

HOUSE BILL 968

K3, P4

4lr0618
CF SB 753

By: **Delegates Olszewski, Anderson, Barkley, Barnes, Bobo, Braveboy, Cane, Carter, Clagett, Clippinger, Conaway, Cullison, DeBoy, Dumais, Fraser-Hidalgo, Frush, Gaines, Gilchrist, Glenn, Gutierrez, Guzzone, Hammen, Haynes, Healey, Hixson, Holmes, Howard, Hubbard, Hucker, Ivey, Jones, Kaiser, A. Kelly, Lafferty, Lee, Love, Luedtke, McHale, McIntosh, A. Miller, Mitchell, Mizeur, Morhaim, Nathan-Pulliam, Niemann, Oaks, Pena-Melnyk, Pendergrass, Proctor, Reznik, B. Robinson, S. Robinson, Rosenberg, Simmons, Stukes, Summers, Swain, Tarrant, F. Turner, V. Turner, Valderrama, Vaughn, Waldstreicher, A. Washington, M. Washington, and Zucker**

Introduced and read first time: February 6, 2014

Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Labor and Employment – Maryland Earned Sick and Safe Leave Act

FOR the purpose of requiring certain employers to provide employees with certain earned sick and safe leave; providing for the method of determining whether an employer is required to provide paid or unpaid earned sick and safe leave; providing for the manner in which earned sick and safe leave is accrued by the employee and treated by the employer; authorizing an employer, under certain circumstances, to deduct the amount paid for earned sick and safe leave from the wages paid to an employee on the termination of employment under a certain provision of law; requiring an employer to allow an employee to use earned sick and safe leave for certain purposes; requiring an employee, under certain circumstances, to request leave, notify the employer of certain information, and comply with certain procedures; authorizing an employer to establish, subject to certain limitations, certain procedures for an employee to follow when requesting and taking earned sick and safe leave; authorizing an employer, under certain circumstances, to require an employee to provide certain documentation subject to certain limitations; requiring an employer to notify the employees that the employees are entitled to certain earned sick and safe leave; specifying the information that must be included in the notice; requiring the Commissioner of Labor and Industry to create and make available a certain poster and notice; providing for the manner in which an employer may comply with a certain notice requirement; establishing certain civil penalties for

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



the violation of certain provisions of this Act; requiring an employer to keep certain records for a certain time period; authorizing the Commissioner under certain circumstances to inspect certain records; establishing a rebuttable presumption that an employer has violated certain provisions of this Act under certain circumstances; providing that a certain rebuttable presumption may be overcome only by certain evidence; authorizing the Commissioner to take certain acts when the Commissioner determines certain provisions of this Act have been violated; authorizing an employee to bring a civil action in a certain court against an employer for a violation of certain provisions of this Act; requiring that a certain action be brought within a certain time period; authorizing a court to award certain damages and fees under certain circumstances; establishing certain prohibited acts; providing for certain criminal penalties; providing that certain protections apply to certain employees; requiring the Commissioner to develop and implement a certain outreach program; authorizing the Commissioner to adopt regulations to carry out certain provisions of this Act; authorizing the Commissioner to conduct an investigation, under certain circumstances, to determine whether certain provisions of this Act have been violated; requiring the Commissioner, except under certain circumstances, to keep certain information confidential; providing for the construction of certain provisions of this Act; providing for the application of this Act; defining certain terms; and generally relating to earned sick and safe leave.

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 2–106(b)

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

BY adding to

Article – Labor and Employment

Section 3–103(i); and 3–1201 through 3–1212 to be under the new subtitle
“Subtitle 12. Earned Sick and Safe Leave”

Annotated Code of Maryland

(2008 Replacement Volume and 2013 Supplement)

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

Article – Labor and Employment

2–106.

(b) Except as provided in subsection (c) of this section, and in addition to authority to adopt regulations that is set forth elsewhere, the Commissioner may adopt regulations that are necessary to carry out:

- (1) Title 3, Subtitle 3 of this article;
- (2) Title 3, Subtitle 5 of this article;
- (3) TITLE 3, SUBTITLE 12 OF THIS ARTICLE;**
- [(3)] (4)** Title 4, Subtitle 2, Parts I through III of this article;
- [(4)] (5)** Title 5 of this article;
- [(5)] (6)** Title 6 of this article; and
- [(6)] (7)** Title 7 of this article.

3-103.

(I) (1) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER SUBTITLE 12 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT BY AN EMPLOYEE.

(2) TO THE EXTENT PRACTICABLE, THE COMMISSIONER SHALL KEEP CONFIDENTIAL THE IDENTITY OF AN EMPLOYEE WHO HAS FILED A WRITTEN COMPLAINT ALLEGING A VIOLATION OF SUBTITLE 12 OF THIS TITLE UNLESS THE EMPLOYEE WAIVES CONFIDENTIALITY.

SUBTITLE 12. EARNED SICK AND SAFE LEAVE.

3-1201.

