

Senate, March 25, 1998. The Committee on Labor and Public Employees reported through SEN. PRAGUE, 19th DIST., Chairman of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING WORKERS IN CONTINGENT AND PART-TIME WORK.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 (NEW) (a) As used in this section: (1)  
2 "Benefits" includes, but is not limited to,  
3 accrual of seniority, credit for length of  
4 service, holidays, vacations, sick leave and other  
5 leave, disability and health insurance, health and  
6 welfare and pension benefits; (2) "client company"  
7 means an enterprise that receives services or  
8 functions from another enterprise; (3) "contingent  
9 job" means any job, except in agriculture, in  
10 which an individual does not have an explicit or  
11 implicit contract for long-term full-time  
12 employment, including (A) casual employment, which  
13 means work scheduled on an occasional or  
14 intermittent basis, without a regular schedule,  
15 (B) contractor employment, which means employment  
16 in which a worker is employed by a company that  
17 has contracted with a client company to provide  
18 services or functions, (C) day labor employment,  
19 which means employment in which a worker is hired  
20 for a day or on a day-to-day basis to perform  
21 unskilled or semiskilled tasks, (D) home-based  
22 employment, which means employment in which a

23 person produces goods or delivers services in or  
24 about a home, apartment, tenement or room in a  
25 residential establishment for an employer who  
26 permits such production or service delivery,  
27 regardless of the source, whether obtained from an  
28 employer or elsewhere, of the materials used by  
29 the home worker in such production, (E) leased  
30 employment, which means employment in which an  
31 individual performs services for a client company  
32 through a leasing organization where the provision  
33 of the individual's services is pursuant to an  
34 agreement between the client company and the  
35 leasing organization, (F) on-call employment,  
36 which means employment in which a worker reports  
37 to work only when asked by his employer to do so,  
38 as opposed to having a regular schedule, (G)  
39 part-time employment, which means regularly  
40 scheduled work of not more than thirty-two hours  
41 in one week or more than thirty-two hours per week  
42 but less than sixty-four hours in a biweekly  
43 period, (H) seasonal employment, which means a job  
44 which provides no work for at least ninety days,  
45 (I) temporary agency employment, which means work  
46 performed by a person who is hired and remunerated  
47 by an agency which provides the worker to a client  
48 company, where there is no implicit or explicit  
49 contract for long-term employment, (J) temporary  
50 direct hire employment, which means work performed  
51 by a person who is hired and remunerated by the  
52 company for which the worker provides services,  
53 where there is no implicit or explicit contract  
54 for long-term employment, and (K) temporary  
55 employment, which means work with an established  
56 employment period of one year or less; (4)  
57 "covered employee" means any individual who  
58 performs a service for remuneration except an  
59 independent contractor, as defined in this  
60 subsection; (5) "employer" includes any  
61 individual, organization, including the state and  
62 all of its political subdivisions, partnership,  
63 association, trust, estate, joint stock company,  
64 insurance company or corporation, whether domestic  
65 or foreign, or receiver or trustee in bankruptcy,  
66 or the legal representative of a deceased person,  
67 who has ten or more individuals in his employment  
68 during any day or portion of any day; (6)  
69 "full-time employment" means any job with  
70 regularly scheduled work of more than thirty-two

71 hours per week or greater than sixty-four hours in  
72 a biweekly period; (7) "independent contractor"  
73 means any worker who meets all of the following  
74 criteria: (A) The individual is free from  
75 direction and control over the performance of the  
76 work; (B) the service is performed either outside  
77 the usual course of the business for which it is  
78 performed or is performed outside of all places of  
79 business of the enterprise for which it is  
80 performed; and (C) the individual is customarily  
81 engaged in an independent trade, occupation,  
82 profession or business. The failure of an employer  
83 to withhold federal or state taxes from an  
84 employee's wages shall not be evidence of the  
85 employee's independent contractor status; (8)  
86 "joint employer" means a contractor and a client  
87 where the employees of the contractor perform work  
88 that is an ongoing component of the client's  
89 enterprise and in which one or more of the  
90 following exists: (A) The contractor's employees  
91 are required to follow the client's instructions  
92 concerning the specifics of how and when the  
93 services are to be performed; (B) the contractor's  
94 employees perform the services on a regular basis  
95 on premises owned or managed by the client; or (C)  
96 the capital goods used by the contractor's  
97 employees in performing the services in question  
98 are provided, or substantially financed, directly  
99 or indirectly, by the client; and (9) "prorate"  
100 means to offer the proportion of each of the  
101 benefits offered to full-time employees in similar  
102 positions, including full-time employees in  
103 contingent jobs, to part-time employees for which  
104 each benefit is equal to the ratio of part-time  
105 hours worked to full-time hours worked, or, for  
106 insurance, to offer the same insurance coverage to  
107 part-time employees as full-time employees but  
108 with an employer premium contribution which is  
109 equal to the ratio of part-time hours worked to  
110 full-time hours worked.

