

HOUSE BILL 1299

K3

(0lr2672)

ENROLLED BILL

— Economic Matters/Finance —

Introduced by **Delegates Manno, Davis, Barkley, Braveboy, Burns, Feldman, Hecht, Hubbard, Huckler, Kirk, Krysiak, Love, ~~Manno~~, McHale, Taylor, and Vaughn**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this _____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – *The* Healthy Retail Employee Act**

3 FOR the purpose of requiring certain retail employers to provide a certain nonworking
4 or working shift break to certain employees under certain circumstances;
5 authorizing certain employees to file a complaint with the Commissioner of
6 Labor and Industry under certain circumstances; authorizing the Commissioner
7 to investigate whether a certain provision of law has been violated under
8 certain circumstances; requiring the Commissioner to attempt to resolve a
9 certain issue informally or issue a certain order under certain circumstances;
10 ~~authorizing~~ requiring the Commissioner to assess a certain civil penalty under
11 certain circumstances; subjecting certain provisions of this Act to certain notice
12 and hearing requirements; requiring the Commissioner to consider certain
13 factors when determining whether a violation of this Act has occurred or the

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.

Italics indicate opposite chamber/conference committee amendments.



1 ~~amount of a certain civil penalty; authorizing certain civil actions under certain~~
 2 ~~circumstances; authorizing certain remedies under certain circumstances;~~
 3 ~~requiring a court to award~~ specifying that a certain employee may be entitled to
 4 a certain monetary amount and certain attorney's fees and costs under certain
 5 circumstances; providing for the application of this Act; defining certain terms;
 6 providing for a delayed effective date; and generally relating to shift breaks for
 7 employees.

8 BY repealing and reenacting, with amendments,
 9 Article – Labor and Employment
 10 Section 3–103(d)
 11 Annotated Code of Maryland
 12 (2008 Replacement Volume and 2009 Supplement)

13 BY adding to
 14 Article – Labor and Employment
 15 Section 3–710
 16 Annotated Code of Maryland
 17 (2008 Replacement Volume and 2009 Supplement)

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

20 **Article – Labor and Employment**

21 3–103.

22 (d) (1) The Commissioner may investigate whether § 3–701 of this title
 23 has been violated on receipt of a written complaint of an applicant for employment.

24 (2) The Commissioner may investigate whether § 3–702 of this title
 25 has been violated on receipt of a written complaint of an applicant for employment or
 26 an employee.

27 **(3) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3–710 OF**
 28 **THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN**
 29 **EMPLOYEE AS PROVIDED IN § 3–710(D)(1) OF THIS TITLE.**

30 **3–710.**

31 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
 32 **MEANINGS INDICATED.**

33 **(2) “EMPLOYER” MEANS A PERSON:**

1 (I) ENGAGED IN A RETAIL ESTABLISHMENT BUSINESS IN
2 THE STATE THAT HAS ~~AT LEAST 50 OR MORE~~ RETAIL EMPLOYEES FOR EACH
3 WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR
4 PRECEDING CALENDAR YEAR; OR

5 (II) THAT OWNS ONE OR MORE RETAIL ESTABLISHMENT
6 FRANCHISES WITH THE SAME TRADE NAME WITH ~~AT LEAST 50 OR MORE~~ RETAIL
7 EMPLOYEES IN THE STATE FOR EACH WORKING DAY IN EACH OF 20 OR MORE
8 CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR.

9 (3) "FRANCHISE" HAS THE MEANING STATED IN § 14-201 OF THE
10 BUSINESS REGULATION ARTICLE.

11 (4) (I) ~~"RETAIL ESTABLISHMENT" HAS THE MEANING STATED~~
12 ~~IN § 5-401 OF THE ECONOMIC DEVELOPMENT ARTICLE~~ MEANS A PLACE OF
13 BUSINESS WITH THE PRIMARY PURPOSE OF SELLING GOODS TO A CONSUMER
14 WHO IS PRESENT AT THE PLACE OF BUSINESS AT THE TIME OF SALE.