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

(B) “ABUSE” HAS THE MEANING STATED IN § 4-501 OF THE FAMILY LAW ARTICLE.

(C) “DOMESTIC VIOLENCE” MEANS ABUSE AGAINST A PERSON ELIGIBLE FOR RELIEF.

(D) “EARNED SICK AND SAFE LEAVE” MEANS PAID LEAVE AWAY FROM WORK THAT IS PROVIDED BY AN EMPLOYER UNDER § 3-1205 OF THIS SUBTITLE.

(E) “EMPLOYEE” DOES NOT INCLUDE AN INDIVIDUAL WHO:

(1) DOES NOT HAVE A REGULAR WORK SCHEDULE WITH THE EMPLOYER;

(2) CONTACTS THE EMPLOYER FOR WORK ASSIGNMENTS AND IS SCHEDULED TO WORK THE ASSIGNMENTS WITHIN 48 HOURS OF CONTACTING THE EMPLOYER;

(3) HAS NO OBLIGATION TO WORK FOR THE EMPLOYER IF THE INDIVIDUAL DOES NOT CONTACT THE EMPLOYER FOR WORK ASSIGNMENTS; AND

(4) IS NOT EMPLOYED BY A TEMPORARY PLACEMENT AGENCY.

(F) "EMPLOYER" INCLUDES:

(1) A UNIT OF STATE OR LOCAL GOVERNMENT; AND

(2) A PERSON THAT ACTS DIRECTLY OR INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

(G) "FAMILY MEMBER" MEANS:

(1) A BIOLOGICAL CHILD, AN ADOPTED CHILD, A FOSTER CHILD, OR A STEPCHILD OF THE EMPLOYEE;

(2) A CHILD FOR WHOM THE EMPLOYEE HAS LEGAL OR PHYSICAL CUSTODY OR GUARDIANSHIP;

(3) A CHILD FOR WHOM THE EMPLOYEE IS THE PRIMARY CAREGIVER;

(4) A BIOLOGICAL PARENT, AN ADOPTIVE PARENT, A FOSTER PARENT, OR A STEPPARENT OF THE EMPLOYEE OR THE EMPLOYEE'S SPOUSE;

(5) THE LEGAL GUARDIAN OF THE EMPLOYEE;

(6) AN INDIVIDUAL WHO SERVED AS THE PRIMARY CAREGIVER OF THE EMPLOYEE WHEN THE EMPLOYEE WAS A MINOR;

(7) THE SPOUSE OF THE EMPLOYEE;

(8) A GRANDPARENT OF THE EMPLOYEE;

(9) THE SPOUSE OF A GRANDPARENT OF THE EMPLOYEE;

(10) A GRANDCHILD OF THE EMPLOYEE;

(11) A BIOLOGICAL SIBLING, AN ADOPTED SIBLING, OR A FOSTER SIBLING OF THE EMPLOYEE; OR

(12) THE SPOUSE OF A BIOLOGICAL SIBLING, A FOSTER SIBLING, OR AN ADOPTED SIBLING OF THE EMPLOYEE.

(H) "HEALTH CARE PROVIDER" MEANS AN INDIVIDUAL LICENSED UNDER STATE LAW TO PROVIDE MEDICAL SERVICES.

(I) "PERSON ELIGIBLE FOR RELIEF" HAS THE MEANING STATED IN § 4-501 OF THE FAMILY LAW ARTICLE.

(J) "SEXUAL ASSAULT" MEANS:

(1) RAPE, SEXUAL OFFENSE, OR ANY OTHER ACT THAT IS A SEXUAL CRIME UNDER TITLE 3, SUBTITLE 3 OF THE CRIMINAL LAW ARTICLE;

(2) CHILD SEXUAL ABUSE UNDER § 3-602 OF THE CRIMINAL LAW ARTICLE; OR

(3) SEXUAL ABUSE OF A VULNERABLE ADULT UNDER § 3-604 OF THE CRIMINAL LAW ARTICLE.

(K) "STALKING" HAS THE MEANING STATED IN § 3-802 OF THE CRIMINAL LAW ARTICLE.

3-1202.

THIS SUBTITLE MAY NOT BE CONSTRUED TO:

(1) REQUIRE AN EMPLOYER TO COMPENSATE AN EMPLOYEE FOR UNUSED EARNED SICK AND SAFE LEAVE WHEN THE EMPLOYEE LEAVES THE EMPLOYER'S EMPLOYMENT;

(2) PROHIBIT AN EMPLOYER FROM ESTABLISHING A POLICY UNDER WHICH EMPLOYEES MAY VOLUNTARILY EXCHANGE ASSIGNED WORK HOURS;

(3) PROHIBIT AN EMPLOYER FROM ADOPTING OR RETAINING A GENERAL PAID LEAVE POLICY THAT MEETS THE MINIMUM REQUIREMENTS OF THIS SUBTITLE;

(4) AFFECT A PROVISION OF A CONTRACT, A COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYEE BENEFIT PLAN, OR ANY OTHER AGREEMENT THAT REQUIRES THE EMPLOYER TO PROVIDE GENERAL PAID LEAVE BENEFITS THAT MEET THE MINIMUM REQUIREMENTS OF THIS SUBTITLE;

(5) PREEMPT, LIMIT, OR OTHERWISE AFFECT ANY OTHER LAW THAT PROVIDES FOR SICK AND SAFE LEAVE BENEFITS THAT ARE MORE GENEROUS THAN REQUIRED UNDER THIS SUBTITLE; OR

(6) PREEMPT, LIMIT, OR OTHERWISE AFFECT ANY WORKERS' COMPENSATION BENEFITS THAT ARE AVAILABLE UNDER TITLE 9 OF THIS ARTICLE.

