

**MWELA MWPCL\_FAV\_SB641**

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Position: FAV



WRITTEN TESTIMONY FOR THE SENATE FINANCE COMMITTEE  
IN SUPPORT OF SB 641  
FEBRUARY 27, 2020

The Metropolitan Washington Employment Lawyers Association (MWELA) is the local chapter of the National Employment Lawyers Association, a national organization of attorneys, primarily plaintiffs' counsel, who specialize in employment law. MWELA advocates for laws that protect Maryland employees and ensure that employees have basic rights and fair treatment by their employers.

MWELA supports SB 641 because it provides necessary protections for Maryland employees and closes a statutory gap which allows employers to *legally* fire employees for opposing wage theft that is illegal under the Maryland Wage Payment and Collection Law ("MWPCPL"). The MWPCPL is designed to ensure that Maryland workers receive the pay they have earned on time and in the proper amount.

SB 641 fulfills the promise made by the MWPCPL in three ways. First, SB 641 provides for protection against retaliation should an employee speaks out about non-payment, underpayment, or delayed payment. Second, SB 641 requires that employers make paychecks transparent so workers can see if they were paid the right amount. And, third, SB 641 makes sure that employees are not improperly classified as independent contractors, and have the protections of wage and hour laws.

What good is a right to payment of wages on time and in the full amount if your employer can fire you simply to bringing issues regarding payment to light? The lack of an effective anti-retaliation provision places an unnecessary barrier between people who need to be paid on time to pay for healthcare, to pay for their care, to make rent and making sure such payment actually happens.

And it should not be this way. Nearly every employment and wage statute has an anti-retaliation provision where employees can bring their own lawsuits when they suffer adverse actions for speaking out. This is true of the Maryland Wage and Hour Law and the Maryland anti-discrimination laws, and it should be true of the MWPCPL. The insight that has led to the widespread adoption of anti-retaliation provisions, that if you allow retaliation to gut the substantive right because of the chilling effect of retaliation, applies with equal force to the MWPCPL. Maryland should not allow employers to sidestep the MWPCPL by chilling the exercise of the important rights therein. SB 641 corrects this legislative gap by adding an anti-retaliation provision to the MWPCPL.

What good is a right to payment of wages on time and in the full amount if you cannot tell if you were paid the proper amount on the paycheck? Some employers provide paychecks with scant information, and which do not inform employees of the number of hours for which the employee is being paid or the amount of withholdings. In those cases, how can the employee tell if she is being paid the right amount? SB 641 fixes this concern by ensuring employers disclose basic information on the paycheck which gives the employee basic information every time she is

paid.

And what good are the wage and hour laws at all if you have been improperly classified as an independent contractor? Wage and hour laws by and large do not apply to independent contractors at all. SB 641 clarifies the definition of who is, and who is not, an independent contractor to ensure that only people truly in business for themselves are exempt from the wage and hour protections.

As the representatives of employees, MWELA's goals are to ensure that Maryland employees are fairly treated, and that existing protections already codified live up to their promise. The MWPCCL falls short of its goals, but can be corrected with the modest changes in SB 641. We urge you to support SB 329 and stand against wage theft.

# **Legislative Black Caucus of MD\_FAV\_SB641**

Uploaded by: Black Caucus of MD, Legislative

Position: FAV



# LEGISLATIVE BLACK CAUCUS OF MARYLAND, INC.

The Maryland House of Delegates, 6 Bladen Street, Room 300, Annapolis, Maryland 21401  
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February 25, 2020

Senator Delores G. Kelley  
Chair, Finance

Senator Brian J. Feldman  
Vice Chair, Finance

Dear Chair Kelley and Members of the Committee:

The Legislative Black Caucus of Maryland has voted to offer **favorable** support for SB 641- Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law- Revisions (Maryland Wage Protection Act). The purpose of this legislation is to close the loopholes in state law that facilitate the commission of wage theft, ensuring that bedrock protections like the \$15 minimum wage exist not just in theory but are effective in practice.

Black workers experience wage theft at alarming and disproportionate rates. National data shows, for instance, that Black workers are three times as likely as their white counterparts to suffer minimum wage violations. These workers are often working around the clock, at wage rates that are already set very low, only to find their paychecks come up short and making it near impossible to pay for basic necessities or save for the future.

We feel this legislation is important because it ensures that Black workers and all workers receive their hard-earned wages by strengthening Maryland law to combat the most common practices. For this reason, the Legislative Black Caucus of Maryland supports SB 641.

Respectfully,

Darryl Barnes  
Chair, Legislative Black Caucus  
of Maryland

Edith Patterson  
1<sup>st</sup> Vice Chair, Legislative Black  
Caucus of Maryland

# **JOTF\_FAV\_SB641**

Uploaded by: Dews, Christopher

Position: FAV



*Advocating better skills, jobs, and incomes*

**TESTIMONY IN SUPPORT OF SENATE BILL 641:**

**Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law –  
Revisions (Maryland Wage Protection Act)**

TO: Hon. Delores Kelley, Chair, and Members of the Senate Finance Committee

FROM: Christopher Dews, Policy Advocate

DATE: February 27th, 2020

The Job Opportunities Task Force (JOTF) is an independent, nonprofit organization that advocates for better jobs, skills training, and wages for low-income workers and job seekers in Maryland. We support the Maryland Wage Protection Act as a means of ensuring lower-income workers have honest access to their earned wages.

Wage theft – the denial of minimum wage, overtime, and other promised wages – deprives low-wage workers of an honest day’s pay for an honest day’s work, with Black and Latinx suffering a disproportionate share of the harm. One study found that 32.8% of Latinx employees in low-wage industries had experienced minimum wage violations, while 77.6% had experienced overtime violations. Immigrant Latinx workers, both documented and undocumented, are particularly hard hit – 35.1% have suffered minimum wage violations, and have suffered unlawful denials of overtime pay. Black workers, meanwhile, are three times as likely as their white counterparts to suffer minimum wage violations. Indeed, wage theft is one of the factors that contributes to the racial wage gap that has been growing throughout the country in recent years.

The Maryland Wage Protection Act ensures that Black and Latinx workers – and all workers – receive their hard-earned wages by strengthening Maryland law to combat the most common practices that employers use to commit wage theft:

- **Retaliation Protections:** Employees afraid of retaliation – termination, reduced hours, pay cuts, or for immigrant workers, calls to immigration authorities – often stay silent about wage theft, even when it means going without needed pay. Under current law, district attorneys can theoretically pursue misdemeanor charges against an employer who retaliates against an employee for seeking wages, but such enforcement actions are extremely rare and employees themselves can do nothing to protect themselves from retaliation. The Maryland Wage Protection Act empowers workers to take legal action against retaliation they have suffered, so that they can recover their earned wages.
- **Paystub Transparency:** Employers can mask wage violations with paystubs that have vague or misleading information. An employee who receives a paystub that states only a lump sum or does not list

# JOTF JOB OPPORTUNITIES TASK FORCE

*Advocating better skills, jobs, and incomes*

regular or overtime hours has no way of knowing if he or she has been paid correctly. The Maryland Wage Protection Act requires employers to print basic information that they are already required to track – about wage rates, hours, and deductions – on employee pay stubs so that employees know that they are receiving all that they have earned.

- **Prohibition on Misclassification:** True independent contractors are people who are in business for themselves – with broad authority to set their own rates and hours – and who therefore are not covered by the wage laws. Employers misclassify employees as independent contractors as one way to skirt minimum wage and overtime requirements. The Maryland Wage Protection Act clarifies the definition of “independent contractor” to prevent employers from inappropriately applying that label to workers who are under their control and not truly operating their own businesses.

JOTF supports the Maryland Wage Protection Act, which combats wage theft, a practice that disproportionately deprives Black and Latinx workers of full and fair compensation for their labor. For these reasons, JOTF strongly supports Senate Bill 641 and urges a favorable report.



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*Advocating better skills, jobs, and incomes*

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- **Retaliation Protections:** Employees afraid of retaliation – termination, reduced hours, pay cuts, or for immigrant workers, calls to immigration authorities – often stay silent about wage theft, even when it means going without needed pay. Under current law, district attorneys can theoretically pursue misdemeanor charges against an employer who retaliates against an employee for seeking wages, but such enforcement actions are extremely rare and employees themselves can do nothing to protect themselves from retaliation. The Maryland Wage Protection Act empowers workers to take legal action against retaliation they have suffered, so that they can recover their earned wages.
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**JOTF\_FAV\_SB641**

Uploaded by: Dews, Christopher

Position: FAV



## **SB 641: MARYLAND WAGE PROTECTION ACT**

**Hearing before the Senate Finance Committee  
February 27, 2020**

**Position: SUPPORT**

Job Opportunities Task Force (JOTF) works to eliminate educational and employment barriers for low-wage workers by transforming the systems and policies that create and perpetuate those barriers. We seek, as a core value, to advance racial equity in the workplace, including through reform of policies and practices that disadvantage workers of color in particular. **JOTF supports the Maryland Wage Protection Act (SB 641/HB 1097)**, which combats wage theft, a practice that disproportionately deprives Black and Latinx workers of full and fair compensation for their labor.

