

HOUSE BILL 969

K3

5lr2323
CF SB 688

By: **Delegates Hixson, Morales, Anderson, Atterbeary, Carr, Ebersole, Fennell, Glenn, Gutierrez, Healey, Kelly, Korman, Lam, McCray, McIntosh, A. Miller, Moon, Oaks, Patterson, Pena-Melnyk, Pendergrass, Platt, Reznik, S. Robinson, Rosenberg, Smith, Tarlau, Waldstreicher, and M. Washington**
Introduced and read first time: February 13, 2015
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Fair Scheduling Act**

3 FOR the purpose of requiring an employer to provide employees with a certain work
4 schedule within a certain time period, notify employees of certain changes, and
5 provide employees with a new work schedule within a certain time period; requiring
6 an employer to conspicuously post at each work site certain work schedules;
7 requiring, except under certain circumstances, an employee's work schedule to begin
8 on the same day of the week each workweek; prohibiting an employer from requiring
9 an employee to work certain hours, except under certain circumstances, or find
10 another employee to cover certain hours; authorizing an employee to make certain
11 requests and provide input regarding the employee's work schedule; providing for
12 the application and construction of certain provisions of this Act; prohibiting, except
13 under certain circumstances, an employer from making changes to an employee's
14 work schedule; requiring an employer to pay certain predictability pay under certain
15 circumstances; requiring an employer to pay an employee for certain hours of work
16 at a certain rate for certain shifts; requiring each employer to record certain wages
17 and pay in a certain statement of earnings and specify in the statement certain
18 hours; requiring employers to keep certain records for a certain minimum period of
19 time, maintain the records at a certain location, and make the records available for
20 inspection by certain individuals; providing that each day an employer violates a
21 certain provision of this Act is a separate violation; requiring the Commissioner of
22 Labor and Industry to enter a place of employment for certain purposes; providing
23 that certain records and statements are confidential and may be shown only to
24 certain persons; requiring the Commissioner to take certain action under certain
25 circumstances; authorizing the Attorney General to bring a certain action for certain
26 relief in a certain county; prohibiting an employer from taking certain action against
27 an employee under certain circumstances; authorizing an employee to bring a certain
28 action against an employer under certain circumstances; authorizing a court, under

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 certain circumstances, to award an employee certain wages, damages, fees, and other
 2 costs; authorizing the Commissioner to adopt regulations necessary to carry out this
 3 Act; requiring the Commissioner to enforce this Act; authorizing the Commissioner
 4 to conduct a certain investigation under certain circumstances; providing for the
 5 construction of this Act; defining certain terms; and generally relating to the Fair
 6 Scheduling Act.

7 BY repealing and reenacting, with amendments,
 8 Article – Labor and Employment
 9 Section 2–106(b) and 3–102(a)
 10 Annotated Code of Maryland
 11 (2008 Replacement Volume and 2014 Supplement)

12 BY adding to
 13 Article – Labor and Employment
 14 Section 3–103(k); and 3–1301 through 3–1311 to be under the new subtitle “Subtitle
 15 13. Fair Scheduling Act”
 16 Annotated Code of Maryland
 17 (2008 Replacement Volume and 2014 Supplement)

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

20 **Article – Labor and Employment**

21 2–106.

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

25 (1) Title 3, Subtitle 3 of this article;

26 (2) Title 3, Subtitle 5 of this article;

27 **(3) TITLE 3, SUBTITLE 13 OF THIS ARTICLE;**

28 **[(3)] (4)** Title 4, Subtitle 2, Parts I through III of this article;

29 **[(4)] (5)** Title 5 of this article;

30 **[(5)] (6)** Title 6 of this article; and

31 **[(6)] (7)** Title 7 of this article.

32 3–102.

1 (a) In addition to any duties set forth elsewhere, the Commissioner shall:

2 (1) enforce Subtitle 2 of this title;

3 (2) carry out Subtitle 3 of this title;

4 (3) enforce Subtitle 4 of this title;

5 (4) enforce Subtitle 9 of this title; [and]

6 **(5) ENFORCE SUBTITLE 13 OF THIS TITLE; AND**

7 **[(5)] (6)** enforce a local minimum wage law.

8 3-103.