3-1203.

THIS SUBTITLE DOES NOT APPLY TO AN EMPLOYEE WHO REGULARLY WORKS LESS THAN 8 HOURS A WEEK FOR AN EMPLOYER.

3-1204.

(A) THE COMMISSIONER SHALL DEVELOP AND IMPLEMENT A MULTILINGUAL OUTREACH PROGRAM TO INFORM EMPLOYEES AND OTHER AFFECTED INDIVIDUALS ABOUT THE AVAILABILITY OF EARNED SICK AND SAFE LEAVE UNDER THIS SUBTITLE.

(B) THE PROGRAM ESTABLISHED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE THE DISTRIBUTION OF NOTICES AND OTHER WRITTEN MATERIAL IN ENGLISH, SPANISH, AND OTHER LANGUAGES TO:

- (1) CHILD AND ELDER CARE PROVIDERS;**
- (2) DOMESTIC VIOLENCE SHELTERS;**
- (3) SCHOOLS;**
- (4) HOSPITALS;**
- (5) COMMUNITY HEALTH CENTERS; AND**

(6) HEALTH CARE PROVIDERS.**3-1205.**

(A) (1) AN EMPLOYER THAT EMPLOYS MORE THAN 9 EMPLOYEES SHALL PROVIDE AN EMPLOYEE WITH EARNED SICK AND SAFE LEAVE THAT IS PAID AT THE SAME RATE AND WITH THE SAME BENEFITS AS THE EMPLOYEE NORMALLY EARNS.

(2) AN EMPLOYER THAT EMPLOYS 9 EMPLOYEES OR LESS SHALL PROVIDE AN EMPLOYEE WITH UNPAID EARNED SICK AND SAFE LEAVE.

(3) (I) FOR THE PURPOSE OF DETERMINING WHETHER AN EMPLOYER IS REQUIRED TO PROVIDE PAID OR UNPAID EARNED SICK AND SAFE LEAVE UNDER THIS SUBSECTION, THE NUMBER OF EMPLOYEES OF AN EMPLOYER SHALL BE DETERMINED BY CALCULATING THE AVERAGE MONTHLY NUMBER OF EMPLOYEES EMPLOYED BY THE EMPLOYER DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR.

(II) EACH EMPLOYEE OF AN EMPLOYER SHALL BE INCLUDED IN THE CALCULATION MADE UNDER SUBPARAGRAPH (1) OF THIS PARAGRAPH WITHOUT REGARD TO WHETHER THE EMPLOYEE WOULD BE ELIGIBLE FOR EARNED SICK AND SAFE LEAVE BENEFITS UNDER THIS SUBSECTION.

(B) THE EARNED SICK AND SAFE LEAVE PROVIDED UNDER SUBSECTION (A) OF THIS SECTION SHALL ACCRUE AT A RATE OF AT LEAST 1 HOUR FOR EVERY 30 HOURS AN EMPLOYEE WORKS.

(C) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE TO:

(1) EARN MORE THAN 56 HOURS OF EARNED SICK AND SAFE LEAVE IN A CALENDAR YEAR;

(2) USE MORE THAN 80 HOURS OF EARNED SICK AND SAFE LEAVE IN A CALENDAR YEAR; OR

(3) USE EARNED SICK AND SAFE DURING THE FIRST 3 MONTHS THE EMPLOYEE IS EMPLOYED.

(D) AT THE BEGINNING OF A CALENDAR YEAR, AN EMPLOYER MAY AWARD TO AN EMPLOYEE THE FULL AMOUNT OF EARNED SICK AND SAFE LEAVE THAT AN EMPLOYEE WOULD EARN OVER THE COURSE OF THE CALENDAR YEAR

RATHER THAN AWARDING THE LEAVE AS THE LEAVE ACCRUES DURING THE CALENDAR YEAR.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, FOR THE PURPOSES OF CALCULATING THE ACCRUAL OF EARNED SICK AND SAFE LEAVE, AN EMPLOYEE WHO IS EXEMPT FROM OVERTIME WAGE REQUIREMENTS UNDER THE FEDERAL FAIR LABOR STANDARDS ACT IS ASSUMED TO WORK 40 HOURS EACH WORKWEEK.

(2) IF THE EMPLOYEE'S NORMAL WORKWEEK IS LESS THAN 40 HOURS, THE NUMBER OF HOURS IN THE NORMAL WORKWEEK SHALL BE USED.

