

SENATE BILL 280

K3, P4

9lr1098
CF HB 166

By: **Senators McCray, Beidle, Benson, Carter, Ellis, Feldman, Guzzone, Hayes, Kagan, Lam, Lee, Nathan-Pulliam, Patterson, Peters, Pinsky, Rosapepe, Smith, Waldstreicher, Washington, Young, and Zucker**

Introduced and read first time: January 28, 2019

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Payment of Wages – Minimum Wage and Enforcement**
3 **(Fight for Fifteen)**

4 FOR the purpose of specifying the State minimum wage rate that is in effect for certain
5 time periods; increasing, except under certain circumstances, the State minimum
6 wage rate in effect for certain periods of time based on annual growth in a certain
7 consumer price index; requiring the Commissioner of Labor and Industry, beginning
8 at a certain time, to annually determine and announce the growth in the consumer
9 price index, if any, and the new State minimum wage rate; repealing certain
10 provisions of law that authorize certain employers to pay certain employees a certain
11 wage that is less than the State minimum wage under certain circumstances;
12 specifying the tip credit amount that is in effect for certain time periods; prohibiting
13 an employer, beginning on a certain date, from including a tip credit amount as part
14 of the wage of certain employees; repealing the exemption from the Maryland Wage
15 and Hour Law for certain individuals; requiring that a certain summary certain
16 employers are required to keep conspicuously posted in certain places of employment
17 include certain antiretaliation provisions; prohibiting certain employers from taking
18 certain actions under the Maryland Wage Payment and Collection Law; prohibiting
19 certain employers from discriminating against certain employees under certain
20 circumstances; altering the conditions under which certain employers are prohibited
21 from taking adverse actions against certain employees under certain circumstances;
22 altering the list of acts that constitute adverse action under a certain provision of
23 law; requiring that the burden of proof as proved by clear and convincing evidence
24 under certain actions be on the defendant based on certain actions under certain
25 circumstances; repealing certain provisions of law that prohibit certain employees
26 from taking certain actions regarding making certain complaints or bringing or
27 testifying in certain actions or proceedings; authorizing the Commissioner to conduct
28 an investigation under the Maryland Wage and Hour Law on the Commissioner's
29 own initiative or on receipt of a certain complaint; authorizing the Commissioner to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 conduct an investigation under the Maryland Wage Payment and Collection Law on
 2 the Commissioner's own initiative; requiring that certain names be kept confidential
 3 except under certain circumstances; authorizing a certain employee to bring an
 4 action against an employer for a violation of certain provisions of this Act;
 5 authorizing the Commissioner to take certain actions relating to a certain claim by
 6 an employee under certain circumstances; specifying the time period for filing a
 7 certain action and the scope of a certain action; providing that a certain limitation
 8 period does not apply during a certain investigation; requiring a court to allow
 9 against a certain employer reasonable counsel fees and costs in a certain action;
 10 establishing certain penalties against certain employers; authorizing the
 11 Commissioner or a court to order certain civil penalties or certain relief under certain
 12 circumstances; requiring that certain civil penalties be paid to the General Fund for
 13 certain purposes; providing that certain enforcement provisions, civil penalties, and
 14 remedies apply to violations of certain provisions of this Act in the same manner as
 15 certain other violations; requiring an employer, beginning at a certain time, to pay
 16 certain employees a wage that is at least equal to the State minimum wage rate;
 17 requiring the Governor, in certain fiscal years, to include in a certain budget proposal
 18 certain funding to reimburse community service providers; repealing obsolete
 19 provisions of law; defining certain terms; altering a certain definition; and generally
 20 relating to the payment of wages.

21 BY repealing and reenacting, with amendments,
 22 Article – Health – General
 23 Section 7–307
 24 Annotated Code of Maryland
 25 (2015 Replacement Volume and 2018 Supplement)

26 BY repealing and reenacting, with amendments,
 27 Article – Labor and Employment
 28 Section 3–103, 3–403, 3–413, 3–419, 3–423, 3–428, and 3–508
 29 Annotated Code of Maryland
 30 (2016 Replacement Volume and 2018 Supplement)

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

33 **Article – Health – General**

34 7–307.

35 (a) (1) In this section the following words have the meanings indicated.

36 (2) “Community direct service worker” means an employee of a community
 37 provider that provides treatment or services to developmentally disabled individuals.

38 (3) “Community provider” means a community–based agency or program
 39 funded by the Administration to serve individuals with developmental disabilities.

1 (4) "Rate" means the reimbursement rate paid by the Department to a
2 community provider from the State General Fund, Maryland Medical Assistance Program
3 funds, other State or federal funds, or a combination of funds.

4 (b) Notwithstanding the provisions of this title or any other provision of law, the
5 Department shall reimburse community providers as provided in this section.

