

SENATE BILL 107

K3
SB 62/20 – FIN

(PRE-FILED)

1lr1179
CF 1lr2164

By: **Senator Hayes**

Requested: October 28, 2020

Introduced and read first time: January 13, 2021

Assigned to: Finance

A BILL ENTITLED

AN ACT concerning

Labor and Employment – Secure Maryland Wage Act

FOR the purpose of requiring that certain employees working at a Maryland heightened security interest location be paid a certain wage or combination of certain wages or benefits under certain circumstances; declaring findings of the General Assembly; specifying the purposes of certain provisions of this Act; specifying that certain provisions of this Act do not diminish certain rights of certain covered employees; requiring an employer to pay certain covered employees an overtime wage under certain circumstances; specifying that a certain agreement to work for less than a certain wage is void; requiring and authorizing the Commissioner of Labor and Industry to create and make available certain materials for certain employers; requiring the Commissioner to provide certain materials to certain employers under certain circumstances; requiring an employer to keep posted in each place of employment certain materials in a certain manner; requiring employers to keep certain records for a certain period of time; requiring the Commissioner to take certain enforcement actions; providing for the confidentiality of certain records and statements; authorizing a certain person to file a complaint in circuit court within a certain time period under certain circumstances; requiring that a certain complaint be served on the Commissioner; requiring the court to make a certain determination under certain circumstances; authorizing certain employees to bring a certain action under certain circumstances; authorizing the Commissioner to take certain actions regarding certain claims under certain circumstances; providing that a certain agreement is not a defense for certain purposes; requiring a court to make certain awards to certain employees under certain circumstances; prohibiting certain employers and employees from taking certain actions; establishing a certain penalty; prohibiting a certain conviction of a certain employer except under certain circumstances; requiring the Commissioner to enforce certain provisions of law; authorizing the Commissioner to conduct a certain investigation under certain circumstances; establishing an exemption under the Wage and Hour Law for a certain covered employee; establishing an exemption under the Living Wage Law for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



a certain covered employee; providing for the application of certain provisions of this Act; defining certain terms; and generally relating to wages paid at heightened security interest locations.

BY repealing and reenacting, with amendments,
 Article – Labor and Employment
 Section 3–102 and 3–403(13) and (14)
 Annotated Code of Maryland
 (2016 Replacement Volume and 2020 Supplement)

BY adding to
 Article – Labor and Employment
 Section 3–103(m) and 3–403(15); and 3–1501 through 3–1511 to be under the new
 subtitle “Subtitle 15. Secure Maryland Wage Act”
 Annotated Code of Maryland
 (2016 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
 Article – State Finance and Procurement
 Section 18–102
 Annotated Code of Maryland
 (2015 Replacement Volume and 2020 Supplement)

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

Article – Labor and Employment

3–102.

(a) In addition to any duties set forth elsewhere, the Commissioner shall:

- (1) enforce Subtitle 2 of this title;
- (2) carry out Subtitle 3 of this title;
- (3) enforce Subtitle 4 of this title;
- (4) enforce Subtitle 9 of this title; [and]
- (5) **ENFORCE SUBTITLE 15 OF THIS TITLE; AND**
- (6) enforce a local minimum wage law.

(b) If the Governor declares an emergency or disaster, then, with the consent of the Governor, the Commissioner may suspend enforcement of any provision of Subtitle 2 of this title until the emergency or disaster ends.

(c) The Commissioner has the same powers and duties in enforcing a local minimum wage law as the Commissioner has in enforcing Subtitle 4 of this title.

3-103.

(M) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER SUBTITLE 15 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT BY AN EMPLOYEE.

3-403.

This subtitle does not apply to an individual who:

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

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

(i) the individual:

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

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

(ii) the individual:

1. is under the age of 17;

2. is employed on the same farm as a parent of the individual or a person standing in the place of the parent; and

3. is paid at the same rate that an employee who is at least 17 years old is paid on the same farm; **OR**

(15) IS A COVERED EMPLOYEE UNDER THE SECURE MARYLAND WAGE ACT.

SUBTITLE 15. SECURE MARYLAND WAGE ACT.

3-1501.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS

INDICATED.

(B) “COVERED EMPLOYEE” MEANS ANY INDIVIDUAL EMPLOYED TO PERFORM WORK AT A HEIGHTENED SECURITY INTEREST LOCATION WHO IS A NONEXEMPT EMPLOYEE AS DESCRIBED IN THE FEDERAL FAIR LABOR STANDARDS ACT.

