

Senate Bill 303

By: Senators Fort of the 39th, Reed of the 35th and Thomas of the 10th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to require the State of Georgia and certain employers who contract with or
3 receive financial assistance from the state or a state agency to pay their employees a living
4 wage; to provide definitions; to provide the method of computing a living wage; to provide
5 for notice requirements; to provide for record keeping; to prohibit employer retaliation; to
6 authorize the Commissioner of Labor to enforce the provisions of this chapter; to authorize
7 the Commissioner of Labor to adopt applicable rules; to provide for claims; to provide for
8 penalties; to provide for related matters; to provide for applicability; to provide an effective
9 date; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations
13 is amended by inserting immediately following Chapter 4 a new Chapter 4A to read as
14 follows:

15 "CHAPTER 4A

16 34-4A-1.

17 As used in this chapter, the term:

18 (1) 'Commissioner' means the Commissioner of Labor.

19 (2) 'Department' means the Department of Labor.

20 (3) 'Employee' means an individual who performs work on a full-time, part-time,
21 temporary, or seasonal basis, and includes employees as defined in the common law,
22 independent contractors, and contingent or contracted workers, including persons made
23 available to work through the services of a staffing, temporary, or employment agency,
24 who is actually working:

- 1 (A) For the State of Georgia;
- 2 (B) In direct furtherance of a service contract that is covered under paragraph (9) of this
3 Code section; or
- 4 (C) For a person receiving economic development incentives from the state or a state
5 agency as provided in subparagraph (D) of paragraph (4) of this Code section.
- 6 (4) 'Employer' means either:
- 7 (A) The State of Georgia;
- 8 (B) A person that contracts with the State of Georgia through a state agency to provide
9 services valued at \$10,000.00 or more;
- 10 (C) A person that subcontracts for delivery of services to the State of Georgia through
11 a state agency under a contract covered by subparagraph (B) of this paragraph; or
- 12 (D) A person that receives economic development incentives from the state or a state
13 agency in an aggregate sum of \$1 million or more in the form of any loan, grant, tax
14 incentive or abatement, tax increment financing, bond financing, subsidy, or other form
15 of financial assistance.
- 16 (5) 'Fair market rent' means the most recent fair market rent established by the United
17 States Department of Housing and Urban Development for a two-bedroom dwelling in
18 a market area.
- 19 (6) 'Living wage' means the rate established by the department as the minimum hourly
20 wage rate that shall be paid to an employee by an employer pursuant to the formula set
21 forth in Code Section 34-4A-3 of this chapter.
- 22 (7) 'Market area' means the area designated by the United States Department of Housing
23 and Urban Development in which the employer's office is located at which an employee
24 works or is based.
- 25 (8) 'Person' means one or more of the following or their agents, employees, and
26 representatives: individuals, corporations, partnerships, joint ventures, associations, labor
27 organizations, educational institutions, mutual companies, joint-stock companies, trusts,
28 unincorporated organizations, trustees, trustees in bankruptcies, receivers, fiduciaries, and
29 all other entities recognized by law by this state.
- 30 (9) 'Service contract' means a contract with the state or a state agency primarily for the
31 furnishing of services to or for the state or a state agency for an aggregate annual sum of
32 \$10,000.00 or more.
- 33 (10) 'State' means:
- 34 (A) The State of Georgia;
- 35 (B) Any state agency as defined in paragraph (11) of this Code section; or
- 36 (C) Any elected official of the State of Georgia.

1 (11) 'State agency' or 'agency' means:

2 (A) A board, commission, department, authority, office, or other agency in the
3 executive branch of state government that is created by the Constitution or a statute of
4 this state, including an institution of higher education as defined by Title 20;

5 (B) The General Assembly or an agency of the General Assembly; or

6 (C) The Supreme Court of Georgia, the Court of Appeals of Georgia and other courts,
7 a state judicial agency, or the State Bar of Georgia.

8 34-4A-2.

9 (a) An employer shall pay an employee who does not receive health care benefits no less
10 than the living wage for the market area computed under Code Section 34-4A-3.

11 (b) The Commissioner shall calculate the living wage on an annual basis and shall publish
12 the wage rate on July 1 of each year.

