIDE**
22 **SERVICES THAT ARE SUBSTANTIALLY SIMILAR TO THOSE PROVIDED WITHIN THE**
23 **PREVIOUS 90 DAYS, INCLUDING THOSE SERVICES THAT HAD BEEN PROVIDED**
24 **UNDER A SERVICE CONTRACT THAT HAS BEEN TERMINATED;**

25 **(2) HAS PURCHASED OR ACQUIRED CONTROL OF A PROPERTY IN**
26 **WHICH SERVICE EMPLOYEES WERE EMPLOYED WITHIN THE PREVIOUS 90 DAYS;**
27 **OR**

28 **(3) CANCELS OR TERMINATES A SERVICE CONTRACT AND HIRES**
29 **SERVICE EMPLOYEES AS ITS DIRECT EMPLOYEES TO PERFORM SERVICES THAT**

1 ARE SUBSTANTIALLY SIMILAR WITHIN 90 DAYS OF THE TERMINATION OR
2 CANCELLATION OF A SERVICE CONTRACT.

3 **3-1102.**

4 THIS SUBTITLE DOES NOT APPLY TO:

5 (1) RESIDENTIAL BUILDINGS WITH FEWER THAN 30 UNITS;

6 (2) ANY EMPLOYER WHO EMPLOYS FEWER THAN 15 INDIVIDUALS
7 REGARDLESS OF THE INDIVIDUAL'S STATUS UNDER THIS SUBTITLE; AND

8 (3) A COMMERCIAL BUILDING OR AN OFFICE PARK OCCUPYING
9 LESS THAN 75,000 SQUARE FEET.

10 **3-1103.**

11 THIS SUBTITLE DOES NOT DIMINISH THE RIGHT OF A PROPERTY OWNER
12 OR AN AWARDDING AUTHORITY TO:

13 (1) TERMINATE A BUILDING SERVICE CONTRACT; OR

14 (2) REPLACE A CONTRACTOR WITH ANOTHER CONTRACTOR.

15 **3-1104.**

16 (A) WITHIN 15 CALENDAR DAYS BEFORE THE TERMINATION,
17 TRANSFER, OR CHANGE IN OWNERSHIP OF ANY SERVICE CONTRACT, A COVERED
18 EMPLOYER SHALL:

19 (1) PROVIDE AND REQUEST THAT THE TERMINATED EMPLOYER
20 PROVIDE TO THE SUCCESSOR EMPLOYER A FULL AND ACCURATE LIST
21 CONTAINING THE NAME, ADDRESS, DATE OF HIRE, AND EMPLOYMENT
22 CLASSIFICATION OF EACH EMPLOYEE CURRENTLY EMPLOYED AT ANY SITE
23 COVERED BY A COVERED EMPLOYER; AND

24 (2) ENSURE THAT A NOTICE TO ALL SERVICE EMPLOYEES IS
25 CONSPICUOUSLY POSTED AT ANY AFFECTED SITE SETTING FORTH THE RIGHTS
26 PROVIDED FOR UNDER THIS SUBTITLE AND THAT SUCH NOTICE IS PROVIDED TO
27 THE EMPLOYEES' COLLECTIVE BARGAINING REPRESENTATION.

28 (B) THE NOTICE AND LIST UNDER SUBSECTION (A) OF THIS SECTION
29 SHALL BE POSTED IN THE SAME LOCATION AND MANNER AS OTHER
30 STATUTORILY REQUIRED EMPLOYEE NOTICES.

1 (C) THE SUCCESSOR EMPLOYER SHALL RETAIN FOR A 90-DAY
2 TRANSITION EMPLOYMENT PERIOD AT AN AFFECTED SITE THOSE EMPLOYEES
3 WHOM THE TERMINATED EMPLOYER EMPLOYED AT THE SITE.

4 (D) (1) THE SUCCESSOR EMPLOYER SHALL MAKE A WRITTEN OFFER
5 OF EMPLOYMENT TO EACH EMPLOYEE AS REQUIRED BY THIS SECTION AND
6 PROVIDE A COPY OF THE NOTICE TO THE EMPLOYEE'S BARGAINING
7 REPRESENTATIVE.

8 (2) THE WRITTEN OFFER OF EMPLOYMENT SHALL STATE THE
9 TIME WITHIN WHICH THE EMPLOYEE MUST ACCEPT THE OFFER, BUT IN NO CASE
10 MAY THE TIME BE FEWER THAN 10 DAYS FROM THE DATE THE NOTICE IS GIVEN.

11 (E) (1) IF AT ANY TIME THE SUCCESSOR EMPLOYER DETERMINES
12 THAT FEWER EMPLOYEES ARE REQUIRED TO PERFORM THE SERVICES THAN
13 WERE REQUIRED BY THE TERMINATED EMPLOYER, THE SUCCESSOR EMPLOYER
14 SHALL RETAIN EMPLOYEES BY SENIORITY WITHIN EACH JOB CLASSIFICATION.

15 (2) DURING THE 90-DAY TRANSITION PERIOD, THE SUCCESSOR
16 EMPLOYER SHALL MAINTAIN A PREFERENTIAL HIRING LIST OF THOSE
17 EMPLOYEES NOT RETAINED, FROM WHICH THE SUCCESSOR EMPLOYER MUST
18 HIRE ANY ADDITIONAL EMPLOYEES AT THE SITE IN ORDER OF SENIORITY UNTIL
19 ALL OF THE EMPLOYEES OF THE TERMINATED EMPLOYER HAVE BEEN OFFERED
20 EMPLOYMENT WITH THE SUCCESSOR EMPLOYER.