6 (c) Subject to subsection (d) of this section, the Department shall increase the rate
7 of reimbursement for community services providers each fiscal year by the amount of rate
8 increase included in the State budget for that fiscal year.

9 (d) [(1) The Governor's proposed budget for fiscal year 2016 shall include a
10 3.5% rate increase for community service providers over the funding provided in the
11 legislative appropriation for Object 08 Contractual Services in Program M00M01.02
12 Community Services for fiscal year 2015.

13 (2) The Governor's proposed budget for fiscal year 2017 shall include a
14 3.5% rate increase for community service providers over the funding provided in the
15 legislative appropriation for Object 08 Contractual Services in Program M00M01.02
16 Community Services for fiscal year 2016.

17 (3) The Governor's proposed budget for fiscal year 2018 shall include a
18 3.5% rate increase for community service providers over the funding provided in the
19 legislative appropriation for Object 08 Contractual Services in Program M00M01.02
20 Community Services for fiscal year 2017.]

21 [(4)] (1) The Governor's proposed budget for fiscal year 2019 shall include
22 a 3.5% rate increase for community service providers over the funding provided in the
23 legislative appropriation for Object 08 Contractual Services in Program M00M01.02
24 Community Services for fiscal year 2018.

25 (2) **THE GOVERNOR'S PROPOSED BUDGET FOR FISCAL YEAR 2020**
26 **SHALL INCLUDE A 7% RATE INCREASE FOR COMMUNITY SERVICE PROVIDERS OVER**
27 **THE FUNDING PROVIDED IN THE LEGISLATIVE APPROPRIATION FOR OBJECT 08**
28 **CONTRACTUAL SERVICES IN PROGRAM M00M01.02 COMMUNITY SERVICES FOR**
29 **FISCAL YEAR 2019.**

30 (3) **THE GOVERNOR'S PROPOSED BUDGET FOR FISCAL YEAR 2021**
31 **SHALL INCLUDE A 5.5% RATE INCREASE FOR COMMUNITY SERVICE PROVIDERS**
32 **OVER THE FUNDING PROVIDED IN THE LEGISLATIVE APPROPRIATION FOR OBJECT**
33 **08 CONTRACTUAL SERVICES IN PROGRAM M00M01.02 COMMUNITY SERVICES FOR**
34 **FISCAL YEAR 2020.**

35 (4) **THE GOVERNOR'S PROPOSED BUDGET FOR FISCAL YEAR 2022**
36 **SHALL INCLUDE A 5.5% RATE INCREASE FOR COMMUNITY SERVICE PROVIDERS**

1 **OVER THE FUNDING PROVIDED IN THE LEGISLATIVE APPROPRIATION FOR OBJECT**
2 **08 CONTRACTUAL SERVICES IN PROGRAM M00M01.02 COMMUNITY SERVICES FOR**
3 **FISCAL YEAR 2021.**

4 **(5) THE GOVERNOR'S PROPOSED BUDGET FOR FISCAL YEAR 2023**
5 **SHALL INCLUDE A 5.5% RATE INCREASE FOR COMMUNITY SERVICE PROVIDERS**
6 **OVER THE FUNDING PROVIDED IN THE LEGISLATIVE APPROPRIATION FOR OBJECT**
7 **08 CONTRACTUAL SERVICES IN PROGRAM M00M01.02 COMMUNITY SERVICES FOR**
8 **FISCAL YEAR 2022.**

9 **(6) THE GOVERNOR'S PROPOSED BUDGET FOR FISCAL YEAR 2024,**
10 **AND FOR EACH FISCAL YEAR THEREAFTER, SHALL INCLUDE A PERCENTAGE RATE**
11 **INCREASE THAT IS NOT LESS THAN THE PERCENTAGE INCREASE IN THE STATE**
12 **MINIMUM WAGE RATE UNDER § 3-413 OF THE LABOR AND EMPLOYMENT ARTICLE**
13 **FOR COMMUNITY SERVICE PROVIDERS OVER THE FUNDING PROVIDED IN THE**
14 **LEGISLATIVE APPROPRIATION FOR OBJECT 08 CONTRACTUAL SERVICES IN**
15 **PROGRAM M00M01.02 COMMUNITY SERVICES FOR THE IMMEDIATELY PRECEDING**
16 **FISCAL YEAR.**

17 (e) The Governor's proposed budget for fiscal year 2016 and thereafter for
18 community service providers shall be presented in the same manner, including object and
19 program information, as provided for in the fiscal year 2015 budget.

20 (f) A portion of the funds in subsection (e) of this section may be allocated to
21 address the impact of an increase in the State minimum wage on wages and benefits of
22 direct support workers employed by community providers licensed by the Developmental
23 Disabilities Administration.

24 **Article – Labor and Employment**

25 3-103.

