

SENATE BILL 181

P4

11r0146
CF HB 171

By: **The President (By Request – Administration)**

Introduced and read first time: January 24, 2011

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: April 3, 2011

CHAPTER _____

1 AN ACT concerning

2 **Collective Bargaining – Independent Home Care Providers**

3 FOR the purpose of establishing collective bargaining rights for certain independent
4 home care providers; providing that there may be only one appropriate
5 bargaining unit for certain independent home care providers; authorizing
6 providers to designate an exclusive representative; requiring that certain
7 procedures relating to the election and certification of an exclusive
8 representative, collective bargaining process, and bargaining agreements be
9 governed by certain provisions of the collective bargaining law for State
10 employees; prohibiting the State Labor Relations Board from conducting a
11 certain election within a certain period; requiring an exclusive representative to
12 represent all independent home care providers, whether or not they are
13 members of the provider organization; providing for the scope of collective
14 bargaining for independent home care providers; authorizing collective
15 bargaining negotiations pertaining to independent home care providers to
16 include, ~~under certain circumstances~~ subject to certain conditions, negotiations
17 relating to the right of an employee organization to receive service fees from
18 nonmembers; requiring an exclusive representative, if a memorandum of
19 understanding contains a certain service fee provision, to provide notice of the
20 service fee provision to independent home care providers before a certain vote is
21 held; providing that certain independent home care providers are not required
22 to pay certain fees and are required to make certain other payments; specifying
23 that the certification of certain exclusive representatives under this Act does not
24 prevent provider organizations or other persons from communicating with or
25 appearing before or making proposals to certain State agencies at a public

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 meeting or hearing; prohibiting a provider organization from calling or directing
 2 a strike; providing that the provisions of this Act may not alter certain rights of
 3 home care consumers with regard to independent home care providers;
 4 declaring the intent of the General Assembly as it relates to the application of a
 5 certain exemption to State and federal antitrust laws; providing for the
 6 application and construction of this Act; providing that a certain provider
 7 organization certified as the majority representative in a certain election
 8 pursuant to a certain Executive Order shall continue as the exclusive
 9 representative without the requirement of an additional election and
 10 certification; defining certain terms; declaring that the provisions of this Act are
 11 severable; and generally relating to collective bargaining for independent home
 12 care providers.

13 BY adding to
 14 Article – Health – General
 15 Section 15–901 through 15–907 to be under the new subtitle “Subtitle 9.
 16 Collective Bargaining by Independent Home Care Providers”
 17 Annotated Code of Maryland
 18 (2009 Replacement Volume and 2010 Supplement)

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

21 **Article – Health – General**

22 **SUBTITLE 9. COLLECTIVE BARGAINING BY INDEPENDENT HOME CARE**
 23 **PROVIDERS.**

24 **15–901.**

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
 26 INDICATED.

27 (B) (1) “INDEPENDENT HOME CARE PROVIDER” MEANS AN
 28 INDIVIDUAL WHO:

29 ~~(1)~~ (1) PROVIDES HOME CARE SERVICES THAT ARE DIRECTLY
 30 REIMBURSED BY THE STATE OR A FISCAL INTERMEDIARY FUNCTIONING ON
 31 BEHALF OF THE STATE, AND NOT BY AN AGENCY OR BUSINESS THAT EMPLOYS
 32 EMPLOYEES OR REFERS INDEPENDENT CONTRACTORS AS HOME CARE
 33 PROVIDERS, UNDER:

34 ~~(1)~~ 1. THE MEDICAID WAIVER FOR OLDER ADULTS THAT IS
 35 JOINTLY ADMINISTERED BY THE DEPARTMENT AND THE DEPARTMENT OF
 36 AGING AS ESTABLISHED UNDER § 15–132 OF THIS TITLE, OR ANY SUCCESSOR
 37 PROGRAM;

1 ~~(H)~~ 2. THE MEDICAID PERSONAL CARE PROGRAM
2 UNDER THE STATE MEDICAL ASSISTANCE PROGRAM;