**Wage theft – the denial of minimum wage, overtime, and other promised wages – deprives low-wage workers of an honest day’s pay for an honest day’s work, with Black and Latinx suffering a disproportionate share of the harm.** One study found that 32.8% of Latinx employees in low-wage industries had experienced minimum wage violations, while 77.6% had experienced overtime violations. Immigrant Latinx workers, both documented and undocumented, are particularly hard hit – 35.1% have suffered minimum wage violations, and have suffered unlawful denials of overtime pay.<sup>1</sup> Black workers, meanwhile, are three times as likely as their white counterparts to suffer minimum wage violations.<sup>2</sup> Indeed, wage theft is one of the factors that contributes to the racial wage gap that has been growing throughout the country in recent years.<sup>3</sup>

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<sup>1</sup> Labor Council for Latin American Advancement, *Latino Workers in the United States* (2011), [https://www.lclaa.org/images/pdf/LCLAA\\_Report.pdf](https://www.lclaa.org/images/pdf/LCLAA_Report.pdf).

<sup>2</sup> National Employment Law Project, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities* (2009), <https://s27147.pcdn.co/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

<sup>3</sup> Valerie Wilson & William Rodgers III, *Black-white Wage Gaps Expand with Rising Wage Inequality*, <https://www.epi.org/publication/black-white-wage-gaps-expand-with-rising-wage-inequality/> (2016)

**The Maryland Wage Protection Act ensures that Black and Latinx workers – and all workers – receive their hard-earned wages by strengthening Maryland law to combat the most common practices that employers use to commit wage theft:**

- **Retaliation Protections:** Employees afraid of retaliation – termination, reduced hours, pay cuts, or for immigrant workers, calls to immigration authorities – often stay silent about wage theft, even when it means going without needed pay. Under current law, district attorneys can theoretically pursue misdemeanor charges against an employer who retaliates against an employee for seeking wages, but such enforcement actions are extremely rare and employees themselves can do nothing to protect themselves from retaliation. The Maryland Wage Protection Act empowers workers to take legal action against retaliation they have suffered, so that they can recover their earned wages.
- **Paystub Transparency:** Employers can mask wage violations with paystubs that have vague or misleading information. An employee who receives a paystub that states only a lump sum or does not list regular or overtime hours has no way of knowing if he or she has been paid correctly. The Maryland Wage Protection Act requires employers to print basic information that they are already required to track – about wage rates, hours, and deductions – on employee paystubs, so that employees know that they are receiving all that they have earned.
- **Prohibition on Misclassification:** True independent contractors are people who are in business for themselves – with broad authority to set their own rates and hours – and who therefore are not covered by the wage laws. Employers misclassify employees as independent contractors as one way to skirt minimum wage and overtime requirements. The Maryland Wage Protection Act clarifies the definition of “independent contractor” to prevent employers from inappropriately applying that label to workers who are under their control and not truly operating their own businesses.

For these reasons, JOTF strongly supports the Maryland Wage Protection Act (SB 641/HB 1097) and **urges a favorable report.**

Should you have questions or concerns, please contact Christopher Dews at [christopher@JOTF.org](mailto:christopher@JOTF.org)

# **CASA\_FAV\_SB641**

Uploaded by: Dworak-Fisher, Sally

Position: FAV

**Senate Judicial Proceedings Committee**

**SUPPORT SB641 – Maryland Worker Wage Protection Act**

**Testimony of Nicholas Katz, CASA de Maryland**

**February 27, 2020**

Good Afternoon Madame Chair and members of the Committee:

My name is Nicholas Katz and I am the Senior Manager of Legal Services for CASA de Maryland (“CASA”). CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 90,000 members in Maryland. Thank you for this opportunity to testify today in support of SB641.

CASA’s strong support for SB641 stems from the experiences of our members, who routinely face discrimination, retaliation and exploitation in the workplace. Each year, CASA’s legal department conducts intakes with hundreds of individuals who have experienced wage theft or other workplace abuses, helping our members recover tens of thousands of dollars in lost wages annually.

Over the last several years, this Legislature has made amazing progress in advancing economic justice and strengthening worker’s rights. In a crucial advance, last year Maryland became the sixth state in the nation to guarantee a \$15 per hour minimum wage to all state residents, dramatically improving the quality of life for more than half a million Marylanders. Unfortunately, that bill did not include the anti-retaliation protections and other necessary changes that are embodied in the Maryland Wage Protection Act. In order to fully realize the benefits of such legislation, we must protect workers from being fired when they complain about not being paid at the proper rate.

Sadly, that is exactly what happened to one of our clients recently. After working for his employer for more than a decade, the client realized he had not been paid the overtime he is entitled to under the law. He filed a complaint with the Maryland Department of Labor seeking to recover his wages, and as soon as his employer found out about the complaint, he was fired. CASA encouraged him to file a complaint with the United States Equal Employment Opportunity Commission (EEOC) but sadly there was no remedy under State law for this outrageous action. We also recognize that given the EEOC’s focus on traditional forms of employment discrimination, that agency likely will not be able to offer relief. That has to change, and that is exactly what the Maryland Wage Protection Act will do.

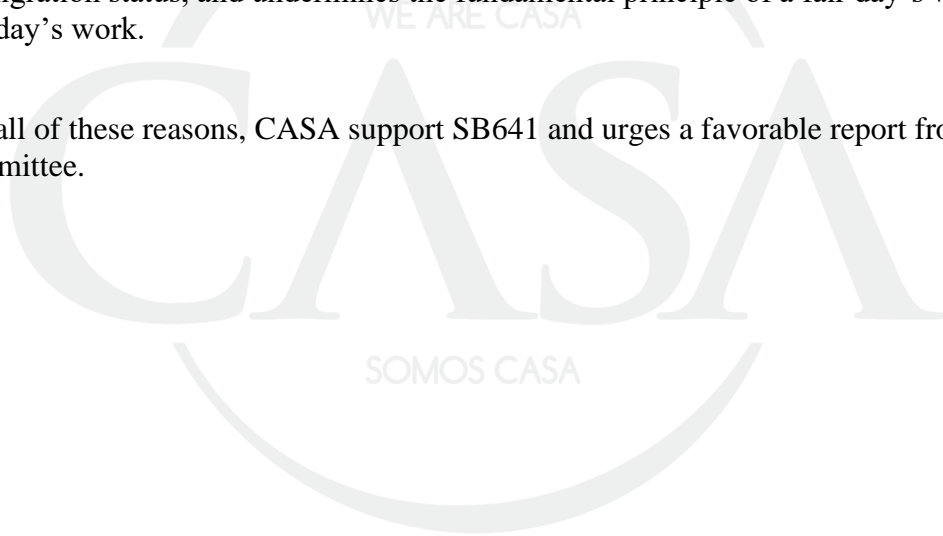
SB641 does three crucial things that will protect all workers in Maryland, but particularly those like our members who are especially vulnerable. First, it protects workers from



retaliation, so that victims of wage theft can enforce their right to be paid fairly without fear of being fired or incurring other negative consequences at work. Second, it promotes transparency by requiring that paystubs contain information showing how pay was calculated, such as hours worked, pay rate, and overtime. All too often, workers come to us with checks that are written out with none of this information and they have no idea how their wages were calculated. Third, it clarifies that employees are broadly protected by wage laws while independent contractors (people who are in business for themselves) are not. Another major issue that we see is where employers misclassify individuals who are actually employees as independent contractors, thus depriving them of many of their fundamental workplace rights. SB641 helps to add clarity to this landscape and protect all workers.

Another key provision of the Maryland Wage Protection Act that is especially important to CASA members is its prohibition on retaliating against workers (or their families members) who exercise their rights under the Act, based on their suspected citizenship or immigration status. All too often, undocumented workers are exploited because they fear that their employer will report them to ICE if they complain about wage theft or other violations of the law. This makes the workplace unsafe for everyone, regardless of their immigration status, and undermines the fundamental principle of a fair day's wage for a fair day's work.

For all of these reasons, CASA support SB641 and urges a favorable report from the committee.



**MELA\_FAV\_SB641**

Uploaded by: Dworak-Fisher, Sally

Position: FAV



WRITTEN TESTIMONY FOR THE SENATE FINANCE COMMITTEE  
IN SUPPORT OF SB 641

FEBRUARY 27, 2020

The Maryland Employment Lawyers Association (MELA) is the state chapter of the National Employment Lawyers Association, a national organization of attorneys, primarily plaintiffs' counsel, who specialize in employment law. MELA advocates for laws that protect Maryland employees and ensure fair treatment by their employers.