(F) (1) EARNED SICK AND SAFE LEAVE SHALL BEGIN TO ACCRUE:

(I) OCTOBER 1, 2014; OR

(II) IF THE EMPLOYEE IS HIRED AFTER OCTOBER 1, 2014, THE DATE ON WHICH THE EMPLOYEE BEGINS EMPLOYMENT WITH THE EMPLOYER.

(2) AN EMPLOYEE MAY NOT ACCRUE EARNED SICK AND SAFE LEAVE BASED ON HOURS WORKED BEFORE OCTOBER 1, 2014.

(G) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF AN EMPLOYEE HAS UNUSED EARNED SICK AND SAFE LEAVE AT THE END OF A CALENDAR YEAR, THE EMPLOYEE MAY CARRY THE BALANCE OF THE EARNED SICK AND SAFE LEAVE OVER TO THE FOLLOWING CALENDAR YEAR.

(2) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE TO CARRY OVER MORE THAN 56 HOURS OF EARNED SICK AND SAFE LEAVE UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(H) IF AN EMPLOYEE BEGINS WORKING IN A SEPARATE DIVISION OR LOCATION BUT REMAINS EMPLOYED BY THE EMPLOYER, THE EMPLOYEE IS ENTITLED TO THE EARNED SICK AND SAFE LEAVE THAT ACCRUED BEFORE THE EMPLOYEE MOVED TO THE SEPARATE DIVISION OR LOCATION.

(I) (1) IF AN EMPLOYEE IS REHIRED BY THE EMPLOYER WITHIN 12 MONTHS AFTER LEAVING THE EMPLOYMENT OF THE EMPLOYER, THE EMPLOYER SHALL REINSTATE ANY UNUSED EARNED SICK AND SAFE LEAVE THAT THE EMPLOYEE HAD WHEN THE EMPLOYEE LEFT THE EMPLOYMENT OF THE EMPLOYER.

(2) IF AN EMPLOYEE IS REHIRED BY THE EMPLOYER MORE THAN 12 MONTHS AFTER LEAVING THE EMPLOYMENT OF THE EMPLOYER, THE EMPLOYER MAY NOT BE REQUIRED TO REINSTATE ANY UNUSED EARNED SICK AND SAFE LEAVE THAT THE EMPLOYEE HAD WHEN THE EMPLOYEE LEFT THE EMPLOYMENT OF THE EMPLOYER.

(J) (1) AN EMPLOYER MAY ALLOW AN EMPLOYEE TO USE EARNED SICK AND SAFE LEAVE BEFORE THE AMOUNT NEEDED BY THE EMPLOYEE ACCRUES.

(2) IF AN EMPLOYEE IS ALLOWED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO USE EARNED SICK AND SAFE LEAVE BEFORE IT HAS ACCRUED, THE EMPLOYER MAY DEDUCT THE AMOUNT PAID FOR THE EARNED SICK AND SAFE LEAVE FROM THE WAGES PAID TO THE EMPLOYEE ON THE TERMINATION OF EMPLOYMENT UNDER § 3-505 OF THIS TITLE IF:

(I) THE EMPLOYER AND EMPLOYEE MUTUALLY CONSENTED TO THE DEDUCTION AS EVIDENCED BY A DOCUMENT SIGNED BY THE EMPLOYEE; AND

(II) THE EMPLOYEE LEAVES THE EMPLOYMENT OF THE EMPLOYER BEFORE THE EMPLOYEE HAS ACCRUED THE AMOUNT OF EARNED SICK AND SAFE LEAVE THAT WAS USED.

3-1206.

(A) AN EMPLOYER SHALL ALLOW AN EMPLOYEE TO USE EARNED SICK AND SAFE LEAVE:

(1) TO CARE FOR OR TREAT THE EMPLOYEE'S MENTAL OR PHYSICAL ILLNESS, INJURY, OR CONDITION;

(2) TO OBTAIN PREVENTIVE MEDICAL CARE FOR THE EMPLOYEE OR EMPLOYEE'S FAMILY MEMBER;

(3) TO CARE FOR A FAMILY MEMBER WITH A MENTAL OR PHYSICAL ILLNESS, INJURY, OR CONDITION;

(4) IF THE EMPLOYER'S PLACE OF BUSINESS HAS CLOSED BY ORDER OF A PUBLIC OFFICIAL DUE TO A PUBLIC HEALTH EMERGENCY;

(5) IF THE SCHOOL OF OR CHILD CARE PROVIDER FOR THE EMPLOYEE'S FAMILY MEMBER HAS CLOSED BY ORDER OF A PUBLIC OFFICIAL DUE TO A PUBLIC HEALTH EMERGENCY;

(6) TO CARE FOR A FAMILY MEMBER IF A HEALTH OFFICIAL OR HEALTH CARE PROVIDER HAS DETERMINED THAT THE FAMILY MEMBER'S PRESENCE IN THE COMMUNITY WOULD JEOPARDIZE THE HEALTH OF OTHERS BECAUSE OF THE FAMILY MEMBER'S EXPOSURE TO A COMMUNICABLE DISEASE; OR