3 ~~(H)~~ 3. THE LIVING AT HOME WAIVER PROGRAM UNDER
4 SUBTITLE 8 OF THIS TITLE, OR ANY SUCCESSOR PROGRAM; AND

5 ~~(IV)~~ 4. THE IN-HOME AIDE SERVICE PROGRAM, OR ANY
6 SUCCESSOR PROGRAM ADMINISTERED BY THE DEPARTMENT OF HUMAN
7 RESOURCES, OR ANY SUCCESSOR PROGRAM; AND

8 ~~(2)~~ (II) IS NOT EMPLOYED OR REFERRED BY A PRIVATE AN
9 AGENCY OR BUSINESS THAT EMPLOYS EMPLOYEES OR REFERS INDEPENDENT
10 CONTRACTORS AS HOME CARE PROVIDERS;

11 ~~(3)~~ (III) CONTRACTS DIRECTLY WITH A PROGRAM PARTICIPANT
12 FOR HOME CARE SERVICES; AND

13 ~~(4)~~ (IV) PROVIDES HOME CARE SERVICES TO A PROGRAM
14 PARTICIPANT PERSONALLY AND DOES NOT SUBCONTRACT WITH ANY OTHER
15 PARTY TO PROVIDE THE SERVICES TO A PROGRAM PARTICIPANT.

16 (2) “INDEPENDENT HOME CARE PROVIDER” DOES NOT INCLUDE
17 AN INDIVIDUAL WHO PROVIDES HOME CARE SERVICES TO A FAMILY MEMBER.

18 (C) (1) “PROVIDER ORGANIZATION” MEANS AN ORGANIZATION THAT:

19 ~~(1)~~ (I) INCLUDES INDEPENDENT HOME CARE PROVIDERS; AND

20 ~~(2)~~ (II) HAS AS ONE OF ITS PURPOSES THE REPRESENTATION
21 OF INDEPENDENT HOME CARE PROVIDERS IN THEIR RELATIONS WITH THE
22 STATE.

23 (2) “PROVIDER ORGANIZATION” DOES NOT INCLUDE AN AGENCY
24 OR BUSINESS THAT EMPLOYS EMPLOYEES OR REFERS INDEPENDENT
25 CONTRACTORS AS HOME CARE PROVIDERS.

26 15-902.

27 IN ACCORDING INDEPENDENT HOME CARE PROVIDERS AND THEIR
28 REPRESENTATIVES RIGHTS UNDER THIS SUBTITLE, IT IS THE INTENT OF THE
29 GENERAL ASSEMBLY THAT THE STATE ACTION EXEMPTION TO THE
30 APPLICATION OF FEDERAL AND STATE ANTITRUST LAWS BE FULLY AVAILABLE
31 TO THE EXTENT THAT THE ACTIVITIES OF THE INDEPENDENT HOME CARE

1 PROVIDERS AND THEIR REPRESENTATIVES ARE AUTHORIZED UNDER THIS
2 TITLE.

3 15-903.

4 (A) THERE SHALL BE ONLY ONE APPROPRIATE BARGAINING UNIT OF
5 INDEPENDENT HOME CARE PROVIDERS IN THE STATE.

6 (B) INDEPENDENT HOME CARE PROVIDERS MAY DESIGNATE, IN
7 ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE, WHICH PROVIDER
8 ORGANIZATION, IF ANY, SHALL BE THE EXCLUSIVE REPRESENTATIVE OF ALL
9 INDEPENDENT HOME CARE PROVIDERS IN THE STATE.

10 (C) (1) THE ELECTION AND CERTIFICATION OF THE EXCLUSIVE
11 REPRESENTATIVE OF INDEPENDENT HOME CARE PROVIDERS SHALL BE
12 GOVERNED BY THE PROCEDURES SET FORTH IN TITLE 3, SUBTITLE 4 OF THE
13 STATE PERSONNEL AND PENSIONS ARTICLE.

14 (2) ALL ELECTIONS SHALL BE CONDUCTED BY THE STATE LABOR
15 RELATIONS BOARD AND SUBJECT TO THE REQUIREMENTS AND LIMITATIONS OF
16 TITLE 3, SUBTITLE 4 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.