111 (b) No employer, including a joint employer,  
112 shall discriminate in any way in the payment of  
113 wages as between full-time and part-time  
114 employees, or between permanent and contingent  
115 employees, provided variations in rates of pay  
116 shall not be prohibited when based upon a  
117 difference in seniority. For the purpose of  
118 determining the wages paid to full-time employees

119 in order to determine whether the employer is  
120 discriminating against part-time or contingent  
121 workers, full-time wages shall be deemed to be the  
122 gross hourly wages of similarly situated  
123 employees, plus a thirty per cent surcharge. Such  
124 surcharge shall be deemed to be paid to the  
125 part-time or contingent employee if it is included  
126 directly in wages or offered as part of the cost  
127 of health, welfare and retirement benefits, at the  
128 employer's discretion. This subsection shall not  
129 be construed to require an employer to offer total  
130 compensation to a part-time or contingent employee  
131 greater than a pro rata share of that offered to a  
132 similarly situated full-time permanent employee.

133 (c) Nothing in this section shall be  
134 construed to diminish or otherwise affect the  
135 requirements, guarantees or protections under any  
136 bargaining agreement, company policy or state or  
137 federal law which provides for greater or  
138 additional benefits than those required under this  
139 section.

140 (d) Misclassification by any employer of a  
141 worker as an independent contractor shall  
142 constitute a violation of this section.

143 (e) Any employer who violates subsection (b)  
144 of this section shall be fined not less than two  
145 thousand five hundred dollars but not more than  
146 five thousand dollars for each offense. The Labor  
147 Commissioner shall collect such fines, as well as  
148 wages due under this section, and shall disburse  
149 such wages to employees found by the Labor  
150 Commissioner to have been damaged by an employer's  
151 failure to comply with the provisions of this  
152 section.

153 (f) The Labor Commissioner may make complaint  
154 to the proper prosecuting authorities for the  
155 violation of any provision of this section.

156 (g) Any employee claiming to be aggrieved by  
157 a violation of this section may, within three  
158 years of when he knew or should have known of such  
159 violation, institute and prosecute in his own name  
160 and on his own behalf, or for himself and for  
161 others similarly situated, a civil action for  
162 injunctive relief and any damages incurred,  
163 including treble damages for any loss of wages and  
164 other benefits and reasonable attorneys' fees.

165 (h) No employer shall discharge, discipline  
166 or otherwise penalize any employee because the

167 employee, or a person acting on behalf of the  
168 employee, reports a violation or suspected  
169 violation of this section to the employer, or to  
170 any local, state or federal official, or because  
171 the employee, or a person acting on behalf of the  
172 employee, has exercised any right under this  
173 section.

174 LAB COMMITTEE VOTE: YEA 8 NAY 6 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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**FISCAL IMPACT STATEMENT - BILL NUMBER sSB 274**

STATE IMPACT	Workload Increase, Potential Revenue Gain, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Labor, Judicial Department

**EXPLANATION OF ESTIMATES:**

The bill prohibits employers of 10 or more people from discriminating in payment of wages between (1) full-time and part-time, and (2) permanent and contingent employees, except where wage rates vary because of differences in seniority.

It establishes penalties for violations and gives the Labor Commissioner authority to bring violations before prosecuting authorities. This would be a revenue gain to the state.

There would be a workload increase for the Department of Labor associated with bringing violations to the prosecuting authorities. The amount of violations is unknown and it is uncertain as to whether this can be done within resources of the Department of Labor.

The number of cases that would be filed by the Labor Commissioner and by affected employees under this bill is not expected to be high, and therefore could be handled within the court system's current budgetary and caseload structure.

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**OLR BILL ANALYSIS**

sSB 274

**AN ACT CONCERNING WORKERS IN CONTINGENT AND PART-TIME WORK**

**SUMMARY:** This bill prohibits employers of 10 or more people from discriminating in payment of wages between (1) full-time and part-time employees and (2) permanent and contingent employees, except where wage rates vary because of differences in seniority. The bill does not apply to independent contractors and jobs in agriculture.