MELA supports SB 641 because it closes loopholes that leave Maryland employees vulnerable to wage theft and too often unable to challenge their employers' failures to pay. Currently, unscrupulous employers may *legally* fire employees for opposing illegal wage theft that under the Maryland Wage Payment and Collection Law ("MWPCCL"). The MWPCCL is designed to ensure that Maryland workers receive the pay they have earned on time and in the proper amount. Likewise, though some forms of retaliation are prohibited under the Maryland Wage and Hour Law (MWHL), the criminal misdemeanor penalty is not effective because it cannot restore the employee to their position if they are fired. These two bedrock laws are designed to ensure that Maryland workers receive the pay they have earned on time and in the proper amount.

SB 641 fulfills the promise made by the MWPCCL and MWHL in three ways. First, SB 641 provides for protection against retaliation should an employee speak out about non-payment, underpayment, or delayed payment. Second, SB 641 requires that employers make paychecks transparent so workers can see if they were paid the right amount. Currently, some unscrupulous businesses mask wage theft with paychecks that provide no information on how pay was calculated; they only provide a gross amount and deductions. And, third, SB 641 makes sure that employees are not improperly classified as independent contractors, such that they are protected as employees under Maryland's wage and hour laws.

A right to payment of wages on time and in the full amount is meaningless if your employer can fire you simply to bringing issues regarding payment to light. The lack of an effective anti-retaliation provision silences people who need to be paid on time to pay for healthcare, to pay for their care, to make rent and to make sure such payment actually happens.

And it should not be this way. Nearly every employment statute has an anti-retaliation provision where employees can bring their own lawsuits when they suffer adverse actions for speaking out. This is true of the Maryland anti-discrimination laws, and it should be true of the wage laws. The widespread adoption of anti-retaliation or whistleblower provisions recognizes that unchecked retaliation guts the substantive right by silencing workers. SB 641 corrects this legislative gap by adding an anti-retaliation provision to the wage laws.

Similarly, the ability of employers to provide paychecks with scant information, and which do not inform employees of the number of hours or pieces for which the employee is being paid,

can mask wage theft. In those cases, how can the employee tell if she is being paid the right amount? SB 641 fixes this concern by ensuring employers disclose basic information on the paycheck which gives the employee basic information every time she is paid.

Finally, wage and hour laws by and large do not apply to independent contractors; they protect employees. True independent contractors are in business for themselves; they generally supply a finished product or service that is distinct from the product or service offered by the business to which they supply it, and they work free from any direction or control over their work. The distinction between an employee and an independent contractor is critical; it is the difference between being protected as an employee and entitled to minimum and overtime wages or being responsible for yourself and any employees you have as an independent business. SB 641 clarifies the definition of who is, and who is not, an independent contractor to ensure that only people truly in business for themselves are exempt from the wage and hour protections.

As the representatives of employees, MELA's goals are to ensure that Maryland employees are fairly treated, and that existing protections already codified live up to their promise. The MWHL and MWPCCL currently fall short of their goals but can be corrected with the modest changes in SB 641.

We **urge you to support SB 641** and help ensure that Maryland's wage laws live up to their promise.

**PJC\_FAV\_SB641**

Uploaded by: Dworak-Fisher, Sally

Position: FAV



**Monisha Cherayil, Attorney**  
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**SB 641: MARYLAND WAGE AND HOUR LAW AND MARYLAND WAGE PAYMENT AND COLLECTION ACT - REVISIONS (MARYLAND WAGE PROTECTION ACT)**

**Hearing before the Senate Finance Committee  
February 27, 2020**

**Position: SUPPORT**

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that advances social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project expands and enforces the right of low-wage workers to an honest day's pay for an honest day's work. The PJC **supports SB 641**, which will protect employees from retaliation, prevent misclassification of employees as independent contractors, and guarantee employees access to basic information on their paystubs.

**Wage theft – the practice of denying or failing to pay workers their earned minimum, overtime, and other promised wages – is all too common.** Low-wage workers nationwide are denied minimum wages to the tune of fifteen billion dollars per year.<sup>1</sup> They lose nearly quarter of their weekly earnings, an average of \$3,300 per year, leaving them to survive on a mere \$10,500 annually. **In Maryland, 580,000 workers are cheated out of a cumulative \$875 million in gross wages each year.**<sup>2</sup>

**Wage theft hurts Maryland families, law-abiding businesses, and government coffers.** Nearly a third of workers who suffer minimum wage violations turn to public assistance, leaving taxpayers to subsidize the cheaters; and many families are in poverty as a direct result of not receiving the wages they have earned.<sup>3</sup> Moreover, employers who misclassify their employees as independent contractors undercut their law-abiding competitors, who pay more in wages and in workers' compensation premiums and unemployment insurance taxes to cover for the cheaters. Businesses that misclassify employees also do not make unemployment insurance contributions on their behalf, thereby limiting the amounts collected by the state for unemployment funds.

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<sup>1</sup> David Cooper & Teresa Kroeger, Employers Steal Billions from Workers' Paychecks Each Year (Economic Policy Institute, May 10, 2017), <https://www.epi.org/files/pdf/125116.pdf>

<sup>2</sup> Center for Popular Democracy, Combatting Wage Theft with the Maryland Paystub Transparency Act of 2016 4 (2016), <https://populardemocracy.org/sites/default/files/MD%20Pay%20Stub-web.pdf>

<sup>3</sup> Cooper, *supra* n. 1, at 13-15.

**SB 641 is a common sense solution that will close 3 loopholes that unscrupulous businesses exploit. It will:**

**1. Enable employees to stand up to wage theft by protecting them from retaliation.** Employees often forego their hard-earned pay because they fear retaliation. And with good reason: one national study found that forty-three percent of respondents who had complained experienced reprisal in the form of firing, suspension, or threats to cut hours or pay or call immigration authorities.<sup>4</sup> Another twenty percent of workers chose not to complain at all in order to avoid these sorts of retaliatory responses.<sup>5</sup>

Maryland's wage laws provide employees virtually no protection from retaliation. The state Wage and Hour Law theoretically makes theft of minimum and overtime wages a criminal misdemeanor, but prosecutors rarely (if ever) pursue these cases, and the maximum penalty – a \$1,000 fine – does little to deter low-road employers.<sup>6</sup> Even a successful prosecution offers no relief to a worker who has lost a job or suffered a cut in pay. In the PJC's practice representing low-wage workers throughout the state, we routinely hear from workers who suffer wage theft but opt not to pursue claims because they are fearful of the consequences they will suffer.

**2. Prohibit low-road employers' ability to hide wage theft with paystubs that contain vague or misleading information.** Maryland law requires employers to record payroll information such as employees' hours, pay rates, deductions, and earned regular and overtime wages, but it does not require businesses to share this information each pay period; current law only requires a statement of gross wages and deductions. Paystubs that lump together all compensation make it nearly impossible to determine how the compensation was calculated or whether an employee has been paid all earned wages, including overtime. In addition, because Maryland law does not require paystubs to include basic identifying information for the issuing business, some employers – particularly those in low-wage industries – omit their address or telephone number, making it difficult for employees to even raise questions about their pay.

With its gaping omissions, **Maryland's paystub requirements are far weaker than those in Alaska, California, Colorado, Delaware, Hawaii, Massachusetts, Maine, Minnesota, New Mexico, Nevada, New York, Pennsylvania, Texas, Vermont, and Washington.**<sup>7</sup> Virtually all of these jurisdictions require that, in addition to gross wages and deductions, paystubs show hours worked. Majorities also require that paystubs report pay rate(s), net pay, and pay period ranges. Maryland thus lags behind a diverse array of other states in its failure to impose common sense standards to require transparency in paystubs generated within its borders.

**3. Clarify what an independent contractor is so that employees are not misclassified and benefit from the protections of our wage laws as intended.** Independent contractors are those who control their own work and are truly in business for themselves; a plumber that sets her own rate and schedule when servicing homes is an example. Maryland already has a well-established definition in the unemployment insurance code and Workplace Fraud Act, but that definition is

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<sup>4</sup> Nat'l Empl. Law Project, Broken Laws, Unprotected Workers 3 (2008), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> Md. Code Ann. Lab. & Empl. § 3-402(b)(1).

<sup>7</sup> Center for Popular Democracy, *supra* n. 2, at 4.

not spelled out in our wage statutes. As a result, too many businesses label their employees independent contractors and deny them protections – such as bedrock rights to minimum wage and overtime – that Maryland’s wage laws afford to covered employees. This practice is particularly common in industries dominated by women, such as home health care and domestic services.<sup>8</sup> Clarifying the definition of “independent contractor” in the wage statutes will promote clarity and consistency, and ensure that employees are not exempt from the wage theft protections of the Wage and Hour and the Wage Payment and Collection Laws.