26 (a) Except as otherwise provided in this section, the Commissioner may conduct
27 an investigation to determine whether a provision of this title has been violated on the
28 Commissioner's own initiative or may require a written complaint.

29 (b) The Commissioner may conduct an investigation under Subtitle 3 of this title,
30 on the Commissioner's own initiative or on receipt of a written complaint of an employee.

31 **(C) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION UNDER**
32 **SUBTITLE 4 OF THIS TITLE, ON THE COMMISSIONER'S OWN INITIATIVE OR ON**
33 **RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE.**

34 **[(c)] (D)** The Commissioner may conduct an investigation to determine whether
35 Subtitle 5 of this title has been violated **ON THE COMMISSIONER'S OWN INITIATIVE OR**

1 on receipt of a written complaint of an employee.

2 **[(d)] (E)** The Commissioner may conduct an investigation to determine whether
3 Subtitle 6 of this title has been violated on receipt of a written complaint of a sales
4 representative.

5 **[(e)] (F)** (1) The Commissioner may investigate whether § 3–701 of this title
6 has been violated on receipt of a written complaint of an applicant for employment.

7 (2) The Commissioner may investigate whether § 3–702 of this title has
8 been violated on receipt of a written complaint of an applicant for employment or an
9 employee.

10 (3) The Commissioner may investigate whether § 3–704 of this title has
11 been violated on receipt of a written complaint of an employee.

12 (4) The Commissioner may investigate whether § 3–710 of this title has
13 been violated on receipt of a written complaint of an employee as provided in § 3–710(d)(1)
14 of this title.

15 (5) The Commissioner may investigate whether § 3–711 of this title has
16 been violated on receipt of a written complaint of an employee as provided in § 3–711(d)(1)
17 of this title.

18 (6) The Commissioner may investigate whether § 3–712 of this title has
19 been violated on receipt of a written complaint of an employee or applicant.

20 **[(f)] (G)** (1) The Commissioner may investigate whether § 3–801 of this title
21 has been violated on receipt of a written complaint of an employee.

22 (2) The Commissioner may investigate whether § 3–802 of this title has
23 been violated on receipt of a written complaint of an employee.

24 **[(g)] (H)** The Commissioner may investigate whether Subtitle 9 of this title has
25 been violated:

26 (1) on the Commissioner’s own initiative;

27 (2) on receipt of a written complaint signed by the person submitting the
28 complaint; or

29 (3) on referral from another unit of State government.

30 **[(h)] (I)** The Commissioner may conduct an investigation to determine whether
31 Subtitle 10 of this title has been violated on receipt of a written complaint of an employee.

1 **[(i)] (J)** The Commissioner may conduct an investigation to determine whether
2 Subtitle 12 of this title has been violated on receipt of a written complaint of an employee.

3 **[(j)] (K)** The Commissioner, on the Commissioner's own initiative or on receipt
4 of a written complaint, may conduct an investigation of whether a local minimum wage law
5 has been violated.

6 **[(k)] (L)** (1) The Commissioner may conduct an investigation to determine
7 whether Subtitle 13 of this title has been violated on receipt of a written complaint by an
8 employee.

9 (2) To the extent practicable, the Commissioner shall keep confidential the
10 identity of an employee who has filed a written complaint alleging a violation of Subtitle 13
11 of this title unless the employee waives confidentiality.

12 3–403.

13 This subtitle does not apply to an individual who:

14 (1) is employed in a capacity that the Commissioner defines, by regulation,
15 to be administrative, executive, or professional;

16 (2) is employed in a nonadministrative capacity at an organized camp,
17 including a resident or day camp;

18 (3) is under the age of 16 years and is employed no more than 20 hours in
19 a week;

20 (4) is employed as an outside salesman;

21 **[(5)]** is compensated on a commission basis;]

22 **[(6)] (5)** is a child, parent, spouse, or other member of the immediate
23 family of the employer;

24 **[(7)] (6)** is employed in a drive-in theater;

25 **[(8)] (7)** is employed as part of the training in a special education program
26 for emotionally, mentally, or physically handicapped students under a public school system;

27 **[(9)]** is employed by an employer who is engaged in canning, freezing,
28 packing, or first processing of perishable or seasonal fresh fruits, vegetables, or
29 horticultural commodities, poultry, or seafood;]

30 **[(10)] (8)** engages in the activities of a charitable, educational, nonprofit,
31 or religious organization if:

1 (i) the service is provided gratuitously; and

2 (ii) there is, in fact, no employer–employee relationship;

3 [(11)] (9) is employed in a cafe, drive–in, drugstore, restaurant, tavern, or
4 other similar establishment that:

5 (i) sells food and drink for consumption on the premises; and

6 (ii) has an annual gross income of \$400,000 or less; OR

7 [(12)] is employed in agriculture if, during each quarter of the preceding
8 calendar year, the employer used no more than 500 agricultural–worker days;