(7) IF:

(I) THE ABSENCE FROM WORK IS NECESSARY DUE TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER; AND

(II) THE LEAVE IS BEING USED:

1. BY THE EMPLOYEE TO OBTAIN FOR THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER:

A. MEDICAL ATTENTION THAT IS NEEDED TO RECOVER FROM PHYSICAL OR PSYCHOLOGICAL INJURY OR DISABILITY THAT IS CAUSED BY THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING;

B. SERVICES FROM A VICTIM SERVICES ORGANIZATION RELATED TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING;

C. PSYCHOLOGICAL OR OTHER COUNSELING RELATED TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING; OR

D. LEGAL SERVICES, INCLUDING PREPARING FOR OR PARTICIPATING IN A CIVIL OR CRIMINAL PROCEEDING RELATED TO OR RESULTING FROM THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING; OR

2. DURING THE TIME THAT THE EMPLOYEE HAS TEMPORARILY RELOCATED DUE TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.

(B) IN ORDER TO USE EARNED SICK AND SAFE LEAVE, AN EMPLOYEE SHALL:

(1) REQUEST THE LEAVE FROM THE EMPLOYER AS SOON AS PRACTICABLE AFTER THE EMPLOYEE DETERMINES THAT THE EMPLOYEE NEEDS TO TAKE THE LEAVE;

(2) NOTIFY THE EMPLOYER OF THE ANTICIPATED DURATION OF THE LEAVE; AND

(3) COMPLY WITH ANY REASONABLE PROCEDURES ESTABLISHED BY THE EMPLOYER UNDER SUBSECTION (C) OF THIS SECTION.

(C) (1) SUBJECT TO PARAGRAPHS (2) AND (3) OF THIS SUBSECTION, AN EMPLOYER MAY ESTABLISH REASONABLE PROCEDURES FOR AN EMPLOYEE TO FOLLOW WHEN REQUESTING AND TAKING EARNED SICK AND SAFE LEAVE.

(2) AN EMPLOYER MAY NOT REQUIRE THAT AN EMPLOYEE WHO IS REQUESTING EARNED SICK AND SAFE LEAVE SEARCH FOR OR FIND AN INDIVIDUAL TO WORK IN THE EMPLOYEE'S STEAD DURING THE TIME THE EMPLOYEE IS TAKING THE LEAVE.

(3) AN EMPLOYER MAY NOT REQUIRE AN EMPLOYEE TO:

(I) DISCLOSE DETAILS OF:

1. THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING THAT WAS COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER; OR

2. THE MENTAL OR PHYSICAL ILLNESS, INJURY, OR CONDITION OF THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER; OR

(II) PROVIDE AS CERTIFICATION ANY INFORMATION THAT WOULD VIOLATE THE FEDERAL SOCIAL SECURITY ACT OF 1939 OR THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT.

(D) (1) INSTEAD OF TAKING EARNED SICK AND SAFE LEAVE UNDER THIS SECTION, BY MUTUAL CONSENT OF THE EMPLOYER AND EMPLOYEE, AN EMPLOYEE MAY WORK ADDITIONAL HOURS OR TRADE SHIFTS WITH ANOTHER EMPLOYEE DURING A PAY PERIOD TO MAKE UP WORK HOURS THAT THE EMPLOYEE TOOK OFF FOR WHICH THE EMPLOYEE COULD HAVE TAKEN EARNED SICK AND SAFE LEAVE.

(2) AN EMPLOYEE IS NOT REQUIRED TO OFFER OR TO ACCEPT AN OFFER OF ADDITIONAL WORK HOURS OR A TRADE IN SHIFTS.

(E) (1) AN EMPLOYEE MAY TAKE EARNED SICK AND SAFE LEAVE IN THE SMALLEST INCREMENT THAT THE EMPLOYER'S PAYROLL SYSTEM USES TO ACCOUNT FOR ABSENCES OR USE OF THE EMPLOYEE'S WORK TIME.

(2) AN EMPLOYEE MAY NOT BE REQUIRED TO TAKE EARNED SICK AND SAFE LEAVE IN AN INCREMENT OF MORE THAN 1 HOUR.

(F) WHEN WAGES ARE PAID TO AN EMPLOYEE, THE EMPLOYER SHALL PROVIDE IN WRITING BY ANY REASONABLE METHOD A STATEMENT REGARDING THE AMOUNT OF EARNED SICK AND SAFE LEAVE THAT IS AVAILABLE FOR USE BY THE EMPLOYEE.

(G) (1) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN EMPLOYER MAY REQUIRE AN EMPLOYEE WHO USES EARNED SICK AND SAFE LEAVE FOR MORE THAN 2 CONSECUTIVE SCHEDULED SHIFTS TO PROVIDE REASONABLE DOCUMENTATION TO VERIFY THAT THE LEAVE WAS USED APPROPRIATELY UNDER SUBSECTION (A) OF THIS SECTION.