In sum, the Maryland Wage Protection Act simply closes three loopholes to combat wage theft and level the playing field for law-abiding businesses by:

- **Protecting employees from retaliation** so that victims of wage theft can enforce their right to be paid without fear of being fired, losing hours, being threatened, et cetera;
- **Promoting transparency by requiring that paystubs contain information showing how pay was calculated**, such as hours worked, pay rate, and overtime.
- **Clarifying that employees are broadly protected by wage laws** while independent contractors (people who are in business for themselves) are not, and incorporating the definition of “independent contractor” from the existing Unemployment Insurance law.

In doing so, this legislation takes an important step towards combatting wage theft in Maryland, and ensuring that all workers receive the wages they work hard to earn. **The PJC strongly urges a favorable report.**

For more information contact Monisha Cherayil, whose contact information is on the first page.

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<sup>8</sup> U.S. Gov’t Accountability Office, GAO-06-656, Employment Arrangements: Improved Outreach Could Help Ensure Proper Worker Classification 31 (2006), <https://www.gao.gov/new.items/d06656.pdf>; NELP, Independent Contractor Classification in Home Care (2015), <https://www.nelp.org/wp-content/uploads/Home-Care-Misclassification-Fact-Sheet.pdf>.



# **SB641 PPT**

Uploaded by: Dworak-Fisher, Sally

Position: FAV

Retaliation – Employee asks about wages and gets fired, receives a cut in hours, is reassigned, or threatened, etc.

### Existing Law & Loopholes

Wage & Hour Law – Prohibits some forms of retaliation (demotion, discharge), BUT

- The only penalty is the possibility of a misdemeanor prosecution with a fine of up to \$1,000 on conviction
- Prosecution does not get workers their jobs back or otherwise remedy the retaliation or wage theft
- States’ attorneys rarely, if ever, prosecute

Wage Payment & Collection Law: No protection from retaliation.

FLSA - Prohibits some forms of retaliation against workers pursuing federal wage claims, and permits civil enforcement, BUT

- Only applies to violations of the federal minimum wage (\$7.25/hr for non-tipped) and overtime
- Generally covers only larger, multi-state businesses

### MWPA Fix

- Allows employee to get their job back if terminated
- Employee can recover wages owed
- Covers retaliation against employees claiming denials of the federal or state minimum wage, overtime, and other promised wages
- Covers all businesses
- Allows employee to file suit against employer who retaliates against the employee for inquiring or complaining about wage theft, or supporting others who complain
- Employee can recover damages for actual harm suffered – e.g. loss of employment, reduced wages
- Creates civil penalties for repeat

Misleading or Confusing Paystubs – Paystubs do not show hours worked, pay rate, or employer contact information, so employees do not know if they have been paid correctly and cannot resolve errors

Existing Law & Loopholes

Wage Payment & Collection Law- Employer must provide paystub for each pay period, BUT it need only include gross earnings and total deductions. In addition, at time of hire, employer must provide notice of employee’s pay rate, paydays, and leave benefits.

Wage & Hour Law – Employer must keep records of each employee’s pay rate, hours worked per day and week, and amount paid per pay period, BUT are not required to put the same information on paystubs.

FLSA – Employer must keep records of each employee’s pay rate, hours worked per day and week, straight-time and overtime earnings, and itemized deductions, BUT are not required to put the same information on paystubs.

-No penalties under any applicable law for failure to provide a paystub, even when that failure facilitates wage theft

MWPA Fix

-Requires that paystub include all information that employers must maintain in their records under the Wage & Hour Law and/or the FLSA

-Requires adequate employer identification on paystub

-Allows employees to seek additional damages, capped at \$2,500 total, for paystub violations where they have also experienced wage theft

|  | <u>Existing Law &amp; Loopholes</u>  | <u>MWPA Fix</u>   |
|--|--|---|
| <p><u>Mis-classification</u> – Employees are wrongly classified as independent contractors even though not in business for themselves, and thereby denied minimum wage, overtime, employer share of payroll taxes etc.</p> | <p><u>Wage &amp; Hour Law, Wage Payment Law</u>– Does not define “independent contractor,” leading to confusion over who is exempt from the wage laws and resulting in exclusion of protected employees, and damage to the state coffers.</p> <p><u>Unemployment Insurance Law</u> – Defines an independent contractor as an individual who is (a) free from control and direction over work performance; (b) customarily engaged in an independently established business doing the type of work at issue; and (c) performing work outside the usual course of business for the person/entity for whom the work is performed.</p> <p>Example: Retailer contracts with a plumber to fix its sink; plumber also provides services to other businesses, setting own rates and hours.</p> <p><u>Workplace Fraud Act</u> – Incorporates “independent contractor” from UI law and prohibits independent contractor misclassification,</p> | <p>-Uses the same definition of “independent contractor” in Maryland’s wage laws as in Maryland’s UI law to clarify who is legitimately exempt.</p> |

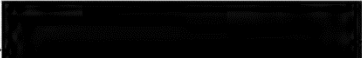
# Paystub Transparency



32588

| REFERENCE NO. | DESCRIPTION             | INVOICE DATE | INVOICE AMOUNT | DISCOUNT TAKEN | AMOUNT PAID |
|---------------|-------------------------|--------------|----------------|----------------|-------------|
|               | CONTRACT LABOR & 1099's |              |                |                | 1,360.00    |

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# FROZ/BLOCK ACC

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[REDACTED] (0140045)  
1013 BEARDS HILL RD  
ABERDEEN, MD 21001

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| 11/6/2015  | 10212        |

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| PAY THIS AMOUNT |
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PAY: Five Hundred Sixty Five and 99/100 Cents \*\*\*\*\*

TO THE ORDER OF: [REDACTED]

PNC BANK N.A.  
PITTSBURGH, PA 15219

[REDACTED SIGNATURE]

Authorized Signature

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**WomensLawCenterofMD\_FAV\_SB641**

Uploaded by: Dworak-Fisher, Sally

Position: FAV

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BILL NO.: Senate Bill 641  
TITLE: Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law  
– Revisions (Maryland Wage Protection Act)  
COMMITTEE: Finance  
DATE: February 27, 2020  
POSITION: SUPPORT

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Senate Bill 641 seeks to resolve three challenges workers face when attempt to address wage theft. Because approximately 33% of Maryland workers are low wage workers and 60% of those workers are women, wage theft and wage loss is a women's issue that has a demonstrable negative effect on women and their families in Maryland. In fact, women are significantly more likely to experience wage theft than men<sup>1</sup>. As such, the Women's Law Center of Maryland supports SB 641.

Essentially, three loop holes exist in the law which make it nearly impossible for many people to obtain the wages they earned through their hard work and SB 641 addresses those loopholes in the following ways:

- 1) **It protects employees from retaliation for seeking to obtain their own earned wages.** Currently, if an employee complains about lost wages, an employer can take any adverse employment action against them, including termination or reducing their hours, and the sole remedy under the Wage and Hour Law is a criminal misdemeanor. This infrequently prosecuted crime does nothing to help a low-wage worker who cannot afford job loss or reduced pay. **Women already face a heightened risk of retaliation in the workplace, and are therefore less likely to speak out against violations unless there are assurances that repercussions won't take place.**
- 2) **It promotes transparency** by requiring employers to include basic information on paystubs, such as the rate of pay, hours worked, overtime, and calculations. This has **a direct correlation to the gender pay gap** and inability for women to identify disparities in their pay as compared to their male counterparts.
- 3) **It clarifies that independent contractors are not, and should not, be protected by wage and hour laws,** but that employees should be afforded broad protections under the laws. Most of the laws currently in place to address misclassification focus on male-dominated industries such as construction and landscaping, ignoring the fact that **misclassification of employees as independent contractors is particularly common in sectors dominated by women workers, such as home health care services and domestic workers.**

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<sup>1</sup> NELP, Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities at \*8 (2009), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.



Women account for less than half of the U.S. working population, yet nearly 6 in 10 low wage workers are women. Many are working full time and yet they are still living below the poverty line. In Maryland, two-thirds of families now have women as sole, co, or primary breadwinners. That leaves many women financially insecure or dependent upon others in order to provide for themselves and their families. Economic security is the key to physical safety and self-sufficiency. But it cannot be gained if employees are unable to determine if they're being paid fairly or if they're unable to secure the wages they are entitled to without fear of retaliation.

For the above reasons, the Women's Law Center of Maryland urges a favorable report for SB 641.