(C) (1) “EMPLOY” MEANS TO ENGAGE AN INDIVIDUAL TO WORK.

(2) “EMPLOY” INCLUDES:

(I) ALLOWING AN INDIVIDUAL TO WORK; AND

(II) INSTRUCTING AN INDIVIDUAL TO BE PRESENT AT A WORK SITE.

(D) “EMPLOYER” INCLUDES A PERSON WHO ACTS DIRECTLY OR INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

(E) “HEIGHTENED SECURITY INTEREST LOCATION” MEANS:

(1) BALTIMORE–WASHINGTON INTERNATIONAL THURGOOD MARSHALL AIRPORT;

(2) PENNSYLVANIA STATION IN BALTIMORE; OR

(3) THE PORT OF BALTIMORE.

(F) “WAGE” MEANS ALL COMPENSATION THAT IS DUE TO AN EMPLOYEE FOR EMPLOYMENT.

3–1502.

(A) THE GENERAL ASSEMBLY FINDS THAT:

(1) LOW WAGES OF EMPLOYEES AT A HEIGHTENED SECURITY INTEREST LOCATION CAN BE A SUBSTANTIAL FACTOR IN THE INABILITY OF THESE LOCATIONS TO ATTRACT OR RETAIN EXPERIENCED AND TRAINED EMPLOYEES; AND

(2) HIGH TURNOVER RATES AND INEXPERIENCE OF MANY EMPLOYEES AT A HEIGHTENED SECURITY INTEREST LOCATION THAT RESULT FROM LOW WAGES CAN HINDER THE ABILITY OF THE EMPLOYEES TO RESPOND TO EMERGENCY SITUATIONS AND PUT AT RISK THE SAFETY, SECURITY, AND WELFARE

OF THE RESIDENTS OF THE STATE.

(B) THE PURPOSE OF THIS SUBTITLE IS TO SET A HIGHER WAGE STANDARD FOR EMPLOYEES WORKING AT A HEIGHTENED SECURITY INTEREST LOCATION TO PROMOTE THE SAFETY, SECURITY, AND WELFARE OF THE RESIDENTS OF THE STATE BY:

(1) ENSURING THAT EMPLOYERS AT A HEIGHTENED SECURITY INTEREST LOCATION CAN ATTRACT AND RETAIN EXPERIENCED AND TRAINED WORKERS;

(2) INCREASING EMPLOYEE PREPAREDNESS AND IMPROVING THE ABILITY OF EMPLOYEES TO ASSIST IN EMERGENCY RESPONSES AND EVACUATIONS;

(3) SAFEGUARDING EMPLOYERS AND EMPLOYEES AGAINST UNFAIR COMPETITION THAT COMPROMISES SAFETY;

(4) PROVIDING A MAINTENANCE LEVEL THAT INCREASES EMPLOYEE EFFICIENCY, GENERAL WELL-BEING, AND HEALTH; AND

(5) PROTECTING THE VITALITY OF A HEIGHTENED SECURITY INTEREST LOCATION THROUGH IMPROVEMENTS TO THE EXPERIENCE, TRAINING, AND EFFICACY OF EMPLOYEES IN TERMS OF SAFETY AND SECURITY.

3-1503.

(A) THIS SUBTITLE APPLIES TO A COVERED EMPLOYEE OF AN EMPLOYER ONLY IF AT LEAST 50% OF THE COVERED EMPLOYEE'S TIME DURING ANY WORKWEEK IS PERFORMED AT A HEIGHTENED SECURITY INTEREST LOCATION.

(B) THIS SUBTITLE DOES NOT DIMINISH:

(1) THE RIGHT OF COVERED EMPLOYEES TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYERS THROUGH REPRESENTATIVES WHOM THE COVERED EMPLOYEES CHOOSE TO ESTABLISH WAGES OR OTHER CONDITIONS OF EMPLOYMENT IN EXCESS OF THE APPLICABLE MINIMUM FOR WAGES UNDER THIS SUBTITLE; OR

(2) A RIGHT OF A COVERED EMPLOYEE THAT IS GRANTED UNDER THE FEDERAL FAIR LABOR STANDARDS ACT.

3-1504.