17 (3) THE STATE LABOR RELATIONS BOARD MAY NOT CONDUCT
18 AN ELECTION FOR AN EXCLUSIVE REPRESENTATIVE IF AN ELECTION OR
19 CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE HAS TAKEN PLACE WITHIN
20 THE PRECEDING 2 YEARS.

21 (4) A PROVIDER ORGANIZATION DESIGNATED AS THE EXCLUSIVE
22 REPRESENTATIVE SHALL REPRESENT ALL INDEPENDENT HOME CARE
23 PROVIDERS IN THE STATE FAIRLY AND WITHOUT DISCRIMINATION, WHETHER
24 OR NOT THE INDEPENDENT HOME CARE PROVIDERS ARE MEMBERS OF THE
25 PROVIDER ORGANIZATION.

26 15-904.

27 (A) THE DEPARTMENT AND THE DEPARTMENTS OF HUMAN
28 RESOURCES AND AGING SHALL DESIGNATE APPROPRIATE REPRESENTATIVES
29 TO PARTICIPATE IN COLLECTIVE BARGAINING WITH THE PROVIDER
30 ORGANIZATION CERTIFIED AS THE EXCLUSIVE REPRESENTATIVE OF
31 INDEPENDENT HOME CARE PROVIDERS.

32 (B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, THE PARTIES
33 SHALL ADHERE TO THE BARGAINING PROCESS SET FORTH IN § 3-501 OF THE
34 STATE PERSONNEL AND PENSIONS ARTICLE.

1 **(C) THE STATE AGENCIES SPECIFIED IN SUBSECTION (A) OF THIS**
2 **SECTION THAT ARE ENGAGED IN BARGAINING SHALL NEGOTIATE, IN**
3 **CONSULTATION WITH THE DEPARTMENT OF BUDGET AND MANAGEMENT, ALL**
4 **MATTERS THAT REQUIRE APPROPRIATION OF STATE FUNDS.**

5 **(D) COLLECTIVE BARGAINING SHALL INCLUDE ALL MATTERS RELATING**
6 **TO THE TERMS AND CONDITIONS OF PARTICIPATION BY INDEPENDENT HOME**
7 **CARE PROVIDERS IN THE PROVISION OF HOME CARE SERVICES UNDER THE**
8 **PROGRAMS SPECIFIED IN § 15-901(B) OF THIS SUBTITLE, INCLUDING:**

9 **(1) REIMBURSEMENT RATES;**

10 **(2) BENEFITS;**

11 **(3) PAYMENT PROCEDURES;**

12 **(4) CONTRACT GRIEVANCE PROCEDURES;**

13 **(5) TRAINING;**

14 **(6) MEMBER DUES DEDUCTIONS; AND**

15 **(7) OTHER TERMS AND CONDITIONS OF PARTICIPATION BY**
16 **INDEPENDENT HOME CARE PROVIDERS IN THE PROVISION OF HOME CARE**
17 **SERVICES UNDER THE PROGRAMS SPECIFIED IN § 15-901(B) OF THIS SUBTITLE.**

18 **(E) (1) (I) SUBJECT TO ~~SUBPARAGRAPH (II)~~ SUBPARAGRAPHS (II)**
19 **AND (III) OF THIS PARAGRAPH, COLLECTIVE BARGAINING MAY INCLUDE**
20 **NEGOTIATIONS RELATING TO THE RIGHT OF A PROVIDER ORGANIZATION THAT**
21 **IS THE EXCLUSIVE REPRESENTATIVE TO RECEIVE SERVICE FEES FROM**
22 **NONMEMBERS.**

23 **(II) THE REPRESENTATIVES OF THE STATE MAY NOT REACH**
24 **AN AGREEMENT CONTAINING A SERVICE FEE PROVISION UNLESS THE**
25 **REPRESENTATIVES OF THE STATE CONCLUDE THAT THE AGREEMENT AS A**
26 **WHOLE WILL NOT ADVERSELY IMPACT NONMEMBER PROVIDERS.**