***The Women's Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.***

# **MDDCAFLCIO\_FAV\_SB641**

Uploaded by: Edwards, Donna

Position: FAV



# MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

7 School Street • Annapolis, Maryland 21401-2096

Balto. (410) 269-1940 • Fax (410) 280-2956

*President*  
Donna S. Edwards

*Secretary-Treasurer*  
Gerald W. Jackson

**SB 641 – Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law – Revisions (Maryland Wage Protection Act)**  
**Senate Finance Committee**  
**February 27, 2020**

## **SUPPORT**

**Donna S. Edwards**  
**President**  
**Maryland State and DC AFL-CIO**

Madam Chair and members of the Committee, thank you for the opportunity to submit testimony supporting SB 641 – Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law – Revisions (Maryland Wage Protection Act). My name is Donna S. Edwards and I am the President of the Maryland State and District of Columbia AFL-CIO. On behalf of the 340,000 union members I offer the following comments.

Whether you are a plumber in Western Maryland, a poultry worker on the Eastern Shore, or a server in a local restaurant, you deserve to know everything that goes in and out of your paycheck. Full transparency in pay should be a right for every Maryland worker. Under current law, employers only need to report gross pay and deductions. Employers are not even required to provide their contact information, should the need arise for an employee to contact them regarding pay and benefits. SB 641 rectifies this, providing the full transparency that workers deserve in their paycheck. It allows workers to be aware of any changes, discrepancies, or deficiencies, and make corrections with the employer, if need be.

SB 641 is not a hindrance on employers. Those who are following the law – Unemployment Insurance, Workers' Compensation, and Wage and Hour Laws – are already collecting and calculating all the information that would be used to display on a worker's paystub. This bill simply requires employers to share that information with the very people who make their businesses thrive. Workers create the wealth enjoyed by businesses and deserve to know the details of how their gross pay, deductions, and benefits are calculated in writing on a pay stub.

SB 641 protects workers – who report incidents of wage theft – from retaliation by their employers, and it is broad reaching. It is imperative that we hold harmless workers who are doing the right thing and following the rules. For far too long, workers have been afraid to speak up in the workplace to defend themselves and their co-workers against wage theft.

Finally, SB 641 clearly delineates the difference between an employee and a contractor. A contractor is, at the heart of it, a small business owner. They set their own hours, determine their own pay rates and benefits, do not report to a boss, and have the freedom to pick and choose clients that they determine are correct for their business. Workers, on the other hand, do not have this level of flexibility, and are dependent on the employer for wages, benefits, and hours. By well-defining the concept of an “independent contractor” into Maryland Wage Law, we can protect the rights of contractors to do business as they please while also ensuring that unscrupulous employers do not misclassify workers with the intent to deny them good wages and benefits, denying the State of thousands of dollars through lost Workers’ Compensation and Unemployment Contributions.

**We ask for a favorable report on SB 641.**

# **Building and Trades\_FAV\_SB641**

Uploaded by: Guido, Jeff

Position: FAV



**Maryland Senate – Finance Committee**

**Chair: Delores G. Kelley**  
**Vice Chair: Brian J. Feldman**

**Senate Bill 641 – Maryland Wage & Hour Law & Maryland Wage Payment & Collection Law (MD Wage Protection Act)**

**Position: Support**

- Electrical Workers
- Insulators
- Boilermakers
- United Association
- Roofers
- Cement Masons
- Teamsters
- Laborers
- Bricklayers
- Ironworkers
- Sheet Metal Workers
- Elevator Constructors
- Painters
- Operating Engineers
- Carpenters

The Baltimore DC Metro Building Trades Council supports SB 641 in the belief that all working women and men deserve the same protections in their employment whether they have Union representation or not. The U.S. Supreme court 1975 ruling (NLRB v. J. Weingarten) that upheld the National Labor Relations Board’s decision that employees have a right to Union representation during an investigatory interview and to deny that was considered an unfair labor practice. The NLRB under President Bill Clinton extended the Wiengarten ruling to include non-union workers. That ruling was rescinded under President G.W. Bush in 2004 by a vote of 3 to 2. There are many laws and agencies that are meant to protect employees from unsafe and hazardous working conditions but without Union representation and a collectively bargained contract workers are deemed at will employees and subject to the arbitrary decisions of autocratic employers. Democracy should not cease once you enter the company door. This legislation will provide protections to workers to have a voice in their job conditions, wages and hours of work without unfair retaliation. It is imperative for employers to keep records of employee availability to work all hours provided, their production and insubordination if applicable to defend themselves against any frivolous charges as stated in legislation. The bill as written may not have much affect on the Building Trades Unions and our Signatory contractors but for the American Labor movement it is part of the larger campaign for economic and social justice.

We ask for a favorable report by the committee.

Jeffry Guido – Director

(E) [jguido@bdcbt.org](mailto:jguido@bdcbt.org) (O) 301-909-1071 (C) 240-687-5195

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**Value on Display... Everyday.**



**SEIU1199\_FAV\_SB641**

Uploaded by: Jones, Ricarra

Position: FAV



**Testimony of Ricarra Jones, Political Director of 1199SEIU**

**SB 641 – Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law – Revisions  
(Maryland Wage Protection Act)**

**Position: FAVORABLE**

February 27, 2020

Members of the Senate Finance Committee:

1199SEIU Healthcare Workers East (1199SEIU) is the largest healthcare union in the country with, with over 450,000 members throughout Massachusetts, New York, New Jersey, Maryland, Florida and Washington, D.C. **We fully support any and all measures such as this important piece of legislation designed to protect Maryland working families.**

Every day, the members of 1199SEIU save lives, deliver babies and care for the sick, seniors and people with disabilities. We are nurses, nurse aides, techs, lab workers, clerks, housekeepers, dietary workers, transporters, pharmacists, social workers and many other types of medical professionals. Many of our members worked hard to advocate for the passage of the \$15 minimum wage legislation. We are very excited that hundreds of thousands of workers received well deserved raises. But a very important piece of the bill was left on the table because unfortunately in so many cases, we can't protect workers' pay.

This bill is critical to ensuring that Maryland workers actually receive the wages they have earned, and that the new \$15 minimum wage actually works in practice.

We support this legislation because it will close important loopholes. It will:

- **Protect employees from retaliation** so that victims of wage theft can enforce their right to be paid without fear of being fired, losing hours, being threatened, et cetera;
- **Promote transparency by requiring that paystubs contain information showing how pay was calculated**, such as hours worked, pay rate, and overtime.
- **Clarify that employees are broadly protected by wage laws** while independent contractors (people who are in business for themselves) are not.

Together, these protections ensure that Maryland's wage laws are properly followed, and that Marylanders can work with dignity, not just in theory but in practice.

**We must do right by Maryland working families.**

**For all of these reasons, we respectfully urge the Committee to issue a FAVORABLE report for Senate Bill 641.**



# **MD Center on Economic Policy\_FAV\_SB641**

Uploaded by: Orr, Benjamin

Position: FAV

# For a Healthy Economy, Strengthen Marylanders' Rights in the Workplace

## Position Statement in Support of Senate Bill 641

*Given before the Senate Finance Committee*

Strong legal protections for workers are an essential tool to steer our economy along a healthy growth path that delivers broadly shared prosperity. Maryland has made important advances in recent years by guaranteeing most workers the opportunity to earn paid sick days and gradually raising the minimum wage to \$15 per hour. However, our current labor laws often provide too little information for employees to effectively exercise their rights and too often leaves them vulnerable to retaliation when they do. This undermines the effectiveness of Maryland's existing worker protections, hurting all working people and especially heightening barriers that hold back many women, workers of color, and Marylanders who were born outside the United States. The Maryland Center on Economic Policy supports Senate Bill 641, which would strengthen the transparency and anti-retaliation standards that make other worker protections meaningful.

Senate Bill 641 calls for multiple improvements to the mechanics of Maryland labor law, such as:

- The bill requires employers to provide workers written notification of the terms of their employment within 30 days after hiring. This includes the worker's specific pay structure (hourly, salaried, on commission, etc.), other information necessary to verify the accuracy of pay calculations, and accurate contact information for the employer legally responsible for appropriately paying the worker.
- The bill requires employers to include similar information on pay stubs, allowing workers to verify the accuracy of their pay for each payroll period and making clear who is legally responsible for appropriate payment.
- The bill would clarify the definition of prohibited retaliation by specifying actions employers may not take in response to an employee exercising their rights. In addition to prohibiting an employer from firing workers who exercise their rights, the bill prohibits retaliatory hours reductions, reporting employees to federal immigration officials, or punishing workers who help each other exercise their rights.
- The bill would establish retaliation protections in areas of labor law where none currently exist. For example an employer today is essentially legally allowed to retaliate against an employee who complains that their pay does not match their stated wage, as long as it exceeds the applicable minimum wage.
- The bill would enable the Maryland Department of Labor to proactively enforce worker protections. This would mean that the state could take action when employers are clearly violating labor law, without having to wait to receive an employee complaint.