9 (13) is engaged principally in the range production of livestock; or]

10 [(14)] (10) is employed as a hand–harvest laborer and is paid on a
11 piece–rate basis in an operation that, in the region of employment, has been and
12 customarily and generally is recognized as having been paid on that basis, if[:

13 (i)] the individual:

14 [1. commutes daily from the permanent residence of the
15 individual to the farm where the individual is employed; and

16 2. during the preceding calendar year, was employed in
17 agriculture less than 13 weeks; or

18 (ii) the individual:]

19 [1.] (I) is under the age of 17;

20 [2.] (II) is employed on the same farm as a parent of the
21 individual or a person standing in the place of the parent; and

22 [3.] (III) is paid at the same rate that an employee who is at
23 least 17 years old is paid on the same farm.

24 3–413.

25 (a) (1) In this section[, “employer”] THE FOLLOWING WORDS HAVE THE
26 MEANINGS INDICATED.

27 (2) “CONSUMER PRICE INDEX” MEANS THE CONSUMER PRICE INDEX
28 FOR ALL URBAN CONSUMERS FOR THE WASHINGTON–ARLINGTON–ALEXANDRIA,

1 **DC–VA–MD–WV METROPOLITAN AREA OR A SUCCESSOR METROPOLITAN AREA**
 2 **INDEX PUBLISHED BY THE FEDERAL BUREAU OF LABOR STATISTICS.**

3 **(3) “EMPLOYER”** includes a governmental unit.

4 (b) Except as provided in [subsection (d) of this section and] § 3–414 of this
 5 subtitle, each employer shall pay:

6 (1) to each employee who is subject to both the federal Act and this subtitle,
 7 at least the greater of:

8 (i) the minimum wage for that employee under the federal Act; or

9 (ii) the State minimum wage rate set under subsection (c) of this
 10 section; and

11 (2) to each other employee who is subject to this subtitle, at least[:

12 (i)] the greater of:

13 [1.] **(I)** the highest minimum wage under the federal Act;

14 or

15 [2.] **(II)** the State minimum wage rate set under subsection
 16 (c) of this section]; or

17 (ii) a training wage under regulations that the Commissioner adopts
 18 that include the conditions and limitations authorized under the federal Fair Labor
 19 Standards Amendments of 1989].

20 (c) **(1)** The State minimum wage rate is:

21 [(1) for the 6–month period beginning January 1, 2015, \$8.00 per hour;

22 (2) for the 12–month period beginning July 1, 2015, \$8.25 per hour;

23 (3) for the 12–month period beginning July 1, 2016, \$8.75 per hour;]

24 [(4)] **(I)** for the 12–month period beginning July 1, 2017, \$9.25 per hour;

25 [and]

26 [(5)] **(II) FOR THE 12–MONTH PERIOD** beginning July 1, 2018, \$10.10
 27 per hour;

28 **(III) FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2019,**

1 **\$11.00 PER HOUR;**

2 (IV) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2020,
3 **\$12.00 PER HOUR;**

4 (V) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2021,
5 **\$13.00 PER HOUR;**

6 (VI) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2022,
7 **\$14.00 PER HOUR;**

8 (VII) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2023,
9 **\$15.00 PER HOUR; AND**

10 (VIII) FOR EACH SUBSEQUENT 12-MONTH PERIOD BEGINNING
11 JULY 1, 2024, AND EACH JULY 1 THEREAFTER, THE RATE DETERMINED BY THE
12 COMMISSIONER UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION.

13 (2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
14 PARAGRAPH, FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2024, AND EACH
15 SUBSEQUENT 12-MONTH PERIOD, THE STATE MINIMUM WAGE RATE SHALL BE
16 INCREASED BY THE AMOUNT, ROUNDED TO THE NEAREST 5 CENTS, THAT EQUALS
17 THE PRODUCT OF:

18 1. THE STATE MINIMUM WAGE RATE IN EFFECT FOR THE
19 IMMEDIATELY PRECEDING 12-MONTH PERIOD; AND

20 2. THE AVERAGE PERCENT GROWTH IN THE CONSUMER
21 PRICE INDEX FOR THE IMMEDIATELY PRECEDING 12-MONTH PERIOD, AS
22 DETERMINED BY THE COMMISSIONER UNDER SUBPARAGRAPH (II)1 OF THIS
23 PARAGRAPH.

24 (II) BEGINNING MARCH 1, 2024, AND EACH MARCH 1
25 THEREAFTER, THE COMMISSIONER SHALL DETERMINE AND ANNOUNCE:

26 1. THE AVERAGE PERCENT GROWTH, IF ANY, IN THE
27 CONSUMER PRICE INDEX BASED ON THE IMMEDIATELY PRECEDING 12-MONTH
28 PERIOD FOR WHICH DATA ARE AVAILABLE ON MARCH 1; AND

29 2. THE STATE MINIMUM WAGE RATE THAT WILL BE
30 EFFECTIVE FOR THE 12-MONTH PERIOD BEGINNING THE FOLLOWING JULY 1.