(2) REASONABLE DOCUMENTATION THAT MAY BE REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION INCLUDES:

(I) FOR LEAVE USED UNDER SUBSECTION (A)(5) OF THIS SECTION, THE NOTICE OF THE CLOSURE ORDER BY A PUBLIC OFFICIAL IN THE FORM IN WHICH THE EMPLOYEE RECEIVED THE NOTICE;

(II) FOR LEAVE USED UNDER SUBSECTION (A)(1), (3), OR (6) OF THIS SECTION, DOCUMENTATION FROM THE HEALTH OFFICER OR HEALTH CARE PROVIDER THAT THE USE OF EARNED SICK AND SAFE LEAVE IS NECESSARY; AND

(III) FOR LEAVE USED UNDER SUBSECTION (A)(7) OF THIS SECTION:

1. A REPORT BY A LAW ENFORCEMENT OFFICER INDICATING THAT THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER WAS A VICTIM OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING;

2. DOCUMENTATION OF AN INDICTMENT FOR DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER;

3. CERTIFICATION BY A STATE'S ATTORNEY'S OFFICE, CHILD PROTECTIVE SERVICES, LAW ENFORCEMENT, THE VICTIM'S ATTORNEY, OR THE VICTIM'S ADVOCATE THAT THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER IS A PARTY TO OR WITNESS IN A LEGAL ACTION RELATED TO THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER;

4. A COURT ORDER PROTECTING THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER FROM THE PERPETRATOR OF THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER; OR

5. A NOTICE FROM A COURT, VICTIM'S ATTORNEY, OR STATE'S ATTORNEY'S OFFICE THAT THE EMPLOYEE OR EMPLOYEE'S FAMILY MEMBER APPEARED, OR IS SCHEDULED TO APPEAR, IN COURT IN CONNECTION WITH THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST THE EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER.

(3) AN EMPLOYER MAY NOT REQUIRE THAT:

(I) THE DOCUMENTATION USED FOR VERIFYING THE USE OF THE EARNED SICK AND SAFE LEAVE UNDER SUBSECTION (A)(1), (3), OR (6) OF THIS SECTION EXPLAIN THE NATURE OF THE MENTAL OR PHYSICAL ILLNESS, INJURY, OR CONDITION; OR

(II) THE DOCUMENTATION USED FOR VERIFYING THE USE OF THE EARNED SICK AND SAFE LEAVE UNDER SUBSECTION (A)(7) OF THIS SECTION INCLUDE DETAILS REGARDING THE DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING.

(4) (I) IF DOCUMENTATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION RELATES TO MENTAL OR PHYSICAL HEALTH OF AN EMPLOYEE, OR IS DOCUMENTATION RELATING TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING COMMITTED AGAINST AN EMPLOYEE OR THE EMPLOYEE'S FAMILY MEMBER, THE EMPLOYER SHALL MAINTAIN THE DOCUMENTATION IN A CONFIDENTIAL FILE THAT IS SEPARATE FROM THE EMPLOYEE'S PERSONNEL FILE.

(II) AN EMPLOYER MAY NOT DISCLOSE THE DOCUMENTATION MAINTAINED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH UNLESS THE DISCLOSURE IS MADE TO THE EMPLOYEE OR WITH THE PERMISSION OF THE EMPLOYEE.

3-1207.

(A) AN EMPLOYER SHALL NOTIFY THE EMPLOYER'S EMPLOYEES THAT THE EMPLOYEES ARE ENTITLED TO EARNED SICK AND SAFE LEAVE UNDER THIS SUBTITLE.

(B) THE NOTICE PROVIDED UNDER SUBSECTION (A) OF THIS SECTION SHALL INCLUDE:

(1) A STATEMENT OF HOW EARNED SICK AND SAFE LEAVE IS ACCRUED UNDER § 3-1205 OF THIS SUBTITLE;

(2) THE PURPOSES FOR WHICH THE EMPLOYER IS REQUIRED TO ALLOW AN EMPLOYEE TO USE EARNED SICK AND SAFE LEAVE UNDER § 3-1206 OF THIS SUBTITLE;

(3) A STATEMENT REGARDING THE PROHIBITION IN § 3-1210 OF THIS SUBTITLE OF THE EMPLOYER TAKING ADVERSE ACTION AGAINST AN EMPLOYEE WHO EXERCISES A RIGHT UNDER THIS SUBTITLE; AND

(4) INFORMATION REGARDING THE RIGHT OF AN EMPLOYEE TO REPORT AN ALLEGED VIOLATION OF THIS SUBTITLE BY THE EMPLOYER TO THE COMMISSIONER OR BRING A CIVIL ACTION UNDER § 3-1209(B) OF THIS SUBTITLE.