These reforms would bring Maryland’s bedrock worker protections into line with standard employment law practice. For example, federal law prohibits employers from retaliating against a worker who makes a claim under the Fair Labor Standards Act, the Occupational Safety and Health Act, the Civil Rights Act, the Equal Pay Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the National Labor Relations Act, and other employment laws.<sup>i</sup> The Maryland Department of Labor has stated that the lack of protection under current law exerts a chilling effect, effectively allowing employers to intimidate workers out of taking any action to collect the wages they are owed.<sup>ii</sup> The Department has estimated that employers across Maryland retaliate against workers who make claims under the Wage Payment and Collection Law hundreds of times per year.<sup>iii</sup>

We should measure the health of our economy not simply by the number of dollars exchanged or the number of people who go to work each day, but by its ability to raise all families’ standard of living. Yet our economy has largely moved in the opposite direction over the last half century, as typical workers saw little improvement in their wages despite explosive growth for the wealthiest 1 percent.<sup>iv</sup> Basic standards push against this negative trend, helping to ensure that everyone shares in the benefits of a growing economy—and these standards are meaningful only if they are backed by effective enforcement.

**For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Finance Committee make a favorable report on Senate Bill 641.**

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## **Equity Impact Analysis: Senate Bill 641**

### *Bill summary*

Senate Bill 641 would reform transparency, enforcement, and anti-retaliation standards in Maryland labor law. These reforms would make it easier for workers to know when an employer is violating their rights, make it easier to prove this violation, and prohibit employers from retaliating against workers who exercise their rights.

### *Background*

The Maryland General Assembly enacted the Healthy Working Families Act in 2018, overturning the governor’s 2017 veto. This law guarantees most Maryland workers the right to earn paid sick days at work. The General Assembly acted to raise the state minimum wage in 2019, gradually increasing the wage floor for most workers to \$15 per hour.

However, Maryland wage law currently includes inadequate enforcement provisions to make these protections effective. Employers are not required to disclose some information necessary to file and support a complaint, are effectively allowed to take certain retaliatory actions such as reducing hours or reporting workers to federal immigration authorities, and in some cases are not subject to any anti-retaliation measures.

### *Equity Implications*

Current labor law provides especially weak protections to part-time workers, low-wage workers, tipped workers, and workers born outside the United States. These weaknesses heighten economic roadblocks facing many workers who already face obstacles in the labor market. For example, about two-thirds of tipped workers nationwide are

women,<sup>v</sup> and workers of color—particularly Latinx workers—are more likely than their white counterparts to work for low wages.

Senate Bill 641 would reduce barriers facing these workers by making it easier for them to enforce their existing rights.

### *Impact*

Senate Bill 641 would likely **improve racial, gender, immigration, and economic equity** in Maryland.

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<sup>i</sup> “Fact Sheet: Retaliation Based on Exercise of Workplace Rights Is Unlawful,” U.S. Equal Employment Opportunity Commission, 2015, [https://www.eeoc.gov/eeoc/interagency/fs\\_retaliation.cfm](https://www.eeoc.gov/eeoc/interagency/fs_retaliation.cfm)

<sup>ii</sup> Heather Ruby, “Fiscal and Policy Note: Senate Bill 726,” Department of Legislative Services, 2017, [http://mgaleg.maryland.gov/2017RS/fnotes/bil\\_0006/sbo726.pdf](http://mgaleg.maryland.gov/2017RS/fnotes/bil_0006/sbo726.pdf)

<sup>iii</sup> Ibid. The Department estimated that it would have received “as many as 200 claims per year alleging adverse action violations” under Senate Bill 726 of 2017, which included the same protections as Senate Bill 329 of this session.

<sup>iv</sup> Christopher Meyer, “What a \$15 Minimum Wage Would Mean for Maryland: Good Jobs, Secure Families, and a Healthy Economy,” Maryland Center on Economic Policy, 2018, [http://www.mdeconomy.org/wp-content/uploads/2018/02/MDCEP\\_FF15\\_report-2.pdf](http://www.mdeconomy.org/wp-content/uploads/2018/02/MDCEP_FF15_report-2.pdf)

<sup>v</sup> Elise Gould and David Cooper, “Seven Facts about Tipped Workers and the Tipped Minimum Wage,” Economic Policy Institute, 2018, <https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/>

**EASRCC\_FAV\_SB641**

Uploaded by: Sanchez, Mungu

Position: FAV



# Eastern Atlantic States

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## REGIONAL COUNCIL OF CARPENTERS

February 27, 2020

Chair Delores Kelly  
Finance Committee  
Senate of Maryland

Chair Kelley, Vice-Chair Feldman and distinguished Committee Members,

On behalf of the Eastern Atlantic States Regional Council of Carpenters, we proudly SUPPORT SB 641 - Maryland Worker Wage Protection Act. Wage theft in Maryland in an epidemic - 2017 study found 580,000 workers are cheated out of \$875 million annually. While \$1,500 may seem like a small amount of money to people in this room, that is meals, transit passes, and health coverage all put in jeopardy for our most vulnerable employees. The problem is even more dramatic in the trades as fly-by-night and insolvent subcontractors cannot be traced after jobs are completed so there is little recourse for wage theft.

The Eastern Atlantic States Regional Council of Carpenters supports SB 641 as it closes three key loopholes:

- Protects employees from retaliation so that victims of wage theft can enforce their right to be paid without fear of being fired, losing hours, or being threatened.
- Promotes transparency by requiring that paystubs contain information showing how pay was calculated, such as hours worked, pay rate, and overtime.
- Clarifies that employees are broadly protected by wage laws.

We thank the committee for its consideration of SB 641 and urge a favorable report.

Sincerely,

Mungu Sanchez  
Eastern Atlantic States Regional Council of Carpenters

# **Marylanders Against Poverty\_FAV\_SB641**

Uploaded by: Schumitz, Kali

Position: FAV



## TESTIMONY IN SUPPORT OF SB 641

### MARYLAND WAGE AND HOUR LAW AND MARYLAND WAGE PAYMENT AND COLLECTION ACT – REVISIONS (MARYLAND WAGE PROTECTION ACT)

Senate Finance Committee

February 27, 2020

Submitted by Stacey Jefferson and Margo Quinlan, Co-Chairs

#### Member Agencies:

Advocates for Children and Youth  
Baltimore Jewish Council  
Behavioral Health System Baltimore  
CASH Campaign of Maryland  
Catholic Charities  
Episcopal Diocese of Maryland  
Family League of Baltimore  
Fuel Fund of Maryland  
Health Care for the Homeless  
Homeless Persons  
Representation Project  
Job Opportunities Task Force  
League of Women Voters of Maryland  
Loyola University Maryland  
Maryland Catholic Conference  
Maryland Center on Economic Policy  
Maryland Community Action  
Partnership  
Maryland Family Network  
Maryland Hunger Solutions  
Paul's Place  
Public Justice Center  
St. Vincent de Paul of Baltimore  
Welfare Advocates

#### Marylanders Against Poverty

Stacey Jefferson, Chair  
P: 410-637-1900 ext 8578  
C: 443-813-9231

E: [stacey.jefferson@bhsbaltimore.org](mailto:stacey.jefferson@bhsbaltimore.org)

Margo Quinlan, Co-Chair  
C: 410-236-5488

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**Lifting Maryland's working poor out of poverty requires not only an increase in wages, but protections to ensure that workers actually receive all wages they have earned.** Wage theft – the denial or failure to pay workers their earned minimum wages, overtime, and other promised wages – is a common practice that deprives those living in or at the edge of poverty of needed income. Nationally, low-wage workers are denied minimum wages to the tune of fifteen billion dollars per year.<sup>1</sup> **In Maryland, 580,000 workers are cheated out of a cumulative \$875 million in gross wages each year.**<sup>2</sup>

Wage theft keeps workers poor, preventing them from affording basic necessities like rent, food, and healthcare. In one recent study, among the 2.4 million workers experiencing minimum wage violations, over 21% were living at or below the poverty line.<sup>3</sup> If these workers actually received all wages earned, 31% fewer would be in poverty.<sup>4</sup> **Ultimately, taxpayers are paying a price for these wage violations; nearly a third of workers who suffer minimum wage violations must rely on public assistance.**<sup>5</sup>

The Maryland Wage Protection Act provides an effective solution by preventing and remedying wage theft. It ensures that workers can determine, in the first instance, if they have been paid correctly by guaranteeing them complete information about their regular and overtime hours and pay rate on their paystub. Further, it protects workers from retaliation, so that they can enforce their right to be paid without fear of being fired or losing pay. Finally, it ensures that low-road employers cannot get away with wage theft by simply labelling their employees as "independent contractors," even when the employees are not truly in business for themselves.