9 **(K) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE**
10 **WHETHER A PROVISION OF SUBTITLE 13 OF THIS TITLE HAS BEEN VIOLATED, ON**
11 **THE COMMISSIONER'S OWN INITIATIVE OR ON RECEIPT OF A WRITTEN COMPLAINT**
12 **OF AN EMPLOYEE.**

13 **SUBTITLE 13. FAIR SCHEDULING ACT.**

14 **3-1301.**

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

17 **(B) "EMPLOYEE" DOES NOT INCLUDE AN INDIVIDUAL WHO PERFORMS**
18 **WORK FOR AN EMPLOYER FOR REMUNERATION IF:**

19 **(1) THE INDIVIDUAL IS FREE FROM THE EMPLOYER'S CONTROL AND**
20 **DIRECTION REGARDING THE PERFORMANCE OF THE WORK;**

21 **(2) THE INDIVIDUAL CUSTOMARILY IS ENGAGED IN AN INDEPENDENT**
22 **BUSINESS OR OCCUPATION OF THE SAME NATURE AS THAT INVOLVED IN THE WORK;**
23 **AND**

24 **(3) THE WORK IS:**

25 **(I) OUTSIDE THE USUAL COURSE OF BUSINESS OF THE**
26 **EMPLOYER; OR**

1 (II) PERFORMED OUTSIDE ANY PLACE OF BUSINESS OF THE
2 EMPLOYER.

3 (C) "EMPLOYER" INCLUDES A PERSON WHO ACTS DIRECTLY OR
4 INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

5 (D) "INITIAL WORK SCHEDULE" MEANS THE FIRST WRITTEN WORK
6 SCHEDULE OF AN EMPLOYEE'S SHIFTS FOR A WORKWEEK THAT IS PROVIDED BY AN
7 EMPLOYER TO AN EMPLOYEE.

8 (E) "PREDICTABILITY PAY" MEANS WAGES THAT ARE PAID TO AN
9 EMPLOYEE AT THE EMPLOYEE'S USUAL HOURLY WAGE AS REQUIRED UNDER §
10 3-1304 OF THIS SUBTITLE.

11 (F) "SHIFT" MEANS THE CONSECUTIVE HOURS AN EMPLOYER REQUIRES AN
12 EMPLOYEE TO WORK OR TO BE ON CALL TO WORK.

13 3-1302.

14 THIS SUBTITLE MAY NOT BE CONSTRUED TO:

15 (1) DISCOURAGE OR PROHIBIT AN EMPLOYER FROM THE ADOPTION
16 OR RETENTION OF POLICIES THAT ARE MORE BENEFICIAL TO EMPLOYEES THAN THE
17 REQUIREMENTS OF THIS SUBTITLE;

18 (2) DIMINISH THE OBLIGATION OF AN EMPLOYER TO COMPLY WITH A
19 CONTRACT, A COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYMENT BENEFIT
20 PLAN, OR ANY OTHER AGREEMENT THAT ESTABLISHES POLICIES THAT ARE MORE
21 BENEFICIAL TO AN EMPLOYEE THAN THE REQUIREMENTS OF THIS SUBTITLE; OR

22 (3) PREEMPT, LIMIT, OR OTHERWISE AFFECT THE APPLICABILITY OF
23 ANY OTHER LAW, POLICY, OR STANDARD ESTABLISHING SCHEDULING POLICIES
24 THAT PROVIDE ADDITIONAL RIGHTS OR EXTEND OTHER PROTECTIONS TO
25 EMPLOYEES BEYOND THOSE PROVIDED UNDER THIS SUBTITLE.

26 3-1303.

27 (A) AN EMPLOYER SHALL:

28 (1) PROVIDE EACH EMPLOYEE WITH AN INITIAL WORK SCHEDULE AT
29 LEAST 21 DAYS BEFORE THE FIRST DAY THE EMPLOYEE IS SCHEDULED TO WORK;

1 **(2) NOTIFY AN EMPLOYEE OF ANY SUBSEQUENT CHANGES MADE TO**
2 **THE EMPLOYEE'S INITIAL WORK SCHEDULE; AND**

3 **(3) WITHIN 24 HOURS AFTER MAKING A CHANGE TO AN EMPLOYEE'S**
4 **INITIAL WORK SCHEDULE, PROVIDE THE EMPLOYEE WITH A REVISED WORK**
5 **SCHEDULE.**