31 (III) IF THE COMMISSIONER DETERMINES THAT THERE IS A

1 **DECLINE OR NO GROWTH IN THE CONSUMER PRICE INDEX, THE STATE MINIMUM**
2 **WAGE RATE SHALL REMAIN THE SAME AS THE RATE THAT WAS IN EFFECT FOR THE**
3 **IMMEDIATELY PRECEDING 12-MONTH PERIOD.**

4 [(d) (1) (i) Except as provided in paragraph (2) of this subsection and
5 subject to subparagraph (ii) of this paragraph, an employer may pay an employee a wage
6 that equals a rate of 85% of the State minimum wage established under this section if the
7 employee is under the age of 20 years.

8 (ii) An employer may pay to an employee the wage provided under
9 subparagraph (i) of this paragraph only for the first 6 months that the employee is
10 employed.

11 (2) (i) This paragraph applies only to an employer that is an
12 amusement or a recreational establishment, including a swimming pool, if the employer:

13 1. operates for no more than 7 months in a calendar year; or

14 2. for any 6 months during the preceding calendar year, has
15 average receipts that do not exceed one-third of the average receipts for the other 6 months.

16 (ii) An employer may pay an employee a wage that equals the
17 greater of:

18 1. 85% of the State minimum wage established under this
19 section; or

20 2. \$7.25.]

21 3-419.

22 (a) (1) This section applies to each employee who:

23 (i) is engaged in an occupation in which the employee customarily
24 and regularly receives more than \$30 each month in tips;

25 (ii) has been informed by the employer about the provisions of this
26 section; and

27 (iii) has kept all of the tips that the employee received.

28 (2) Notwithstanding paragraph (1)(iii) of this subsection, this section does
29 not prohibit the pooling of tips.

30 (b) Subject to the limitations in this section, an employer may include, as part of
31 the wage of an employee to whom this section applies:

1 (1) an amount that the employer sets to represent the tips of the employee;
2 or

3 (2) if the employee or representative of the employee satisfies the
4 Commissioner that the employee received a lesser amount in tips, the lesser amount.

5 (c) (1) The tip credit amount that the employer may include under subsection
6 (b) of this section may not exceed the minimum wage established under § 3-413 of this
7 subtitle for the employee less:

8 (I) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2019,
9 \$3.63;

10 (II) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2020,
11 \$5.25;

12 (III) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2021,
13 \$7.50;

14 (IV) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2022,
15 \$9.00;

16 (V) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2023,
17 \$10.50;

18 (VI) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2024,
19 \$12.00;

20 (VII) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2025,
21 \$13.50; AND

22 (VIII) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2026,
23 \$15.00.

24 (2) BEGINNING JULY 1, 2027, AN EMPLOYER:

25 (I) MAY NOT INCLUDE A TIP CREDIT AMOUNT AS PART OF THE
26 WAGE OF AN EMPLOYEE TO WHOM THIS SECTION APPLIES; AND

27 (II) SHALL PAY AN EMPLOYEE A WAGE THAT IS AT LEAST EQUAL
28 TO THE STATE MINIMUM WAGE ESTABLISHED UNDER § 3-413 OF THIS SUBTITLE.

29 3-423.

1 (a) On request by an employer, the Commissioner shall provide without charge a
2 copy of any summary or regulation to the employer.

3 (b) Each employer shall keep posted conspicuously in each place of employment:

4 (1) a summary of this subtitle that:

5 (I) the Commissioner approves; and

6 (II) **INCLUDES THE ANTIRETALIATION PROVISIONS UNDER §**
7 **3-428(B)(1)(III) OF THIS SUBTITLE; AND**

8 (2) a copy or summary of each regulation that is adopted to carry out this
9 subtitle.

10 3-428.

11 (a) In this section, “complaint” includes a written or oral complaint, claim, or
12 assertion of right by an employee, regarding the payment of wages under this subtitle, that
13 is made to:

14 (1) the employer or a supervisor, A manager, [or] A foreman, **OR AN**
15 **INDIVIDUAL WITH APPARENT AUTHORITY TO ALTER THE TERMS OR CONDITIONS OF**
16 **EMPLOYMENT OF THE EMPLOYEE** employed by the employer whether it is made through
17 the employer’s internal grievance process or otherwise; or

18 (2) the Commissioner or an authorized representative of the
19 Commissioner.