By putting in place common sense measures to combat wage theft, the Maryland Wage Protection Act is a critical tool for combatting poverty among low-wage workers. **MAP strongly urges a favorable vote.**

**Marylanders Against Poverty (MAP)** is a coalition of service providers, faith communities, and advocacy organizations advancing statewide public policies and programs necessary to alleviate the burdens faced by Marylanders living in or near poverty, and to address the underlying systemic causes of poverty.

<sup>1</sup> David Cooper & Teresa Kroeger, Employers Steal Billions from Workers' Paychecks Each Year (Economic Policy Institute, May 10, 2017), <https://www.epi.org/files/pdf/125116.pdf>

<sup>2</sup> Center for Popular Democracy, Combatting Wage Theft with the Maryland Paystub Transparency Act of 2016 4 (2016), <https://populardemocracy.org/sites/default/files/MD%20Pay%20Stub-web.pdf>

<sup>3</sup> Cooper, *supra* n. 1, at 13-15.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*



# **Senator Benson\_FAV\_SB641**

Uploaded by: Senator Benson, Senator Benson

Position: FAV

JOANNE C. BENSON  
Legislative District 24  
Prince George's County

Finance Committee  
Chair, Rules Committee

*Joint Committees*

Children, Youth, and Families  
Ending Homelessness  
Fair Practices and State Personnel Oversight  
Management of Public Funds

Chair, Prince George's County  
Senate Delegation



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Joanne.Benson@senate.state.md.us

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Joanne C. Benson**

**SB 641: Maryland Wage and Hour Law and Maryland Wage Payment  
and Collection Law – Revisions  
(Maryland Wage Protection Act)**

Good afternoon Madam Chair and esteemed members of the Finance Committee. Last year, the General Assembly took the bold and necessary step of increasing Maryland's minimum wage to \$15 per hour. We raised the wage to ensure that our Marylanders could afford the basic necessities— housing, food, healthcare – and even save some of their earnings so they can retire with dignity. But what good is it to raise the minimum wage if workers aren't being paid what they're legally due?

Wage theft is when employers fail to pay their employees the minimum wage, overtime, and other wages they have earned. Wage theft is a pervasive problem in Maryland. Every year, in our state alone, 580,000 workers experience wage theft – they are cheated out of a cumulative \$875 million in gross earnings.<sup>1</sup> And the workers who are most heavily impacted are low-wage workers, workers of color, and working women.

Statistics show that 32.8% of Latino employees in low-wage industries have experienced minimum wage violations, while 77.6% have experienced overtime violations. African American workers are also 3 times as likely as their white counterparts to be improperly denied payment of the minimum wage. Across the board, women are more likely than men to face wage theft. However, businesses suffer too – the majority of businesses that are actually paying employees in accordance with the law find themselves underbid and undercut by those who cut corners.

With Senate Bill 641: Maryland Wage Protection Act, we have the opportunity to address this critical problem. Senate Bill 641 will close loopholes that will:

- Protect employees from retaliation so that victims of wage theft can enforce their right to be paid without fear of being fired, losing hours, or being threatened
- Promote transparency by requiring that paystubs contain information that properly demonstrates how their pay was calculated
- Prohibit employers from misclassifying employees as independent contractors

The Maryland Wage Protection Act builds upon our current wage law and closes loopholes in the law that a minority of unscrupulous employers exploit, to the detriment of their workers and their competitors. You'll hear from my panel on exactly how the process unfolds. And you'll

<sup>1</sup> <https://populardemocracy.org/sites/default/files/MD%20Pay%20Stub-web.pdf>

also hear about the impact this bill will have on low-wage workers – people like Ms. Williams, a home health aide who worked around the clock, only to be denied her overtime wages and then be fired when her colleagues tried to stand up for her and themselves. Please keep Ms. Williams’s story in mind when you consider this bill. She, like so many other Marylanders, work hard long hours to put food on the table and a roof over her head. For people like her, it’s not enough that we simply raise the minimum wage or create a right to an overtime premium. We must provide the tools to enforce those rights – so that our state’s wage protections don’t just exist on paper but actually put money in working people’s pockets.

I also want to note that we are currently drafting some technical amendments on paystub transparency portion that my panelists will further expound on.

Our goal is to protect our hard working Marylanders and their families. Senate Bill 641 will not impose any significant burdens to business who abide by the existing law. This bill is simply designed to weed out the bad apples- those who are taking advantage of the little people and trying to silence their voice to their fair pay.

Thus, I respectfully urge the committee to protect our workers and give a favorable report for Senate Bill 641.

# **MBIA SB 641 UNFAV**

Uploaded by: Enten, Bob

Position: UNF

February 27, 2020

The Honorable Delores G. Kelley  
Chair, Finance Committee  
Miller Senate Office Building, 3E  
11 Bladen Street  
Annapolis, MD 21401

**RE: Opposition for Senate Bill 641 (Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law – Revisions (Maryland Wage Protection Act))**

Dear Chairwoman Kelley:

The Maryland Building Industry Association, representing 100,000 employees of the building industry across the State of Maryland, opposes Senate Bill 641 (Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law – Revisions (Maryland Wage Protection Act)).

This measure requires an employer to provide copious written details to an employee within 30 days of the first day of employment. The information required by this measure is lengthy and onerous and will be burdensome for an employer to gather and include in the written document. Most workplaces already include much of this information in offer letters and written employee handbooks; providing it in a new and separate written document is redundant and will be demanding on the employer's time.

For these reasons, MBIA respectfully requests the Committee give this measure an unfavorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or [lgraf@marylandbuilders.org](mailto:lgraf@marylandbuilders.org).

cc: Senate Finance Committee Members

# **MDChamber\_Griffin\_UNFAV\_SB641**

Uploaded by: Griffin, Andrew

Position: UNF



**MARYLAND**  
Chamber of Commerce

**LEGISLATIVE POSITION:**

**Unfavorable**

**Senate Bill 641**

**Maryland Wage Protection Act**

**Senate Finance Committee**

**Thursday, February 27, 2020**

Dear Chairwoman Kaiser and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 4,500 members and federated partners, and we work to develop and promote strong public policy that ensures sustained economic growth for Maryland businesses, employees and families.

As introduced, SB 641 presents multiple areas of concern for the employer community. This legislation would open new avenues for suit on the employer community while also placing an undue burden of proof requirement on the employer in allegations relating to adverse employee actions.

There are additional concerns with new definitions outlined in this bill, such as the addition of work hour or schedule reductions that are “less favorable to the employee” as an item which qualifies as an adverse action taken on an employee. This new addition, coupled with the new burden of proof requirement, makes a common business practice such as schedule adjustments an adverse action which is interpreted as retaliatory against an employee for an allegation which may not have even been made.

SB 641 would also allow another employee, who may be unaffiliated with an event leading to a discriminatory allegation, the right to bring a complaint against an employer on behalf of another employee.

This legislation creates additional uncertainty in Maryland’s business environment. For these reasons, the Maryland Chamber of Commerce respectfully requests an **Unfavorable Report** on **Senate Bill 641**.

MDCHAMBER.ORG

60 West Street, Suite 100, Annapolis 21401 | 410-269-0642

# **MarylandAGC\_OPP\_SB641**

Uploaded by: McCulloch, Champe

Position: UNF





**SB 641**

**Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law – Revisions (Maryland Wage Protection Act)**

**Finance Committee**

**Position: Oppose**

Maryland AGC, the Maryland Chapter of the Associated General Contractors of America, provides professional education, business development, and advocacy for commercial construction companies and vendors, both open shop and union. AGC of America is the nation's largest and oldest trade association for the construction industry. AGC of America represents more than 26,000 firms, including over 6,500 of America's leading general contractors, and over 9,000 specialty-contracting firms, all through a nationwide network of chapters. Maryland AGC opposes SB 641 and respectfully urges the bill be given an unfavorable report.

SB 641 increases the burden on employers under the Wage and Hour and Wage Payment Laws. Some of the changes are not objectionable: allowing the Commissioner of Labor and Industry to initiate investigations on its own motion or requiring the workplace notice include antiretaliation provisions. However, other provisions of the bill introduce ambiguity regarding the employer's permissible conduct and so alter the burden of proof in proceedings under the antiretaliation provisions as to remove any pretext of fair and equal treatment of employers and employees.