6 **(B) AN EMPLOYER SHALL POST CONSPICUOUSLY AT EACH WORK SITE:**

7 **(1) AT LEAST 21 DAYS BEFORE THE START OF EACH WORKWEEK, A**
8 **WRITTEN WORK SCHEDULE THAT INCLUDES THE SHIFTS OF ALL EMPLOYEES AT THE**
9 **WORK SITE, INCLUDING EMPLOYEES WHO ARE NOT SCHEDULED TO WORK OR BE ON**
10 **CALL FOR THE WORKWEEK; AND**

11 **(2) AN UPDATED SCHEDULE WITHIN 24 HOURS AFTER ANY CHANGE IS**
12 **MADE TO A PREVIOUSLY POSTED WORK SCHEDULE.**

13 **(C) UNLESS AN EMPLOYER PROVIDES 21 DAYS' ADVANCE WRITTEN NOTICE**
14 **OF A CHANGE IN THE START DAY OF A WORK SCHEDULE, AN EMPLOYEE'S WORK**
15 **SCHEDULE SHALL BEGIN ON THE SAME DAY OF THE WEEK EACH WORKWEEK.**

16 **(D) AN EMPLOYER MAY NOT REQUIRE AN EMPLOYEE TO:**

17 **(1) WORK HOURS NOT INCLUDED IN AN INITIAL WORK SCHEDULE**
18 **UNLESS THE EMPLOYEE CONSENTS TO THE ADDITIONAL HOURS IN WRITING; OR**

19 **(2) FIND ANOTHER EMPLOYEE TO COVER HOURS DURING WHICH THE**
20 **EMPLOYEE IS UNABLE TO WORK A SCHEDULED SHIFT.**

21 **(E) AN EMPLOYEE MAY:**

22 **(1) REQUEST THAT THE EMPLOYER:**

23 **(I) CHANGE THE EMPLOYEE'S WORK SCHEDULE; AND**

24 **(II) LIMIT THE EMPLOYEE'S AVAILABILITY FOR WORK TO THE**
25 **PARTICULAR HOURS SPECIFIED BY THE EMPLOYEE; AND**

26 **(2) OTHERWISE PROVIDE INPUT REGARDING THE EMPLOYEE'S WORK**
27 **SCHEDULE.**

1 **(A) THIS SECTION DOES NOT APPLY TO A CHANGE TO AN EMPLOYEE'S WORK**
2 **SCHEDULE THAT IS MADE AT THE REQUEST OF THE EMPLOYEE.**

3 **(B) THIS SECTION MAY NOT BE CONSTRUED TO PREVENT AN EMPLOYER**
4 **FROM ALLOWING AN EMPLOYEE TO WORK IN PLACE OF ANOTHER EMPLOYEE IF THE**
5 **CHANGE IN WORK SCHEDULE IS MUTUALLY AGREED TO BY THE EMPLOYER AND THE**
6 **EMPLOYEES.**

7 **(C) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, AN EMPLOYER MAY**
8 **NOT CHANGE AN EMPLOYEE'S WORK SCHEDULE.**

9 **(D) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, WITHIN 21**
10 **DAYS BEFORE THE FIRST SCHEDULED HOUR OF A SHIFT, AN EMPLOYER MAY:**

11 **(I) IF THE CHANGE DOES NOT ALTER THE TOTAL HOURS OF**
12 **SCHEDULED WORK DURING A WORKWEEK:**

13 1. **REDUCE THE LENGTH OF A SCHEDULED SHIFT;**

14 2. **CANCEL AN EMPLOYEE'S SCHEDULED SHIFT; OR**

15 3. **CHANGE THE START OR END TIME OF AN EMPLOYEE'S**
16 **SCHEDULED SHIFT;**

17 **(II) REDUCE THE LENGTH OF A SHIFT TO NO LESS THAN 4**
18 **HOURS;**

19 **(III) IF THE CHANGE DOES NOT ALTER THE TOTAL NUMBER OF**
20 **HOURS IN A SHIFT, CHANGE THE START AND END TIME OF A SHIFT; OR**

21 **(IV) IF THE EMPLOYEE PROVIDES WRITTEN CONSENT, ADD**
22 **HOURS TO AN EMPLOYEE'S WORK SCHEDULE.**

23 **(2) AN EMPLOYER MAY NOT MAKE A CHANGE TO AN EMPLOYEE'S**
24 **WORK SCHEDULE UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION WITHIN 24 HOURS**
25 **BEFORE A SHIFT IS SCHEDULED TO BEGIN.**