13 (c) All contracting state agencies engaged in the awarding of service contracts shall provide
14 in writing an explanation, designed by the department, of the requirements of this chapter
15 in all requests for bids for service contracts with the state. All persons who have signed a
16 service contract with the state shall forward a copy of the requirements to any person
17 submitting a bid for a subcontract on the service contract.

18 (d) Each service contract entered into by a state agency under Chapter 5 of Title 50 shall
19 include a living wage clause. The living wage clause shall require the contracting
20 employer to pay all employees working under the service contract at least a living wage as
21 published by the Commissioner and shall require the contracting employer to include a
22 similar clause in every subcontract for services.

23 34-4A-3.

24 The living wage for a market area is computed by:

25 (1) Multiplying the fair market rent for the market area by three to obtain the gross
26 monthly income;

27 (2) Multiplying the gross monthly income by 12 to obtain the gross yearly income; and

28 (3) Dividing the gross yearly income by 2,080 to obtain the hourly wage.

29 34-4A-4.

30 (a) An employer shall post a notice as prescribed by the Commissioner by rule regarding
31 the living wage required by this chapter. The notice must be posted at conspicuous places
32 at each of the employer's places of business.

1 (b) The notice must include the living wage rate and the telephone number of the
2 Commissioner for information about the living wage requirement and procedures for filing
3 a claim.

4 34-4A-5.

5 Each employer shall have the following duties:

6 (1) With respect to maintenance of payroll records, each employer shall maintain payrolls
7 for all covered employees and basic records relating thereto for a period of three years.

8 The records shall contain:

9 (A) The name and address of each employee;

10 (B) Each employee's job title and classification;

11 (C) The number of hours worked each day for each employee;

12 (D) Each employee's gross wages, deductions made, and actual wages paid;

13 (E) A record of fringe benefit payments including:

14 (i) Contributions to approved plans, funds, or programs;

15 (ii) Additional cash payments; or

16 (iii) Both; and

17 (F) Any other data that may be required by the contracting state agency from time to
18 time;

19 (2) With respect to examination of payrolls, each employer shall permit a representative
20 of the department or its designee to observe work being performed upon the work site,
21 to interview employees, and to examine the books and records relating to the payrolls
22 being investigated;

23 (3) With respect to service contracts, at the time of signing a service contract with the
24 state or a subcontract with a subcontractor, the contract with the employer shall include
25 the following:

26 (A) The name of the program or project under which the contract or subcontract is
27 being awarded;

28 (B) A local contact name, address, and phone number for the employer;

29 (C) A written commitment by the employer to pay all covered employees not less than
30 the living wage, subject to adjustment each July 1, and to comply with this chapter;

31 (D) A work force profile of covered employees paid for by the service contract or
32 subcontract including the employees' job titles with wage ranges; and

33 (E) For service contracts, a list of all service subcontracts either awarded or that will be
34 awarded to subcontractors with funds from the service contract. Any employer
35 awarded a service contract shall notify the contracting agency within three working
36 days of signing a service subcontract with an employer; and

1 (4) By July 31 of each year, employers shall provide annual reports to the department of
2 their employment activities including the job positions charged to the service contract and
3 the wage ranges of those positions.

4 34-4A-6.

5 (a) The Commissioner shall adopt rules for monitoring compliance by employers with this
6 chapter.

7 (b) The Commissioner may require reports, conduct investigations, and take other action
8 he or she considers necessary to implement this chapter.

9 (c) Each state agency shall file a report by October 1 of each year with the department
10 regarding employers who have been awarded a service contract with such agency or who
11 have received an economic development incentive from such agency but have failed to pay
12 employees the living wage as prescribed by the Commissioner under this chapter. Such
13 report shall include a local contact name, address, and phone number for the employer;
14 with respect to service contracts, the name of the program or project under which the
15 contract or subcontract is being awarded; with respect to economic development incentives,
16 the type and amount of each incentive; and the amount of unpaid wages.

17 (d) The Commissioner shall file a report by December 31 of each year with the General
18 Assembly regarding the operation of the living wage requirement. Such report shall
19 include all of the information provided in the annual report of each state agency to the
20 department as provided in subsection (c) of this Code section.

21 (e) The department shall compile and publish annually all of the data contained in the
22 annual reports submitted to the department by each state agency under subsection (c) of
23 this Code section in both written and electronic form, including the department's Internet
24 website.