20 (b) (1) An employer may not:

21 (i) pay or agree to pay less than the wage required under this
22 subtitle;

23 (ii) hinder or delay the Commissioner or an authorized
24 representative of the Commissioner in the enforcement of this subtitle;

25 (iii) take adverse action **OR OTHERWISE DISCRIMINATE** against an
26 employee because the employee:

27 1. makes a complaint:

28 **A.** that the employee has not been paid in accordance with
29 this subtitle; **OR**

30 **B. IN GOOD FAITH, THAT THE EMPLOYER ENGAGED IN**

1 **CONDUCT THAT VIOLATES ANY PROVISION OF THIS SUBTITLE;**

2 2. brings an action under this subtitle or a proceeding that
3 relates to the subject of this subtitle; [or]

4 3. has **PARTICIPATED OR** testified, **OR IS PREPARING TO**
5 **TESTIFY**, in an **INVESTIGATION OR** action under this subtitle or a proceeding related to
6 the subject of this subtitle; [or]

7 4. **ASSISTED ANOTHER EMPLOYEE IN MAKING A**
8 **COMPLAINT RELATED TO VIOLATIONS OF THIS SUBTITLE;**

9 5. **HAS BEEN INFORMED OR INFORMED ANOTHER**
10 **EMPLOYEE ABOUT THE RIGHTS PROVIDED UNDER THIS SUBTITLE; OR**

11 6. **OPPOSED ANY UNLAWFUL PRACTICE UNDER THIS**
12 **SUBTITLE;**

13 **(IV) TAKE ADVERSE ACTION OR OTHERWISE DISCRIMINATE**
14 **AGAINST AN EMPLOYEE BECAUSE THE EMPLOYER BELIEVES THAT THE EMPLOYEE**
15 **MAY TAKE AN ACTION DESCRIBED IN ITEM (III) OF THIS PARAGRAPH; OR**

16 ~~[(iv)]~~ **(v)** violate any other provision of this subtitle.

17 (2) Adverse action prohibited under paragraph (1) of this subsection
18 includes:

19 (i) discharge;

20 (ii) demotion;

21 (iii) threatening the employee with discharge or demotion **OR ANY**
22 **OTHER ADVERSE ACTION; [and]**

23 **(IV) BLACKLISTING;**

24 **(V) A REDUCTION OR CHANGE IN WORK HOURS;**

25 **(VI) REPORTING OR THREATENING TO REPORT THE SUSPECTED**
26 **CITIZENSHIP OR IMMIGRATION STATUS OF AN EMPLOYEE, A FORMER EMPLOYEE, OR**
27 **A FAMILY MEMBER OF AN EMPLOYEE OR A FORMER EMPLOYEE TO A FEDERAL,**
28 **STATE, OR LOCAL AGENCY BECAUSE THE EMPLOYEE OR FORMER EMPLOYEE**
29 **EXERCISED OR ATTEMPTED TO EXERCISE A RIGHT UNDER THIS SUBTITLE; AND**

1 ~~[(iv)]~~ **(VII)** any other retaliatory action **AGAINST AN EMPLOYEE OR**
2 **ANOTHER INDIVIDUAL FOR EXERCISING OR ATTEMPTING TO EXERCISE ANY RIGHT**
3 **UNDER THIS SUBTITLE** that results in a change to the terms or conditions of employment
4 that would dissuade a reasonable employee from making a complaint, bringing an action,
5 or testifying in an action under this subtitle.

6 ~~[(c)~~ An employee may not:

7 (1) make a groundless or malicious complaint to the Commissioner or an
8 authorized representative of the Commissioner;

9 (2) in bad faith, bring an action under this subtitle or a proceeding related
10 to the subject of this subtitle; or

11 (3) in bad faith, testify in an action under this subtitle or a proceeding
12 related to the subject of this subtitle.]

13 ~~[(d)]~~ **(C)** **(1)** A person who violates any provision of this section is guilty of a
14 misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

15 ~~[(e)]~~ **(2)** An employer may not be convicted under this section unless the
16 evidence demonstrates that the employer had knowledge of the relevant complaint,
17 testimony, or action for which the prosecution for retaliation is sought.

18 **(3)** **IN ANY ACTION UNDER THIS SECTION, IF IT HAS BEEN**
19 **DEMONSTRATED BY A PREPONDERANCE OF THE EVIDENCE THAT AN ACTIVITY**
20 **PROHIBITED UNDER SUBSECTION (B) OF THIS SECTION WAS A CONTRIBUTING**
21 **FACTOR IN THE ALLEGED RETALIATION OR ADVERSE ACTION AGAINST AN**
22 **INDIVIDUAL, THE BURDEN OF PROOF SHALL BE ON THE DEFENDANT TO PROVE BY**
23 **CLEAR AND CONVINCING EVIDENCE THAT THE ALLEGED ADVERSE EMPLOYMENT**
24 **ACTION WOULD HAVE OCCURRED FOR LEGITIMATE, NONDISCRIMINATORY REASONS**
25 **EVEN IF THE EMPLOYEE HAD NOT ENGAGED IN THE PROTECTED ACTIVITY.**