As a means of determining whether discrimination exists, the bill provides a calculation method that adds a 30% surcharge to the amounts paid to full-time employees, either as part of their wages or as a cost of their benefits. The resulting figure is then compared with wages of part-time and contingent employees engaged in similar work. Thus, the measure of discrimination permits comparison not only of wages but also of benefits, which the bill defines as accrual of seniority, credit for length of service, holidays, vacations, sick and other leave, disability and health insurance, health and welfare benefits, and pensions.

The bill also defines categories of contingent and part-time employment. It establishes penalties for violations and empowers the labor commissioner to bring violations before prosecuting authorities. It also allows aggrieved employees to sue for damages and bars employers from penalizing employees who exercise their rights under, or report violations of, the bill's provisions.

The bill specifies that it does not diminish any additional requirements, greater protections, or additional benefits granted under federal or state law, collective bargaining agreements, or company policies.

EFFECTIVE DATE: October 1, 1998

**FURTHER EXPLANATION****Employers**

The bill's prohibition applies to employers, including joint employers, employing 10 or more people during any part of a day. "Employer" includes any individual, the state and all of its political subdivisions, partnerships, trusts, estates, joint stock companies, associations, domestic or foreign insurance companies or corporations, receivers or trustees in bankruptcy, or legal representatives of deceased persons. The bill defines a "client company" as an enterprise that receives services or functions from another, and a "joint employer" as a contractor and a client where the contractor's employees perform work for the client's enterprise under any of the following conditions: (1) contractor's employees must follow client instructions in doing the work, (2) they regularly provide their services at the client's premises, or (3) they use the client's equipment to perform services.

### Employees

The bill covers as an employee any individual, except an independent contractor, who performs services for pay. An independent contractor is a worker who (1) is free from control and direction over the work performed; (2) performs the service outside the recipient enterprise's usual course or place of business; and (3) customarily engages in an independent trade, profession, or business. An employer's failure to withhold federal or state taxes from an employee's wages is not evidence of independent contractor status.

### Employment

With the exception of jobs in agriculture, the bill's prohibition covers most contingent work, defined as any job where the worker has no contract for long-term, full-time employment. The bill distinguishes 11 kinds of covered contingent employment:

1. "casual," which is occasional, intermittent or unscheduled work;
2. "contractor" employment, where the contractor's employee provides services to a client firm under a contract between the two firms;

3. "day labor," which is day-to-day work performing unskilled or semiskilled tasks;
4. "home-based" production of goods and services in a residence from materials not necessarily provided by the employer;
5. "leased" employment, under which a leasing organization provides services to a client firm under a contract;
6. "on-call," in which an employee reports for work only when asked by the employer;
7. "part-time," which is regularly scheduled work of up to 32 hours per week or less than 64 hours over two weeks;
8. "seasonal" work, which is a job providing no work for at least 90 days;
9. "temporary agency" work, which is performed by a person hired and paid by an agency, without a contract for long-term employment;
10. "temporary direct hire" work, which is performed by a person hired and paid by the firm for which he performs services, where there is no contract for long-term employment; and
11. "temporary employment," which is work for an established employment period of one year or less.

A full-time job involves regularly scheduled work of more than 32 hours per week or more than 64 hours during two weeks. A full-time job can be contingent. For example, the temporary employment category covers work with an established employment period of a year or less. Thus, under the bill, a full-time job could be contingent if it were limited to less than a year.

#### **Pro Rata Benefits**

The bill specifies that total compensation to a part-time or contingent employee need not exceed a pro rata share of compensation offered to a full-time,

permanent employee doing similar work. The rule for pro rating is that the employer's payment equal the ratio of part-time hours worked to full-time hours worked. For insurance, that ratio applies to the employer's contribution toward paying the premium.

### Violations

The bill subjects employers who engage in discrimination against part-time or contingent workers to fines of between \$2,500 and \$5,000 for each offense. It directs the labor commissioner to collect fines as well as wages due and to disburse them to the damaged employee. The commissioner may also make complaint of violations to prosecuting authorities.

An employer's misclassification of a worker as an independent contractor constitutes a violation.

The bill permits an employee claiming a violation to sue, within three years of the violation, the employer for himself alone or himself and others to obtain relief and damages, including treble damages for lost wages and benefits, and reasonable attorney's fees. It prohibits an employer from discharging, disciplining, or otherwise penalizing an employee or his representative for exercising his rights under the bill, or for reporting a violation or suspected violation to the employer or the authorities.

### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute  
Yea 8      Nay 6