(A) (1) FOR THE 12-MONTH PERIOD BEGINNING JANUARY 1, 2022, AND FOR EACH SUBSEQUENT 12-MONTH PERIOD, AN EMPLOYER SHALL PAY A COVERED EMPLOYEE WAGES, OR ANY COMBINATION OF WAGES AND BENEFITS, THAT IS NOT LESS THAN THE COMBINED AMOUNT OF THE WAGE AND FRINGE BENEFIT RATE IN EFFECT ON SEPTEMBER 1 OF THE IMMEDIATELY PRECEDING YEAR FOR THE GUARD I CLASSIFICATION FOR THE APPLICABLE COUNTY ESTABLISHED BY THE UNITED STATES SECRETARY OF LABOR UNDER §§ 6701 THROUGH 6707 OF THE FEDERAL McNAMARA-O'HARA SERVICE CONTRACT ACT OF 1965.

(2) PARAGRAPH (1) OF THIS SUBSECTION MAY NOT BE CONSTRUED TO PROHIBIT AN EMPLOYER FROM BEGINNING TO PAY A COVERED EMPLOYEE THE WAGE RATE IN EFFECT ON SEPTEMBER 1 BEFORE REQUIRED TO UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(B) AN EMPLOYER SHALL PAY AN OVERTIME WAGE OF AT LEAST 1.5 TIMES THE USUAL HOURLY WAGE REQUIRED UNDER SUBSECTION (A) OF THIS SECTION ON THE BASIS OF EACH HOUR OVER 40 HOURS THAT A COVERED EMPLOYEE WORKS DURING 1 WORKWEEK.

(C) AN AGREEMENT BETWEEN AN EMPLOYER AND A COVERED EMPLOYEE TO WORK FOR LESS THAN THE WAGE REQUIRED UNDER THIS SECTION IS VOID.

3-1505.

(A) THE COMMISSIONER:

(1) SHALL CREATE AND MAKE AVAILABLE A SUMMARY OF THIS SUBTITLE; AND

(2) MAY CREATE AND MAKE AVAILABLE A SUMMARY OF REGULATIONS ADOPTED UNDER THIS SUBTITLE.

(B) ON REQUEST OF AN EMPLOYER, THE COMMISSIONER SHALL PROVIDE WITHOUT CHARGE:

(1) A COPY OF THIS SUBTITLE;

(2) A SUMMARY OF THIS SUBTITLE;

(3) A COPY OF REGULATIONS ADOPTED UNDER THIS SUBTITLE; AND

(4) IF THE COMMISSIONER HAS DEVELOPED A SUMMARY OF REGULATIONS ADOPTED UNDER THIS SUBTITLE, A SUMMARY OF THE REGULATIONS.

(C) EACH EMPLOYER SHALL KEEP POSTED CONSPICUOUSLY IN EACH PLACE OF EMPLOYMENT:

(1) A SUMMARY OF THIS SUBTITLE THAT THE COMMISSIONER HAS PROVIDED TO THE EMPLOYER; AND

(2) A COPY OR SUMMARY OF REGULATIONS ADOPTED UNDER THIS SUBTITLE.

3-1506.

EACH EMPLOYER SHALL KEEP, FOR AT LEAST 3 YEARS, IN OR ABOUT THE PLACE OF EMPLOYMENT, A RECORD OF:

(1) THE NAME, ADDRESS, AND OCCUPATION OF EACH EMPLOYEE;

(2) THE RATE OF PAY OF EACH EMPLOYEE;

(3) THE AMOUNT THAT IS PAID EACH PAY PERIOD TO EACH EMPLOYEE;

(4) THE HOURS THAT EACH EMPLOYEE WORKS EACH DAY AND WORKWEEK; AND

(5) OTHER INFORMATION THAT THE COMMISSIONER REQUIRES, BY REGULATION, AS REASONABLE TO ENFORCE THIS SUBTITLE.

3-1507.

(A) THE COMMISSIONER SHALL ENTER A PLACE OF EMPLOYMENT TO:

(1) QUESTION EMPLOYEES TO DETERMINE WHETHER AN EMPLOYER HAS BEEN AND IS COMPLYING WITH THIS SUBTITLE AND REGULATIONS ADOPTED TO CARRY OUT THIS SUBTITLE;

(2) INSPECT AND COPY EACH RECORD THAT AN EMPLOYER KEEPS ON WAGES AND HOURS OF EMPLOYEES; AND

(3) REQUIRE EACH EMPLOYER TO:

(I) ATTEST TO THE TRUTHFULNESS OF EACH RECORD THAT IS COPIED AND TO SIGN THE COPY; OR

(II) AT THE OPTION OF THE EMPLOYER, SUBMIT A COMPLETE WRITTEN STATEMENT ABOUT THE WAGES, HOURS, NAME, AND ADDRESS OF EACH EMPLOYEE, ON FORMS THAT THE COMMISSIONER PROVIDES OR APPROVES.