26 **(D)** **THE NAME OF THE EMPLOYEE OR ANOTHER PERSON IDENTIFIED IN THE**
27 **COMPLAINT OR AN INVESTIGATION BY THE COMMISSIONER UNDER THIS SECTION**
28 **SHALL BE KEPT CONFIDENTIAL UNLESS THE COMMISSIONER DETERMINES THAT**
29 **THE EMPLOYEE'S NAME BE DISCLOSED, WITH THE EMPLOYEE'S CONSENT, TO**
30 **FURTHER INVESTIGATE THE COMPLAINT.**

31 **(E)** **(1)** **(I)** **NOTWITHSTANDING § 3-103(C) OF THIS TITLE, IF AN**
32 **EMPLOYER'S ACTION VIOLATES SUBSECTION (B) OF THIS SECTION, AN AFFECTED**
33 **EMPLOYEE MAY BRING AN ACTION AGAINST AN EMPLOYER.**

34 **(II)** **AN EMPLOYEE MAY BRING AN ACTION ON BEHALF OF THE**
35 **EMPLOYEE AND OTHER EMPLOYEES SIMILARLY AFFECTED.**

1 **(2) ON THE WRITTEN REQUEST OF AN EMPLOYEE WHO IS ENTITLED**
2 **TO BRING AN ACTION UNDER THIS SUBSECTION, THE COMMISSIONER MAY:**

3 **(I) TAKE AN ASSIGNMENT OF THE CLAIM IN TRUST FOR THE**
4 **EMPLOYEE;**

5 **(II) ASK THE ATTORNEY GENERAL TO BRING AN ACTION IN**
6 **ACCORDANCE WITH THIS SECTION ON BEHALF OF THE EMPLOYEE; AND**

7 **(III) CONSOLIDATE TWO OR MORE CLAIMS AGAINST AN**
8 **EMPLOYER.**

9 **(3) EXCEPT AS PROVIDED UNDER PARAGRAPH (4) OF THIS**
10 **SUBSECTION, AN ACTION UNDER THIS SUBSECTION:**

11 **(I) SHALL BE FILED WITHIN 3 YEARS AFTER THE EMPLOYEE**
12 **KNEW OR SHOULD HAVE KNOWN OF THE EMPLOYER'S ACTION; AND**

13 **(II) MAY ENCOMPASS ALL VIOLATIONS THAT OCCURRED AS**
14 **PART OF A CONTINUING COURSE OF EMPLOYER CONDUCT REGARDLESS OF THE**
15 **DATE OF THE VIOLATION.**

16 **(4) THE LIMITATION PERIOD UNDER PARAGRAPH (3) OF THIS**
17 **SUBSECTION DOES NOT APPLY DURING AN INVESTIGATION UNDER § 3-103(C) OF**
18 **THIS TITLE.**

19 **(5) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO**
20 **JUDGMENT IN AN ACTION UNDER THIS SUBSECTION, THE COURT SHALL ALLOW**
21 **AGAINST THE EMPLOYER REASONABLE COUNSEL FEES AND OTHER COSTS OF THE**
22 **ACTION.**

23 **(F) (1) IF A PERSON IS FOUND TO HAVE VIOLATED SUBSECTION (B) OF**
24 **THIS SECTION, THE COMMISSIONER OR COURT SHALL REQUIRE THE PERSON TO PAY**
25 **THE GREATER OF:**

26 **(I) ACTUAL DAMAGES PLUS LIQUIDATED DAMAGES; OR**

27 **(II) \$500 FOR EACH DAY THAT THE VIOLATION CONTINUED.**

28 **(2) (I) IF AN EMPLOYER WAS FOUND TO HAVE SUBSEQUENTLY**
29 **VIOLATED THE PROVISIONS OF THIS SUBTITLE WITHIN 6 YEARS AFTER A PREVIOUS**
30 **VIOLATION, THE COMMISSIONER OR COURT SHALL ASSESS AGAINST THE EMPLOYER**

1 A CIVIL PENALTY OF NOT LESS THAN **\$10,000**.

2 (II) THE COMMISSIONER AND A COURT MAY ORDER
3 ADDITIONAL CIVIL PENALTIES AND ANY OTHER APPROPRIATE RELIEF FOR
4 VIOLATIONS OF THIS SUBTITLE.

5 (III) EACH CIVIL PENALTY ASSESSED UNDER THIS PARAGRAPH
6 SHALL BE PAID TO THE GENERAL FUND OF THE STATE TO OFFSET THE COST OF
7 FINANCING THE ENFORCEMENT OF THIS SUBTITLE.

8 3-508.