27 **(III) THE REPRESENTATIVES OF THE STATE MAY ONLY**
28 **AGREE TO A SERVICE FEE PROVISION IF THE SERVICE FEE PROVISION WOULD**
29 **REQUIRE NONMEMBERS TO PAY SERVICE FEES ON A SLIDING SCALE IN**
30 **APPROXIMATE PROPORTION TO THE AMOUNT EACH NONMEMBER RECEIVES IN**
31 **REIMBURSEMENT THROUGH:**

1 **1. THE MEDICAID WAIVER FOR OLDER ADULTS**
2 **THAT IS JOINTLY ADMINISTERED BY THE DEPARTMENT AND THE DEPARTMENT**
3 **OF AGING AS ESTABLISHED UNDER § 15-132 OF THIS TITLE, OR ANY SUCCESSOR**
4 **PROGRAM;**

5 **2. THE MEDICAID PERSONAL CARE PROGRAM**
6 **UNDER THE STATE MEDICAL ASSISTANCE PROGRAM, OR ANY SUCCESSOR**
7 **PROGRAM;**

8 **3. THE LIVING AT HOME WAIVER PROGRAM UNDER**
9 **SUBTITLE 8 OF THIS TITLE, OR ANY SUCCESSOR PROGRAM; AND**

10 **4. THE IN-HOME AIDE SERVICE PROGRAM**
11 **ADMINISTERED BY THE DEPARTMENT OF HUMAN RESOURCES, OR ANY**
12 **SUCCESSOR PROGRAM.**

13 **(2) AN INDEPENDENT HOME CARE PROVIDER WHOSE RELIGIOUS**
14 **BELIEFS ARE OPPOSED TO JOINING OR FINANCIALLY SUPPORTING ANY**
15 **COLLECTIVE BARGAINING ORGANIZATION:**

16 **(i) IS NOT REQUIRED TO PAY A SERVICE FEE; BUT**

17 **(ii) SHALL PAY AN AMOUNT OF MONEY AS DETERMINED IN**
18 **COLLECTIVE BARGAINING NEGOTIATIONS, NOT TO EXCEED ANY SERVICE FEE**
19 **NEGOTIATED UNDER PARAGRAPH (1) OF THIS SUBSECTION, TO ANY**
20 **CHARITABLE ORGANIZATION EXEMPT FROM TAXATION UNDER § 501(C)(3) OF**
21 **THE INTERNAL REVENUE CODE AND TO FURNISH TO THE STATE AGENCIES**
22 **ENGAGED IN COLLECTIVE BARGAINING UNDER THIS SUBTITLE AND THE**
23 **EXCLUSIVE REPRESENTATIVE WRITTEN PROOF OF THE PAYMENT.**

24 **(f) NOTWITHSTANDING SUBSECTION (D) OF THIS SECTION, THE**
25 **REPRESENTATIVES OF THE STATE:**

26 **(1) MAY NOT BE REQUIRED TO NEGOTIATE ANY MATTER THAT IS**
27 **INCONSISTENT WITH APPLICABLE LAW; AND**

28 **(2) MAY NEGOTIATE AND REACH AGREEMENT WITH REGARD TO**
29 **ANY MATTER THAT IS INCONSISTENT WITH APPLICABLE LAW ONLY IF IT IS**
30 **UNDERSTOOD THAT THE AGREEMENT WITH RESPECT TO THE MATTER CANNOT**
31 **BECOME EFFECTIVE UNLESS THE APPLICABLE LAW IS AMENDED BY THE**
32 **GENERAL ASSEMBLY IN A MANNER THAT ELIMINATES INCONSISTENCY.**

1 **(G) (1) THE PARTIES SHALL REDUCE THEIR AGREEMENT TO A**
2 **MEMORANDUM OF UNDERSTANDING THAT COMPLIES WITH THE PROVISIONS OF**
3 **§ 3-601 OF THE STATE PERSONNEL AND PENSIONS ARTICLE.**

4 **(2) IF THE MEMORANDUM OF UNDERSTANDING CONTAINS A**
5 **SERVICE FEE PROVISION, BEFORE THE VOTE TO RATIFY THE MEMORANDUM OF**
6 **UNDERSTANDING IS HELD, THE EXCLUSIVE REPRESENTATIVE SHALL PROVIDE**
7 **NOTICE THAT THE MEMORANDUM OF UNDERSTANDING CONTAINS A PROVISION**
8 **FOR A SERVICE FEE THAT WILL BE CHARGED ON A SLIDING SCALE TO**
9 **INDEPENDENT HOME CARE PROVIDERS.**