(B) EACH RECORD OR STATEMENT THAT THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER OBTAINS UNDER SUBSECTION (A) OF THIS SECTION IS CONFIDENTIAL AND MAY BE SHOWN ONLY TO THE COMMISSIONER OR A COURT.

3-1508.

(A) (1) A PERSON AGGRIEVED BY A REGULATION ADOPTED BY OR AN ORDER TO PAY WAGES ISSUED BY THE COMMISSIONER UNDER THIS SUBTITLE MAY FILE A COMPLAINT IN CIRCUIT COURT WITHIN 60 DAYS AFTER THE DATE OF PUBLICATION OF THE REGULATION OR ORDER TO PAY WAGES TO HAVE IT MODIFIED OR SET ASIDE.

(2) A COPY OF THE COMPLAINT SHALL BE SERVED ON THE COMMISSIONER.

(B) UNLESS THE COURT SPECIFICALLY ORDERS OTHERWISE, THE COMMENCEMENT OF PROCEEDINGS UNDER THIS SECTION MAY NOT OPERATE AS A STAY OF THE REGULATION OR ORDER TO PAY WAGES.

(C) (1) THE COURT SHALL DETERMINE WHETHER A REGULATION OR ORDER TO PAY WAGES IS IN ACCORDANCE WITH LAW.

(2) IF A FINDING OF FACT IS SUPPORTED BY SUBSTANTIAL EVIDENCE, THE FINDING IS CONCLUSIVE.

3-1509.

(A) IF AN EMPLOYER PAYS A COVERED EMPLOYEE LESS THAN THE WAGE REQUIRED UNDER THIS SUBTITLE, THE COVERED EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER TO RECOVER:

(1) THE DIFFERENCE BETWEEN THE WAGE PAID TO THE COVERED EMPLOYEE AND THE WAGE REQUIRED UNDER THIS SUBTITLE;

(2) AN ADDITIONAL AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE WAGE PAID TO THE COVERED EMPLOYEE AND THE WAGE REQUIRED UNDER THIS SUBTITLE AS LIQUIDATED DAMAGES; AND

(3) COUNSEL FEES AND OTHER COSTS.

(B) ON THE WRITTEN REQUEST OF A COVERED EMPLOYEE WHO IS ENTITLED TO BRING AN ACTION UNDER THIS SECTION, THE COMMISSIONER MAY:

(1) TAKE AN ASSIGNMENT OF THE CLAIM IN TRUST FOR THE COVERED EMPLOYEE;

(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION IN ACCORDANCE WITH THIS SECTION ON BEHALF OF THE COVERED EMPLOYEE; AND

(3) CONSOLIDATE TWO OR MORE CLAIMS AGAINST AN EMPLOYER.

(C) THE AGREEMENT OF A COVERED EMPLOYEE TO WORK FOR LESS THAN THE WAGE TO WHICH THE COVERED EMPLOYEE IS ENTITLED UNDER THIS SUBTITLE IS NOT A DEFENSE TO AN ACTION UNDER THIS SECTION.

(D) (1) IF A COURT DETERMINES THAT A COVERED EMPLOYEE IS ENTITLED TO RECOVERY IN AN ACTION UNDER THIS SECTION, THE COURT SHALL AWARD TO THE COVERED EMPLOYEE:

(I) THE DIFFERENCE BETWEEN THE WAGE PAID TO THE COVERED EMPLOYEE AND THE WAGE REQUIRED UNDER THIS SUBTITLE;

(II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN ADDITIONAL AMOUNT EQUAL TO THE DIFFERENCE BETWEEN THE WAGE PAID TO THE COVERED EMPLOYEE AND THE WAGE REQUIRED UNDER THIS SUBTITLE AS LIQUIDATED DAMAGES; AND

(III) REASONABLE COUNSEL FEES AND OTHER COSTS.