9 (a) An employer may not:

10 (1) willfully violate this subtitle;

11 (2) PAY OR AGREE TO PAY AN EMPLOYEE IN A MANNER THAT
12 VIOLATES THIS SUBTITLE;

13 (3) HINDER OR DELAY THE COMMISSIONER OR AN AUTHORIZED
14 REPRESENTATIVE OF THE COMMISSIONER IN THE ENFORCEMENT OF THIS
15 SUBTITLE; OR

16 (4) TAKE ADVERSE ACTION OR OTHERWISE DISCRIMINATE AGAINST
17 AN EMPLOYEE BECAUSE:

18 (I) THE EMPLOYEE:

19 1. MAKES A COMPLAINT:

20 A. THAT THE EMPLOYEE HAS NOT BEEN PAID IN
21 ACCORDANCE WITH THIS SUBTITLE; OR

22 B. IN GOOD FAITH, THAT THE EMPLOYER ENGAGED IN
23 CONDUCT THAT VIOLATES THIS SUBTITLE;

24 2. BRINGS AN ACTION UNDER THIS SUBTITLE OR A
25 PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE;

26 3. HAS PARTICIPATED OR TESTIFIED, OR IS PREPARING
27 TO TESTIFY, IN AN INVESTIGATION OR ACTION UNDER THIS SUBTITLE OR A
28 PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE;

1 4. ASSISTED ANOTHER EMPLOYEE IN MAKING A
2 COMPLAINT RELATED TO VIOLATIONS OF THIS SUBTITLE;

3 5. HAS BEEN INFORMED OR INFORMED ANOTHER
4 EMPLOYEE ABOUT THEIR RIGHTS UNDER THIS SUBTITLE; OR

5 6. OPOSED ANY UNLAWFUL PRACTICE UNDER THIS
6 SUBTITLE; OR

7 (II) THE EMPLOYER BELIEVES THE EMPLOYEE MAY TAKE AN
8 ACTION DESCRIBED IN ITEM (I) OF THIS ITEM.

9 (B) ADVERSE ACTION PROHIBITED UNDER SUBSECTION (A)(4) OF THIS
10 SECTION INCLUDES:

11 (1) DISCHARGE;

12 (2) DEMOTION;

13 (3) THREATENING THE EMPLOYEE WITH DISCHARGE OR DEMOTION
14 OR ANY OTHER ADVERSE ACTION;

15 (4) BLACKLISTING;

16 (5) A REDUCTION OR CHANGE IN WORK HOURS;

17 (6) REPORTING OR THREATENING TO REPORT THE SUSPECTED
18 CITIZENSHIP OR IMMIGRATION STATUS OF AN EMPLOYEE, A FORMER EMPLOYEE, OR
19 A FAMILY MEMBER OF AN EMPLOYEE OR A FORMER EMPLOYEE TO A FEDERAL,
20 STATE, OR LOCAL AGENCY BECAUSE THE EMPLOYEE OR FORMER EMPLOYEE
21 EXERCISED OR ATTEMPTED TO EXERCISE A RIGHT UNDER THIS SUBTITLE; AND

22 (7) ANY OTHER RETALIATORY ACTION AGAINST AN EMPLOYEE OR
23 ANOTHER INDIVIDUAL FOR EXERCISING OR ATTEMPTING TO EXERCISE ANY RIGHT
24 UNDER THIS SUBTITLE THAT RESULTS IN A CHANGE TO THE TERMS OR CONDITIONS
25 OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM MAKING
26 A COMPLAINT, BRINGING AN ACTION, OR TESTIFYING IN AN ACTION UNDER THIS
27 SUBTITLE.

28 [(b)] (C) An employee may not knowingly make to a governmental unit or official
29 of a governmental unit a false statement with respect to any investigation or proceeding
30 under this subtitle, with the intent that the governmental unit or official consider or
31 otherwise act in connection with the statement.

1 ~~[(c)]~~ **(D)** (1) **(I)** An employer who violates subsection (a) of this section is
2 guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

3 **(II)** **IN ADDITION TO SUBPARAGRAPH (I) OF THIS PARAGRAPH,**
4 **THE ENFORCEMENT PROVISIONS, CIVIL PENALTIES, AND REMEDIES PROVIDED**
5 **UNDER § 3-428 OF THIS TITLE APPLY TO VIOLATIONS OF SUBSECTION (A)(4) OF THIS**
6 **SECTION IN THE SAME MANNER AS VIOLATIONS OF § 3-428(B) OF THIS TITLE.**

7 **(III)** **EACH CIVIL PENALTY ASSESSED UNDER THIS PARAGRAPH**
8 **SHALL BE PAID TO THE GENERAL FUND OF THE STATE TO OFFSET THE COST OF**
9 **FINANCING THE ENFORCEMENT OF THIS SUBTITLE.**

10 (2) An employee who violates subsection ~~[(b)]~~ **(C)** of this section is guilty of
11 a misdemeanor and on conviction is subject to a fine not exceeding \$500.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June
13 1, 2019.