15 (II) "RETAIL ESTABLISHMENT" DOES NOT INCLUDE:

16 1. A WHOLESALER, AS DEFINED IN § 11-401(I) OF
17 THE COMMERCIAL LAW ARTICLE; OR

18 2. A RESTAURANT.

19 (B) THIS SECTION DOES NOT APPLY TO AN EMPLOYEE:

20 (1) COVERED BY A COLLECTIVE BARGAINING AGREEMENT OR
21 EMPLOYMENT POLICY THAT INCLUDES SHIFT BREAKS EQUAL TO OR GREATER
22 THAN THOSE PROVIDED UNDER THIS SECTION;

23 (2) EXEMPT FROM OVERTIME PAY REQUIREMENTS UNDER THE
24 FAIR LABOR STANDARDS ACT; ~~OR~~

25 (3) WHO WORKS FOR A UNIT OF THE STATE, A COUNTY, OR A
26 MUNICIPALITY;

27 (4) WHO WORKS IN A CORPORATE OFFICE OR OTHER OFFICE
28 LOCATION; OR

29 (5) WHO WORKS FOR AT LEAST 4 CONSECUTIVE HOURS FOR AN
30 EMPLOYER AT A SINGLE LOCATION WITH 5 OR FEWER EMPLOYEES.

1 (C) (1) (I) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS
 2 SUBSECTION OR SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN EMPLOYER MAY
 3 NOT EMPLOY AN EMPLOYEE AT A RETAIL ESTABLISHMENT FOR:

4 ~~1.~~ 4 TO 6 CONSECUTIVE HOURS WITHOUT
 5 PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 15 MINUTES; ~~OR.~~

6 (II) AN EMPLOYEE IS NOT ENTITLED TO A 15 MINUTE SHIFT
 7 BREAK UNDER THIS PARAGRAPH IF THE EMPLOYEE IS ENTITLED TO A 30
 8 MINUTE SHIFT BREAK UNDER PARAGRAPH (2) OF THIS SUBSECTION.

9 ~~2.~~ (2) AN EMPLOYER MAY NOT EMPLOY AN EMPLOYEE
 10 AT A RETAIL ESTABLISHMENT FOR MORE THAN 6 CONSECUTIVE HOURS
 11 WITHOUT PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 30 MINUTES.

12 (3) IF AN EMPLOYEE WORKS 8 CONSECUTIVE HOURS IN A SINGLE
 13 SHIFT, THE EMPLOYER SHALL PROVIDE AN ADDITIONAL NONWORKING SHIFT
 14 BREAK OF AT LEAST 15 MINUTES FOR EVERY ADDITIONAL 4 CONSECUTIVE
 15 HOURS THE EMPLOYER EMPLOYS THE EMPLOYEE IN THE SHIFT.

16 ~~(H)~~ (4) IF AN EMPLOYEE'S WORK HOURS DO NOT EXCEED
 17 6 CONSECUTIVE HOURS, THE PROVISIONS OF ~~SUBPARAGRAPH (I) OF THIS~~
 18 ~~PARAGRAPH~~ PARAGRAPH (1) OF THIS SUBSECTION MAY BE WAIVED BY WRITTEN
 19 AGREEMENT BETWEEN THE EMPLOYER AND EMPLOYEE.

20 ~~(2)~~ (5) ~~THE A~~ SHIFT BREAK REQUIRED UNDER ~~PARAGRAPH (1)~~
 21 ~~OF THIS SUBSECTION~~ MAY BE CONSIDERED A WORKING SHIFT BREAK IF:

22 (I) 1. ~~A.~~ THE TYPE OF WORK PREVENTS AN
 23 EMPLOYEE FROM BEING RELIEVED OF WORK DURING THE NONWORKING SHIFT
 24 BREAK; OR

25 ~~2.~~ ~~B.~~ 2. THE EMPLOYEE IS ALLOWED TO CONSUME A
 26 MEAL WHILE WORKING AND THE WORKING SHIFT BREAK IS COUNTED TOWARDS
 27 THE EMPLOYEE'S WORK HOURS; AND