26 **(E) (1) IF AN EMPLOYER MAKES A CHANGE TO AN EMPLOYEE'S WORK**
27 **SCHEDULE UNDER SUBSECTION (D) OF THIS SECTION, THE EMPLOYER SHALL PAY**
28 **THE EMPLOYEE 1 HOUR OF PREDICTABILITY PAY FOR EACH SHIFT THAT IS**
29 **CHANGED.**

1 **(2) THE PREDICTABILITY PAY REQUIRED UNDER PARAGRAPH (1) OF**
2 **THIS SUBSECTION IS IN ADDITION TO ANY OTHER WAGES REQUIRED TO BE PAID TO**
3 **THE EMPLOYEE UNDER THIS TITLE.**

4 **(F) REGARDLESS OF THE ACTUAL HOURS WORKED BY AN EMPLOYEE**
5 **DURING A SHIFT, AN EMPLOYER SHALL PAY AN EMPLOYEE FOR 4 HOURS OF WORK**
6 **OR THE NUMBER OF HOURS IN THE EMPLOYEE'S SCHEDULED SHIFT, WHICHEVER IS**
7 **FEWER, AT THE EMPLOYEE'S USUAL HOURLY RATE FOR ANY SHIFT FOR WHICH THE**
8 **EMPLOYEE:**

9 **(1) REPORTS TO WORK AND IS INFORMED THE SHIFT HAS BEEN**
10 **CANCELED OR THE HOURS IN THE SHIFT HAVE BEEN REDUCED; OR**

11 **(2) IS NOTIFIED WITHIN 24 HOURS BEFORE THE FIRST HOUR OF A**
12 **SCHEDULED SHIFT THAT THE SHIFT HAS BEEN CANCELED OR THE HOURS IN THE**
13 **SHIFT HAVE BEEN REDUCED.**

14 **3-1305.**

15 **EACH EMPLOYER SHALL:**

16 **(1) RECORD THE WAGES PAID TO AN EMPLOYEE UNDER § 3-1304 OF**
17 **THIS SUBTITLE IN THE STATEMENT OF EARNINGS REQUIRED BY § 3-504(A)(2) OF**
18 **THIS TITLE; AND**

19 **(2) SPECIFY IN THE STATEMENT OF EARNINGS THE TOTAL NUMBER**
20 **OF HOURS FOR WHICH AN EMPLOYEE IS RECEIVING ADDITIONAL WAGES UNDER §**
21 **3-1304 OF THIS SUBTITLE.**

22 **3-1306.**

23 **(A) EACH EMPLOYER SHALL KEEP FOR AT LEAST 2 YEARS AN ACCURATE**
24 **RECORD OF:**

25 **(1) THE NAME, ADDRESS, AND OCCUPATION OF EACH EMPLOYEE;**

26 **(2) THE AMOUNT PAID EACH PAY PERIOD TO EACH EMPLOYEE;**

27 **(3) THE HOURS WORKED EACH DAY AND EACH WEEK BY EACH**
28 **EMPLOYEE;**

29 **(4) THE INITIAL WORK SCHEDULE OF EACH EMPLOYEE; AND**

1 **(5) ANY SUBSEQUENT REVISIONS TO THE INITIAL WORK SCHEDULE**
2 **OF EACH EMPLOYEE.**

3 **(B) THE EMPLOYER SHALL:**

4 **(1) MAINTAIN THE RECORDS KEPT UNDER SUBSECTION (A) OF THIS**
5 **SECTION:**

6 **(I) AT THE PLACE OF EMPLOYMENT;**

7 **(II) AT AN OFFICE OF THE EMPLOYER;**

8 **(III) WITH A BANK OR AN ACCOUNTANT; OR**

9 **(IV) AT ANOTHER CENTRAL LOCATION.**

10 **(2) MAKE THE RECORDS KEPT UNDER SUBSECTION (A) OF THIS**
11 **SECTION AVAILABLE FOR INSPECTION BY THE COMMISSIONER ON REQUEST; AND**

12 **(3) ALLOW AN EMPLOYEE TO INSPECT AT ANY REASONABLE TIME AND**
13 **PLACE ANY RECORD KEPT UNDER SUBSECTION (A) OF THIS SECTION PERTAINING TO**
14 **THE EMPLOYEE.**

15 **(C) EACH DAY AN EMPLOYER FAILS TO KEEP A RECORD, FALSIFIES A**
16 **RECORD, OR OTHERWISE VIOLATES THIS SECTION SHALL CONSTITUTE A SEPARATE**
17 **VIOLATION.**