(C) (1) THE COMMISSIONER SHALL CREATE AND MAKE AVAILABLE A POSTER AND A MODEL NOTICE THAT MAY BE USED BY AN EMPLOYER TO COMPLY WITH SUBSECTION (A) OF THIS SECTION.

(2) THE MODEL NOTICE CREATED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE PRINTED IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE THAT THE COMMISSIONER DETERMINES IS NEEDED TO NOTIFY EMPLOYEES OF THE EMPLOYEES' RIGHTS UNDER THIS SUBTITLE.

(D) AN EMPLOYER MAY COMPLY WITH SUBSECTION (A) OF THIS SECTION BY:

(1) DISPLAYING THE POSTER CREATED BY THE COMMISSIONER UNDER SUBSECTION (C) OF THIS SECTION IN A CONSPICUOUS AND ACCESSIBLE AREA AT THE LOCATION IN WHICH THE EMPLOYEES WORK;

(2) INCLUDING THE NOTICE CREATED BY THE COMMISSIONER UNDER SUBSECTION (C) OF THIS SECTION IN AN EMPLOYEE HANDBOOK OR OTHER WRITTEN GUIDANCE TO EMPLOYEES CONCERNING EMPLOYEE BENEFITS OR LEAVE PROVIDED BY THE EMPLOYER; OR

(3) DISTRIBUTING THE NOTICE CREATED BY THE COMMISSIONER UNDER SUBSECTION (C) OF THIS SECTION TO EACH EMPLOYEE WHEN THE EMPLOYEE IS HIRED.

(E) IF AN EMPLOYER DECIDES NOT TO USE THE MODEL NOTICE CREATED BY THE COMMISSIONER UNDER SUBSECTION (C) OF THIS SECTION, THE NOTICE PROVIDED BY THE EMPLOYER SHALL CONTAIN THE SAME INFORMATION THAT IS INCLUDED IN THE MODEL NOTICE.

(F) THE NOTICE MAY BE DISTRIBUTED ELECTRONICALLY BY THE EMPLOYER TO THE EMPLOYER'S EMPLOYEES.

(G) AN EMPLOYER WHO VIOLATES THIS SECTION IS SUBJECT TO A CIVIL PENALTY NOT EXCEEDING \$125 FOR THE FIRST VIOLATION AND \$250 FOR EACH SUBSEQUENT VIOLATION.

3-1208.

(A) (1) AN EMPLOYER SHALL KEEP FOR AT LEAST 3 YEARS A RECORD OF:

(I) EARNED SICK AND SAFE LEAVE ACCRUED BY EACH EMPLOYEE; AND

(II) EARNED SICK AND SAFE LEAVE USED BY EACH EMPLOYEE.

(2) AN EMPLOYER MAY KEEP THE RECORD IN THE SAME MANNER THAT THE EMPLOYER KEEPS OTHER RECORDS REQUIRED TO BE KEPT UNDER THIS TITLE.

(B) AFTER GIVING THE EMPLOYER NOTICE AND DETERMINING A MUTUALLY AGREEABLE TIME FOR THE INSPECTION, THE COMMISSIONER MAY INSPECT A RECORD KEPT UNDER SUBSECTION (A) OF THIS SECTION FOR THE PURPOSE OF DETERMINING WHETHER THE EMPLOYER IS COMPLYING WITH THE PROVISIONS OF THIS SUBTITLE.

(C) (1) THERE IS A REBUTTABLE PRESUMPTION THAT AN EMPLOYER HAS VIOLATED THE PROVISIONS OF THIS SUBTITLE IF:

(I) THERE IS AN ALLEGATION THAT THE EMPLOYER HAS FAILED TO ACCRUE ACCURATELY THE AMOUNT OF EARNED SICK AND SAFE LEAVE AVAILABLE TO AN EMPLOYEE; AND

(II) THE EMPLOYER FAILS TO:

1. KEEP A RECORD AS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION; OR

2. ALLOW THE COMMISSIONER TO INSPECT A RECORD KEPT UNDER SUBSECTION (A) OF THIS SECTION.

(2) THE REBUTTABLE PRESUMPTION IN PARAGRAPH (1) OF THIS SUBSECTION MAY BE OVERCOME ONLY BY CLEAR AND CONVINCING EVIDENCE.

3-1209.

(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER:

(1) MAY TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION INFORMALLY BY MEDIATION;

(2) WITH THE WRITTEN CONSENT OF THE EMPLOYEE, MAY ASK THE ATTORNEY GENERAL TO BRING AN ACTION IN ACCORDANCE WITH THIS SECTION ON BEHALF OF THE EMPLOYEE; AND

(3) MAY BRING AN ACTION ON BEHALF OF AN EMPLOYEE IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED.

(B) (1) AN EMPLOYEE MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST THE EMPLOYER FOR A VIOLATION OF THIS SUBTITLE.

(2) AN ACTION MAY BE BROUGHT UNDER PARAGRAPH (1) OF THIS SUBSECTION WHETHER OR NOT THE EMPLOYEE FIRST FILED A COMPLAINT WITH THE COMMISSIONER.