(2) IF AN EMPLOYER SHOWS TO THE SATISFACTION OF THE COURT THAT THE EMPLOYER ACTED IN GOOD FAITH AND REASONABLY BELIEVED THAT THE WAGES PAID TO THE COVERED EMPLOYEE WERE NOT LESS THAN THE WAGE REQUIRED UNDER THIS SUBTITLE, THE COURT SHALL:

(I) DETERMINE THAT LIQUIDATED DAMAGES SHOULD NOT BE AWARDED; OR

(II) AWARD, AS LIQUIDATED DAMAGES, ANY AMOUNT LESS THAN THE AMOUNT SPECIFIED IN PARAGRAPH (1)(II) OF THIS SUBSECTION.

3-1510.

(A) IN THIS SECTION, "COMPLAINT" INCLUDES A WRITTEN OR ORAL COMPLAINT, CLAIM, OR ASSERTION OF RIGHT BY A COVERED EMPLOYEE REGARDING THE PAYMENT OF WAGES UNDER THIS SUBTITLE THAT IS MADE TO:

(1) THE EMPLOYER OR A SUPERVISOR, MANAGER, OR FOREMAN EMPLOYED BY THE EMPLOYER WHETHER IT IS MADE THROUGH THE EMPLOYER'S INTERNAL GRIEVANCE PROCESS OR OTHERWISE; OR

(2) THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER.

(B) (1) AN EMPLOYER MAY NOT:

(I) PAY OR AGREE TO PAY LESS THAN THE WAGE REQUIRED UNDER THIS SUBTITLE;

(II) HINDER OR DELAY THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER IN THE ENFORCEMENT OF THIS SUBTITLE;

(III) TAKE ADVERSE ACTION AGAINST A COVERED EMPLOYEE BECAUSE THE COVERED EMPLOYEE:

1. MAKES A COMPLAINT THAT THE COVERED EMPLOYEE HAS NOT BEEN PAID IN ACCORDANCE WITH THIS SUBTITLE;

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

3. HAS TESTIFIED IN AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE; OR

(IV) VIOLATE ANY OTHER PROVISION OF THIS SUBTITLE.

(2) ADVERSE ACTION PROHIBITED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDES:

(I) DISCHARGE;

(II) DEMOTION;

(III) THREATENING THE COVERED EMPLOYEE WITH DISCHARGE OR DEMOTION; AND

(IV) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE COVERED EMPLOYEE FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR TESTIFYING IN AN ACTION UNDER THIS SUBTITLE.

(C) A COVERED EMPLOYEE MAY NOT:

(1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER;

(2) IN BAD FAITH, BRING AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE; OR

(3) IN BAD FAITH, TESTIFY IN AN ACTION UNDER THIS SUBTITLE OR A PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE.

(D) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000.

(E) AN EMPLOYER MAY NOT BE CONVICTED UNDER THIS SECTION UNLESS THE EVIDENCE DEMONSTRATES THAT THE EMPLOYER HAD KNOWLEDGE OF THE RELEVANT COMPLAINT, TESTIMONY, OR ACTION FOR WHICH THE PROSECUTION FOR RETALIATION IS SOUGHT.

3-1511.

THIS SUBTITLE MAY BE CITED AS THE SECURE MARYLAND WAGE ACT.

Article – State Finance and Procurement

18-102.

(a) (1) This title applies to an employee of an employer for the duration of a contract subject to this title if at least one-half of the employee's time during any workweek relates to a State contract for services or a subcontract for services under a State contract.

(2) This title does not apply to an employee of an employer if the employee:

(i) is 17 years of age or younger for the duration of a contract subject to this title; or

(ii) works less than 13 consecutive weeks for the duration of a contract subject to this title and during that period works full time.

(b) **(1)** This title does not apply to a contract:

[(1)] **(I)** for services needed immediately to prevent or respond to an imminent threat to public health or safety;

[(2)] **(II)** with a public service company;

[(3)] **(III)** with a nonprofit organization;

[(4)] **(IV)** between units; or

[(5)] **(V)** between a unit and a county or Baltimore City.

(2) THIS TITLE DOES NOT APPLY TO A COVERED EMPLOYEE UNDER THE SECURE MARYLAND WAGE ACT.

(c) If the unit responsible for a State contract determines that application of this title would conflict with any applicable federal program requirement, this title does not apply to the contract or program.

(d) The head of the unit responsible for a State contract subject to this title shall determine if contract services valued at 50% or more of the total value of the contract will be performed in the Tier 1 area or the Tier 2 area and shall provide that determination on the invitation for a bid.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.