Because the bill affects both the Wage and Hour and Wage Payment statutes, for ease of analysis, I'll deal with the Wage and Hour provisions first, but the same objections apply to the portions of the bill dealing with Wage Payment, since lines 23-26 on page 14 incorporate all of the Wage and Hour provisions into the Wage Payment statute. Objectionable provisions include the following:

1. On page 5 in line 21, the bill adds "or on behalf of", which would result in extending protections to people outside of the employment relation. It is an invitation to free-lance advocates to seek out or foment situations that they can use to their advantage. Employees who feel their employer has taken prohibited adverse action are fully protected and can complain without the need of outside third parties. The language "or on behalf of" should be rejected.
2. On page 5 in lines 23-25, SB 641 creates an opportunity for miscommunication and misunderstanding with potentially serious consequences for employers. The Bill proposes to amend Maryland Labor & Employment Code, Section 3-428(a)(1) [part of the Maryland Wage and Hour Act], to protect a complaint by an employee to "an individual with apparent authority to alter the terms or conditions of employment to the employee." There is no definition of "apparent authority" in the Bill, which creates ambiguity. Apparent to whom? To the employee, to a reasonable person, or to the employer. We believe that this change is unnecessary and irrelevant. If this individual simply ignores the complaint because he or she has no actual authority to deal with wages, the employer could miss the opportunity to deal with the employee's complaint, resulting in action by the Commissioner or a lawsuit and consequent damages. Logically, in order to prove retaliation, the employer or its agent(s) ["a supervisor, manager, or foreman"] must have knowledge of the employee's protected conduct, in this case a complaint. Otherwise, adverse action against the employee cannot possibly be motivated by the unknown or confidential complaint of the employee. Absent such knowledge of the complaint, there can be no retaliatory intent, and thus no causal connection to the adverse action. See, e.g., *Stephens v. Erickson*, 569 F.3d 779, 788 (7th Cir. 2009). The nebulous concept of a complaint to "an individual with apparent authority" who is not a legal agent of the employer should be rejected.
3. On page 5 in lines 29-30 the bill stretches the 3year statute of limitations by beginning the period to run from the date of the complaint. The relevant and correct point from which limitations should run is the date of the action or giving rise to the complaint. The language proposed in SB 641 would permit an employee to wait for 3years minus a day from the prohibited action to file a complaint and then wait an additional three years minus a day before filing suit. Moreover, the language would give SB 641 retroactive effect, allowing employees to file complaints about actions taken 3 years previously. This section of the bill should be rejected.
4. On page 6 in line 6, the bill expands the meaning of "adverse action" to include the broad and nebulous undefined term "or otherwise discriminate." When coupled with §3-428(b)(6), the result is adverse action is simply in the eye of the beholder, i.e., whatever anyone could conceivably think is adverse. That ambiguity puts employers in the impossible position of being exposed to complaints such as from an employee who feels that he or she isn't being nicely by a supervisor or thinks another employee is somehow more favored by a

- supervisor. The existing language in §3-428(b)(6) wisely refers to changes in the terms or conditions of employment. The ambiguous “or otherwise discriminate” and the changes to §3-428 (b)(6) should be rejected.
5. On page 6, lines 24-26, the bill creates an impossible burden of proof for the employer; an employee only has to claim that some neutral action by the employer, changing a shift assignment, for example, was secretly motivated by the employer’s “suspecting or believing” the employee was going to do something protected by the statute to bring the action under the statute and force the employer to court with the burden of proving the employer’s mental state; this provision should be rejected.
  6. On page 7, in line 14, the bill expands the protected class under the bill to include not only employees but also “another individual”, i.e., everyone else in the wide world. Third parties have no rights under the Wage and Hour or Wage Payment Laws, but this language would expand the scope of the bill beyond any limits; protection of employees is one matter; adding everyone else anywhere in the world is quite another. This language should be rejected.
  7. On page 7 beginning in line 30 through page 8 in line 7, SB 641 introduces a manifestly unfair shifting of the burden of proof in lawsuits by an employee seeking redress under §3-428. Whereas an employee complainant could meet its burden of proof by “a preponderance of the evidence”, an employer would have to meet the higher standard of meeting the burden of proof by producing “clear and convincing evidence.” There is no justification for such an unequal and unfair rule. Applying the clear and convincing standard is both unfair to the employer, and not in accordance with the burdens applicable to retaliation cases brought under federal discrimination statutes. In essence, the bill says employers are inherently dishonest and not to be believed absent overwhelming evidence in their favor. The burdens of proof should be equal.
  8. On page 8, lines 8-15, the bill adopts the standard that employers are guilty until proven innocent; on its face, this is a subversion of justice and American legal standards and should be rejected. It’s worth noting that the bill reinforces the assault on employers by requiring them to prove their innocence not simply by the normal burden of a preponderance of the evidence, but by the higher burden of “clear and convincing.” These lines should be stricken from the bill.
  9. On pages 8 and 9, new section 3-428 (f) continues the pattern of unequal treatment of employers and employees. Thus, an employee who prevails is entitled to “counsel fees and other costs (not specified), but the bill is silent if it’s the employer who prevails. Likewise, an employer faces a civil penalty of not less than \$10,000 for another violation within 6 years, but employees face no such penalty. Finally, lines 14-16 on page 9 give courts unlimited discretion to penalize employers in any other manner that comes to mind: perhaps closing their business; imposing a financial penalty of a magnitude that would have the same effect, or ordering the employer to turn over control of the company to employees, etc.

With respect to the provisions dealing with the Wage payment statute, the amendments to §3-504(a) dealing with the specifics of wage payment are unnecessary but unobjectionable. However, the amendments to §3-507.2 are inappropriate and should be rejected.

1. On page 12, lines 12-16, SB 641 allows an employee to recover for insubstantial clerical errors by an employer, such as a missing digit in the employer’s telephone number. While most employees will overlook an innocent error of this type, there will be disgruntled employees who are eager to find any way to strike back at their employer or a disliked supervisor for perceived injustices. At a minimum, there should be a requirement that the errors or omissions be substantial.
2. On page 11, lines 17-23 the bill allows an employee to sue and win the employee’s attorney’s fees and court costs in a case where the court determines wages were withheld as a result of a bona fide dispute. This “heads I win, tails you lose” approach is unjust and encourages and rewards unnecessary litigation. The changes to the current law should be rejected.
3. On page 14, lines 11-15, the bill repeats the inappropriate expansion to include “another individual” addressed above and should be rejected.

Accordingly, Maryland AGC respectfully urges the Committee to give SB 641 an unfavorable report.

Champe C. McCulloch  
McCulloch Government Relations, Inc.  
Lobbyist for Maryland AGC.

# **SB 641 Letter of Information MD Dept of Labor**

Uploaded by: Harrison, Michael

Position: INFO

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## Senate Bill 641

Date: February 27, 2020  
Committee: Finance  
Bill Title: Maryland Wage and Hour Law and Maryland Wage Payment and Collection Law  
– Revisions (Maryland Wage Protection Act)  
RE: Letter of Information

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SB641 makes substantial changes to multiple sections of the wages and hours & wage payment and collection laws. The changes are significant and will result in many Maryland small businesses being in violation of the law and subject to potential civil penalties, remedies, and even criminal enforcement provisions. Three of the provisions will be particularly impactful and create significant hardship on employers.

The bill changes the definition of an “independent contractor” to the test used in LE § 8-205. LE 8-205 is the definition of an “independent contractor” for purposes of the unemployment insurance law. It is commonly referred to as the “ABC” test.” This would be a different standard than Employment Standards Service (ESS) has used in the past. Historically, ESS has used the common law test (also known as the “Economic Realities Test”) as set forth in *Baltimore Harbor Charters v. Ayd*, 134 Md. App. 188 (2000), in analyzing whether a worker is an employee or an independent contractor, the same standard used by the Comptroller and the IRS. It is possible for a worker to be an employee for purposes of the ABC test but not the common law test. This could create difficulties and confusion for employers if ESS uses a different standard than the Comptroller and the IRS.

This bill makes substantial changes to “pay stub” requirements. The provisions of this bill add 8 line items that a pay stub must reflect; adds line items for certain allowances; requires certain employer information. The bill requires employers must provide the information within 30 days of initial employment and for each pay period thereafter. Changing a pay stub requires reprogramming the software used by the employer. Many employers use nationally common payroll systems and custom reprogramming for Maryland law changes will take significant time and potentially large expense. The changes to the minimum wage law in 2019 required changes to the pay stub for restaurant employers and the Department has been working with payroll companies for over 9 months to develop regulations that implement the law’s changes. It can be assumed that the changes required in this bill will be more complex. An employer that pays piece rate on a variety of SKU’s could easily end up with a pay stub that is many pages long.

This bill expands the scope of what may be considered a criminal violation to include most of LE § 3-428 and provides that criminal enforcement provisions include civil penalties and remedies provided in LE § 3-428. Some violations of this section could be unintentional, and subjecting the employer to potentially criminal charges has significant impact on small businesses who may not have the luxury of legal counsel or expensive payroll software.