(C) AN ACTION BROUGHT UNDER SUBSECTION (A) OR (B) OF THIS SECTION SHALL BE FILED WITHIN 3 YEARS AFTER THE OCCURRENCE OF THE ACT ON WHICH THE ACTION IS BASED.

(D) (1) IF, IN AN ACTION UNDER SUBSECTION (A) OR (B) OF THIS SECTION, A COURT FINDS THAT AN EMPLOYER VIOLATED THIS SUBTITLE, THE COURT MAY AWARD THE EMPLOYEE:

(I) THE FULL MONETARY VALUE OF ANY UNPAID EARNED SICK AND SAFE LEAVE;

(II) ACTUAL ECONOMIC DAMAGES SUFFERED BY THE EMPLOYEE AS THE RESULT OF THE EMPLOYER'S VIOLATION OF THIS SUBTITLE;

(III) AN ADDITIONAL AMOUNT NOT EXCEEDING 3 TIMES THE DAMAGES AWARDED UNDER ITEM (II) OF THIS PARAGRAPH;

(IV) REASONABLE COUNSEL FEES AND OTHER COSTS; AND

(V) ANY OTHER RELIEF THAT THE COURT DEEMS APPROPRIATE, INCLUDING:

1. REINSTATEMENT TO EMPLOYMENT;
2. BACK PAY; AND
3. INJUNCTIVE RELIEF.

(2) IF BENEFITS OF AN EMPLOYEE ARE RECOVERED UNDER THIS SECTION, THEY SHALL BE PAID TO THE EMPLOYEE WITHOUT COST TO THE EMPLOYEE.

(3) IF THE ACTION UNDER SUBSECTION (A)(2) OF THIS SECTION WAS BROUGHT BY THE ATTORNEY GENERAL, THE COURT MAY AWARD A FINE OF \$1,000 PER VIOLATION TO THE STATE.

3-1210.

(A) IN THIS SECTION, "ADVERSE ACTION" INCLUDES:

- (1) DISCHARGE;
- (2) DEMOTION;

(3) THREATENING THE EMPLOYEE WITH DISCHARGE OR DEMOTION; AND

(4) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A REASONABLE EMPLOYEE FROM EXERCISING A RIGHT UNDER THIS SUBTITLE.

(B) A PERSON MAY NOT INTERFERE WITH THE EXERCISE OF, OR THE ATTEMPT TO EXERCISE, ANY RIGHT GIVEN UNDER THIS SUBTITLE.

(C) (1) AN EMPLOYER MAY NOT:

(I) TAKE ADVERSE ACTION OR DISCRIMINATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE EXERCISED IN GOOD FAITH THE RIGHTS PROTECTED UNDER THIS SUBTITLE; OR

(II) COUNT EARNED SICK AND SAFE LEAVE THAT AN EMPLOYEE TOOK IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBTITLE AS AN ABSENCE THAT MAY LEAD TO OR RESULT IN ANY ADVERSE ACTION TAKEN AGAINST THE EMPLOYEE.

(2) THERE IS A REBUTTABLE PRESUMPTION THAT AN EMPLOYER HAS VIOLATED THIS SUBSECTION IF THE EMPLOYER TOOK ADVERSE ACTION AGAINST AN EMPLOYEE WITHIN 90 DAYS AFTER THE EMPLOYEE:

(I) FILES A COMPLAINT WITH THE COMMISSIONER ALLEGING A VIOLATION OF THIS SUBTITLE OR BRINGS A CIVIL ACTION UNDER § 3-1209(B) OF THIS SUBTITLE;

(II) INFORMS A PERSON ABOUT AN ALLEGED VIOLATION OF THIS SUBTITLE BY THE EMPLOYER;

(III) COOPERATES WITH THE COMMISSIONER OR ANOTHER PERSON IN THE INVESTIGATION OR PROSECUTION OF AN ALLEGED VIOLATION OF THIS SUBTITLE BY THE EMPLOYER; OR

(IV) OPPOSES A POLICY OR PRACTICE OF THE EMPLOYER OR AN ACT COMMITTED BY THE EMPLOYER THAT IS UNLAWFUL UNDER THIS SUBTITLE.

(D) THE PROTECTIONS AFFORDED UNDER THIS SUBTITLE SHALL APPLY TO AN EMPLOYEE WHO MISTAKENLY, BUT IN GOOD FAITH, ALLEGES A VIOLATION OF THIS SUBTITLE.

3-1211.

(A) AN EMPLOYEE, IN BAD FAITH, MAY NOT:

(1) FILE A COMPLAINT WITH THE COMMISSIONER ALLEGING A VIOLATION OF THIS SUBTITLE;

(2) BRING AN ACTION UNDER § 3-1209 OF THIS SUBTITLE; OR

(3) TESTIFY IN AN ACTION UNDER § 3-1209 OF THIS SUBTITLE.

(B) AN EMPLOYEE WHO VIOLATES THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000.

3-1212.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND EARNED SICK AND SAFE LEAVE ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.