21 (F) THE SUCCESSOR EMPLOYER MAY NOT DISCHARGE AN EMPLOYEE
22 RETAINED IN ACCORDANCE WITH THIS SECTION DURING THE 90-DAY
23 TRANSITION PERIOD WITHOUT JUST CAUSE.

24 (G) (1) AT THE END OF THE 90-DAY TRANSITION PERIOD, THE
25 SUCCESSOR EMPLOYER SHALL PERFORM A WRITTEN PERFORMANCE
26 EVALUATION FOR EACH EMPLOYEE RETAINED IN ACCORDANCE WITH THIS
27 SECTION.

28 (2) IF THE EMPLOYEE'S PERFORMANCE DURING THE 90-DAY
29 TRANSITION PERIOD IS SATISFACTORY, THE SUCCESSOR EMPLOYER SHALL
30 OFFER THE EMPLOYEE CONTINUED EMPLOYMENT UNDER THE TERMS AND
31 CONDITIONS ESTABLISHED BY THE SUCCESSOR EMPLOYER OR AS REQUIRED BY
32 LAW.

33 3-1105.

1 **(A) AN EMPLOYEE WHO WAS NOT RETAINED OR WHO HAS BEEN**
2 **DISCHARGED IN VIOLATION OF THIS SUBTITLE, OR A COLLECTIVE BARGAINING**
3 **REPRESENTATIVE ON BEHALF OF AN EMPLOYEE, MAY BRING AN ACTION IN A**
4 **COURT OF COMPETENT JURISDICTION AGAINST A COVERED EMPLOYER AND**
5 **MAY BE AWARDED:**

6 **(1) BACK PAY FOR EACH DAY THE VIOLATION CONTINUES AT A**
7 **RATE OF COMPENSATION CALCULATED AS THE GREATER OF:**

8 **(I) THE AVERAGE HOURLY RATE OF PAY RECEIVED BY THE**
9 **EMPLOYEE DURING THE LAST YEAR OF THE EMPLOYEE'S EMPLOYMENT, OR**
10 **DURING THE EMPLOYEE'S LENGTH OF EMPLOYMENT IF LESS THAN 1 YEAR, IN**
11 **THE SAME OCCUPATION CLASSIFICATION MULTIPLIED BY THE AVERAGE HOURS**
12 **WORKED IN THE WEEKS THAT THE EMPLOYEE WORKED DURING THE LAST YEAR**
13 **OF THE EMPLOYEE'S EMPLOYMENT; OR**

14 **(II) THE FINAL REGULAR RATE OF PAY RECEIVED BY THE**
15 **EMPLOYEE AT THE TIME OF TERMINATION OF THE PREDECESSOR CONTRACT**
16 **MULTIPLIED BY THE NUMBER OF HOURS USUALLY WORKED BY THE EMPLOYEE;**

17 **(2) THE COSTS OF BENEFITS THE SUCCESSOR EMPLOYER WOULD**
18 **HAVE INCURRED FOR THE EMPLOYEE UNDER THE SUCCESSOR EMPLOYER'S**
19 **BENEFIT PLAN; AND**

20 **(3) REINSTATEMENT TO THE SITE:**

21 **(I) AT WHICH THE SUCCESSOR EMPLOYER FAILED TO**
22 **RETAIN THE EMPLOYEE; OR**

23 **(II) FROM WHICH THE EMPLOYEE WAS DISCHARGED.**

24 **(B) THE COURT MAY AWARD THE PREVAILING PARTY REASONABLE**
25 **ATTORNEY'S FEES AND COSTS.**

26 **(C) IN AN ACTION UNDER THIS SUBTITLE, THE COURT SHALL HAVE THE**
27 **AUTHORITY TO ORDER THE TERMINATED EMPLOYER TO PROVIDE THE**
28 **SUCCESSOR EMPLOYER WITH THE INFORMATION REQUIRED UNDER § 3-1104 OF**
29 **THIS SUBTITLE.**

30 **(D) THIS SECTION MAY NOT BE CONSTRUED TO LIMIT AN EMPLOYEE'S**
31 **RIGHT TO BRING A CAUSE OF ACTION FOR WRONGFUL TERMINATION.**

32 **(E) A COVERED EMPLOYER'S FAILURE TO PROVIDE A SUCCESSOR**
33 **EMPLOYER WITH THE INFORMATION REQUIRED UNDER § 3-1104 OF THIS**

1 SUBTITLE DOES NOT EXCUSE A SUCCESSOR EMPLOYER FROM COMPLYING WITH
2 THIS SUBTITLE.

3 **3-1106.**

4 IF ANY PROVISION OF THIS SUBTITLE OR ANY APPLICATION THEREOF IS
5 HELD INVALID BY ANY COURT, THE INVALIDITY MAY NOT AFFECT ANY OTHER
6 PROVISIONS OR APPLICATIONS OF THIS SUBTITLE THAT CAN BE GIVEN EFFECT
7 WITHOUT THE INVALID PROVISION OR APPLICATION.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2011.