10 **15-905.**

11 **THE CERTIFICATION OF AN EXCLUSIVE REPRESENTATIVE OF**
12 **INDEPENDENT HOME CARE PROVIDERS BY THE STATE AGENCIES ENGAGED IN**
13 **COLLECTIVE BARGAINING UNDER THIS SUBTITLE DOES NOT PREVENT THE**
14 **CERTIFIED PROVIDER ORGANIZATION OR ANY OTHER ORGANIZATION OR**
15 **INDIVIDUAL FROM COMMUNICATING WITH ANY STATE OFFICIAL ON MATTERS**
16 **OF INTEREST, INCLUDING APPEARING BEFORE OR MAKING PROPOSALS TO THE**
17 **STATE AGENCIES ENGAGED IN COLLECTIVE BARGAINING AT A PUBLIC MEETING**
18 **OR HEARING OR AT ANY OTHER FORUM OF THE STATE AGENCIES.**

19 **15-906.**

20 **(A) A PROVIDER ORGANIZATION MAY NOT CALL OR DIRECT A STRIKE OR**
21 **OTHER COLLECTIVE CESSATION OF THE DELIVERY OF SERVICES.**

22 **(B) THIS SUBTITLE MAY NOT BE CONSTRUED TO GRANT ANY RIGHT, OR**
23 **IMPLY THAT INDEPENDENT HOME CARE PROVIDERS HAVE ANY RIGHT, TO**
24 **ENGAGE IN A STRIKE OR OTHER COLLECTIVE CESSATION OF THE DELIVERY OF**
25 **SERVICES.**

26 **15-907.**

27 **(A) THIS SUBTITLE MAY NOT BE CONSTRUED TO MAKE INDEPENDENT**
28 **HOME CARE PROVIDERS EMPLOYEES OF THE STATE.**

29 **(B) THIS SUBTITLE MAY NOT BE CONSTRUED IN ANY WAY TO DENY**
30 **PROGRAM RECIPIENTS OF INDEPENDENT HOME CARE SERVICES THE RIGHT TO**
31 **SELECT, DIRECT, AND TERMINATE THE SERVICES OF INDEPENDENT HOME CARE**
32 **PROVIDERS.**

33 **SECTION 2. AND BE IT FURTHER ENACTED, That, notwithstanding the**
34 **provisions of § 15-903 of the Health – General Article as enacted by Section 1 of this**

1 Act, the provider organization certified as the majority representative of independent
 2 home care providers in the election held pursuant to Executive Order 01.01.2007.15
 3 prior to the effective date of this Act shall continue as the exclusive representative
 4 without the requirement of an additional election and certification.

5 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
 6 Act or the application thereof to any person or circumstance is held invalid for any
 7 reason in a court of competent jurisdiction, the invalidity does not affect other
 8 provisions or any other application of this Act which can be given effect without the
 9 invalid provision or application, and for this purpose the provisions of this Act are
 10 declared severable.

11 SECTION 4. AND BE IT FURTHER ENACTED, That:

12 (a) On or before December 31 of each year through 2014, the Department of
 13 Health and Mental Hygiene shall report to the Senate Finance Committee and the
 14 House ~~Economic Matters~~ Appropriations Committee, in accordance with § 2-1246 of
 15 the State Government Article, on the status of the independent home care providers
 16 participating in the programs specified in § 15-901(b) of the Health – General Article
 17 as enacted by Section 1 of this Act.

18 (b) The report shall include:

19 (1) the number of independent home care providers participating in
 20 the programs and the number of consumers served by the programs;

21 (2) the number of independent home care providers who join the
 22 collective bargaining unit established under this Act and the number of consumers
 23 served by each of the providers; and

24 (3) an analysis of any positive or negative trends resulting from the
 25 implementation of this Act.

26 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
 27 July 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.