25 34-4A-7.

26 An employer may not retaliate or discriminate against an employee who, under this
27 chapter:

28 (1) Makes or files a complaint; or

29 (2) Testifies, assists, or participates in any manner in any investigation, proceeding, or
30 hearing.

31 34-4A-8.

32 (a) A claim may be filed with the Commissioner by an employee or former employee who:

33 (1) Is not paid a living wage as required by this chapter; or

34 (2) Is retaliated or discriminated against in violation of this chapter.

1 (b) A claim must be filed under this Code section not later than the first anniversary of:

2 (1) The violation giving rise to the claim; or

3 (2) The date the employee or former employee knows, or has reason to know, of the
4 violation giving rise to the claim.

5 (c) The Commissioner shall investigate a claim filed under this Code section, make a
6 preliminary determination on whether a violation has occurred, and recommend a penalty.

7 (d) The Commissioner shall mail notice of the preliminary determination to the employer
8 and the complainant at each party's last known address, as reflected by department
9 records.

10 (e) Either party may request a hearing to contest the preliminary determination according
11 to department rules.

12 34-4A-9.

13 (a) The Commissioner may assess an administrative penalty against an employer
14 determined to be in violation of this chapter.

15 (b) In addition to an administrative penalty under subsection (a) of this Code section, the
16 Commissioner may by order take one or more of the following actions:

17 (1) Withhold payment or money due the employer in an amount sufficient to pay the
18 wages of the employee or former employee;

19 (2) Terminate, cancel, or suspend the service contract or financial assistance agreement,
20 in whole or in part; or

21 (3) Disqualify the employer from contracting with or receiving financial assistance from
22 the state or a state agency, or from working on a service contract, for a period of up to
23 three years.

24 34-4A-10.

25 (a) An employer that is receiving an economic development incentive from the state shall
26 pay the living wage to its employees as long as the economic development incentive
27 granted by the state is in effect.

28 (b) If the employer fails to fulfill its requirement under subsection (a) of this Code section,
29 the granting state agency shall recapture a pro rata amount of the incentive based upon the
30 proportion of the incentive that the total amount of unpaid living wages bears to the total
31 amount of the incentive.

32 (c) The agency shall provide written notice to the employer of the agency's intent to
33 recapture, and state the reasons and amount to be recaptured. The employer shall remit
34 such amount to the agency within 60 calendar days of the date of the notice.

1 (d) If an employer fails to pay the living wage to any of its employees for three consecutive
 2 calendar years, the agency shall declare the incentive null and void and shall so notify the
 3 Department of Labor and the employer. The employer shall pay the agency all remaining
 4 value of the incentive within 180 calendar days of the date of such notice.

5 34-4A-11.

6 (a) A party may seek judicial review of the Commissioner's order.

7 (b) An employee or former employee who files suit under subsection (a) of this Code
 8 section may be awarded reinstatement, back pay, damages, attorney's fees, court costs, and
 9 other equitable relief as may be appropriate.

10 34-4A-12.

11 Nothing in this chapter shall be construed as prohibiting or conflicting with any other
 12 obligation or law, including any state or federal prevailing wage or any collective
 13 bargaining agreement, that mandates the provision of higher wages, benefits, or protections
 14 to employees. No part of this chapter shall be construed as applying to any employee
 15 where such coverage would be preempted by federal or state law.

16 34-4A-13.

17 All records required to be prepared or maintained under this chapter, including but not
 18 limited to progress reports, recapture notices and any other records or proceedings relating
 19 thereto, shall be subject to disclosure under Article 4 of Chapter 18 of Title 50.

20 34-4A-14.

21 The Commissioner shall administer and enforce this chapter and may make rules and
 22 regulations for such administration."

23 **SECTION 2.**

24 The provisions of this Act shall be applicable only to a service contract or financial
 25 assistance agreement made or renewed on or after July 1, 2003. A service contract or
 26 financial assistance agreement made or renewed before that date is governed by the law in
 27 effect at the time the service contract or financial assistance agreement was made or renewed,
 28 and the former law is continued in effect for that purpose.

29 **SECTION 3.**

30 This Act shall become effective on July 1, 2003.

- 1 **SECTION 4.**
- 2 All laws and parts of laws in conflict with this Act are repealed.