18 **3-1307.**

19 **(A) THE COMMISSIONER SHALL ENTER A PLACE OF EMPLOYMENT TO:**

20 **(1) QUESTION EMPLOYEES TO DETERMINE WHETHER AN EMPLOYER**
21 **HAS BEEN AND IS COMPLYING WITH THIS SUBTITLE AND REGULATIONS ADOPTED TO**
22 **CARRY OUT THIS SUBTITLE;**

23 **(2) INSPECT AND COPY EACH RECORD THAT AN EMPLOYER KEEPS**
24 **UNDER § 3-1306(A) OF THIS SUBTITLE; AND**

25 **(3) REQUIRE EACH EMPLOYER:**

26 **(I) TO ATTEST TO THE TRUTHFULNESS OF EACH RECORD THAT**
27 **IS COPIED AND TO SIGN THE COPY; OR**

1 **(II) AT THE OPTION OF THE EMPLOYER, TO SUBMIT A**
2 **COMPLETE, WRITTEN STATEMENT ABOUT THE WAGES, HOURS, NAME, AND ADDRESS**
3 **OF EACH EMPLOYEE, ON FORMS THAT THE COMMISSIONER PROVIDES OR**
4 **APPROVES.**

5 **(B) EACH RECORD OR STATEMENT THAT THE COMMISSIONER OR AN**
6 **AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER OBTAINS UNDER**
7 **SUBSECTION (A) OF THIS SECTION IS CONFIDENTIAL AND MAY BE SHOWN ONLY TO**
8 **THE COMMISSIONER OR A COURT.**

9 **3-1308.**

10 **(A) IN THIS SUBSECTION, “ADVERSE ACTION” INCLUDES:**

11 **(1) DISCHARGE;**

12 **(2) DEMOTION;**

13 **(3) THREATENING AN EMPLOYEE WITH DISCHARGE OR DEMOTION;**

14 **AND**

15 **(4) ANY OTHER RETALIATORY ACTION THAT RESULTS IN A CHANGE**
16 **TO THE TERMS OR CONDITIONS OF EMPLOYMENT THAT WOULD DISSUADE A**
17 **REASONABLE EMPLOYEE FROM MAKING A COMPLAINT OR OTHERWISE EXERCISING**
18 **THE EMPLOYEE’S RIGHTS UNDER THIS SUBTITLE.**

19 **(B) AN EMPLOYER MAY NOT TAKE ADVERSE ACTION AGAINST AN EMPLOYEE**
20 **BECAUSE THE EMPLOYEE EXERCISES OR ATTEMPTS TO EXERCISE THE EMPLOYEE’S**
21 **RIGHTS UNDER THIS SUBTITLE.**

22 **3-1309.**

23 **(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE**
24 **HAS BEEN VIOLATED, THE COMMISSIONER SHALL:**

25 **(1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION**
26 **INFORMALLY BY MEDIATION; OR**

27 **(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF**
28 **OF THE EMPLOYEE.**

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

4 **3-1310.**

5 **(A) NOTWITHSTANDING ANY REMEDY AVAILABLE UNDER § 3-1309 OF THIS**
6 **SUBTITLE, IF AN EMPLOYER VIOLATES THIS SUBTITLE, AN EMPLOYEE MAY BRING AN**
7 **ACTION AGAINST THE EMPLOYER.**

8 **(B) (1) IF, IN AN ACTION UNDER SUBSECTION (A) OF THIS SECTION, A**
9 **COURT FINDS THAT AN EMPLOYER HAS VIOLATED THIS SUBTITLE, THE COURT MAY**
10 **AWARD THE EMPLOYEE:**

11 **(I) ANY WAGES AND PREDICTABILITY PAY OWED TO THE**
12 **EMPLOYEE;**

13 **(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,**
14 **DAMAGES OF \$100 FOR EACH WORKWEEK IN WHICH THE EMPLOYER VIOLATED THIS**
15 **SUBTITLE; AND**

16 **(III) REASONABLE ATTORNEY'S FEES AND OTHER COSTS.**

17 **(2) DAMAGES AWARDED UNDER PARAGRAPH (1)(II) OF THIS**
18 **SUBSECTION MAY NOT EXCEED \$2,500.**

19 **3-1311.**

20 **THIS SUBTITLE MAY BE CITED AS THE FAIR SCHEDULING ACT.**

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