

# HOUSE BILL 478

K3, P4

5lr0404

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By: **Delegate McDonough**

Introduced and read first time: February 9, 2015

Assigned to: Economic Matters and Appropriations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Discrimination Based on the Use of Tobacco Products**  
3 **– Prohibition**

4 FOR the purpose of prohibiting, except under certain circumstances, an employer from  
5 discriminating in any manner or taking adverse action against an employee or an  
6 applicant based on the employee or applicant using tobacco products off the  
7 employer's premises during nonworking hours; authorizing employees and  
8 applicants to submit to the Commissioner of Labor and Industry a written complaint  
9 or bring a certain action under certain circumstances; authorizing the Commissioner  
10 to investigate whether a certain provision of this Act has been violated on receipt of  
11 a certain complaint; requiring the Commissioner to take certain action if an  
12 employer violates a certain provision of this Act; authorizing the Attorney General  
13 to bring an action for certain relief under a certain provision of this Act in a certain  
14 county; defining certain terms; and generally relating to a prohibition against  
15 employer discrimination based on the use of tobacco products.

16 BY adding to  
17 Article – Labor and Employment  
18 Section 3–103(e)(7) and 3–714  
19 Annotated Code of Maryland  
20 (2008 Replacement Volume and 2014 Supplement)

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

23 **Article – Labor and Employment**

24 3–103.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (e) (7) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3-714 OF  
2 THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN  
3 EMPLOYEE OR APPLICANT.

4 3-714.

5 (A) IN THIS SECTION, "EMPLOYER" INCLUDES A UNIT OF STATE OR LOCAL  
6 GOVERNMENT.

7 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,  
8 AN EMPLOYER MAY NOT DISCRIMINATE IN ANY MANNER OR TAKE ADVERSE ACTION  
9 AGAINST AN EMPLOYEE OR APPLICANT BASED ON THE EMPLOYEE OR APPLICANT  
10 USING TOBACCO PRODUCTS OFF THE EMPLOYER'S PREMISES DURING NONWORKING  
11 HOURS.

12 (2) PARAGRAPH (1) OF THIS SUBSECTION DOES NOT APPLY TO:

13 (I) A RESTRICTION REGARDING THE USE OF TOBACCO  
14 PRODUCTS THAT RELATES TO A BONA FIDE OCCUPATIONAL REQUIREMENT; OR

15 (II) ACTION THAT IS TAKEN IN ACCORDANCE WITH A  
16 COLLECTIVE BARGAINING AGREEMENT THAT PROHIBITS THE EMPLOYEE'S USE OF  
17 TOBACCO PRODUCTS OFF THE EMPLOYER'S PREMISES DURING NONWORKING  
18 HOURS.

19 (C) IF AN EMPLOYER VIOLATES SUBSECTION (B) OF THIS SECTION, AN  
20 EMPLOYEE OR APPLICANT FOR EMPLOYMENT MAY:

21 (1) SUBMIT TO THE COMMISSIONER A WRITTEN COMPLAINT; OR

22 (2) BRING AN ACTION IN ANY COURT OF COMPETENT JURISDICTION  
23 FOR INJUNCTIVE OR OTHER RELIEF, INCLUDING MONETARY DAMAGES RESULTING  
24 FROM A VIOLATION OF SUBSECTION (B) OF THIS SECTION.

25 (D) (1) WHENEVER THE COMMISSIONER DETERMINES THAT  
26 SUBSECTION (B) OF THIS SECTION HAS BEEN VIOLATED, THE COMMISSIONER  
27 SHALL:

28 (I) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION  
29 INFORMALLY BY MEDIATION; OR

30 (II) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON  
31 BEHALF OF THE EMPLOYEE OR APPLICANT.

1                   **(2) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS**  
2 **SUBSECTION FOR INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF IN THE COUNTY**  
3 **WHERE THE VIOLATION ALLEGEDLY OCCURRED.**

4                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2015.