28 ~~(H)~~ ~~2.~~ (II) THE EMPLOYER AND EMPLOYEE MUTUALLY
 29 AGREE IN WRITING TO THE WORKING SHIFT BREAK ~~AND DOCUMENT THE~~
 30 ~~AGREEMENT.~~

31 (D) (1) IF AN EMPLOYER VIOLATES SUBSECTION (C) OF THIS
 32 SECTION, AN EMPLOYEE OF THE EMPLOYER MAY FILE A COMPLAINT WITH THE
 33 COMMISSIONER.

1 (2) ~~IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER~~
2 ~~HAS VIOLATED THIS SECTION~~ RECEIVES A COMPLAINT UNDER PARAGRAPH (1)
3 OF THIS SUBSECTION, THE COMMISSIONER SHALL:

4 (I) TRY TO RESOLVE THE ISSUE INFORMALLY; OR

5 (II) DETERMINE WHETHER THE EMPLOYER HAS VIOLATED
6 THIS SECTION.

7 (3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER
8 HAS VIOLATED THIS SECTION, THE COMMISSIONER SHALL:

9 (I) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS
10 SECTION ~~CONSISTENT WITH THE NOTICE AND HEARING REQUIREMENTS OF~~
11 ~~TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE; AND~~

12 (II) IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL
13 PENALTY OF:

14 1. UP TO \$300 FOR EACH EMPLOYEE FOR WHOM THE
15 EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION; OR

16 2. UP TO \$600 FOR EACH EMPLOYEE FOR WHOM THE
17 EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION IF THE VIOLATION
18 OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS
19 COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD
20 OCCURRED.

21 (4) THE PROVISIONS OF ~~PARAGRAPH~~ PARAGRAPHS (2)(II) AND
22 (3) OF THIS SUBSECTION ARE SUBJECT TO THE NOTICE AND HEARING
23 REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT
24 ARTICLE.

25 (5) (I) IN DETERMINING WHETHER THERE IS A VIOLATION OF
26 THIS SECTION, THE COMMISSIONER SHALL CONSIDER IF THERE WAS A THREAT
27 TO PUBLIC HEALTH OR SAFETY AT THE TIME THE VIOLATION IS ALLEGED TO
28 HAVE OCCURRED.

29 (II) IN DETERMINING THE AMOUNT OF ANY CIVIL PENALTY
30 TO BE IMPOSED, THE COMMISSIONER SHALL CONSIDER THE:

31 1. SERIOUSNESS OF THE VIOLATION;

32 2. SIZE OF THE EMPLOYER'S BUSINESS;

1 ~~(5) THE EMPLOYEE SHALL BE ENTITLED TO ANY REMEDIES~~
2 ~~AVAILABLE AT LAW OR IN EQUITY APPROPRIATE TO REMEDY ANY VIOLATION OF~~
3 ~~THIS SECTION, INCLUDING BACK PAY OR INJUNCTIVE RELIEF.~~

4 ~~(6) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES~~
5 ~~AND COSTS TO AN EMPLOYEE WHO PREVAILS IN AN ENFORCEMENT ACTION~~
6 ~~UNDER THIS SECTION.~~

7 (8) IF AN EMPLOYEE PREVAILS IN AN ACTION BROUGHT UNDER
8 PARAGRAPH (7) OF THIS SUBSECTION, THE EMPLOYEE MAY BE ENTITLED TO:

9 (I) THREE TIMES THE VALUE OF THE EMPLOYEE'S HOURLY
10 WAGE FOR EACH SHIFT BREAK VIOLATION OF THIS SECTION OCCURRING AFTER
11 THE MOST RECENT VIOLATION AGAINST THE SAME EMPLOYEE; AND

12 (II) REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF
13 THE EMPLOYEE.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 ~~October 1, 2010~~ March 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.