

# HOUSE BILL 1027

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By: **Delegates Glenn, B. Barnes, Campos, Ebersole, Fennell, Frush, Gutierrez, Hixson, Korman, Lam, Luedtke, A. Miller, Moon, Morales, Patterson, Pena–Melnyk, Platt, S. Robinson, Smith, Tarlau, Valderrama, Vaughn, and Waldstreicher**

Introduced and read first time: February 13, 2015

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Overwork Prohibition Act**

3 FOR the purpose of requiring an employer to pay an employee a certain overtime wage for  
4 certain hours worked; prohibiting a certain break from being considered an  
5 interruption of consecutive hours for the purposes of a certain provision of this Act;  
6 prohibiting an employer from requiring an employee to work certain hours except  
7 under certain circumstances; authorizing an employee to decline an employer  
8 request to work more than a certain number of consecutive days, more than a certain  
9 number of hours during a workweek, or during certain hours; requiring employers  
10 to keep certain records for a certain minimum period of time, maintain the records  
11 at a certain location, and make the records available for inspection by certain  
12 individuals; providing that each day an employer violates a certain provision of this  
13 Act is a separate violation; requiring the Commissioner of Labor and Industry to  
14 enter a place of employment for certain purposes; providing that certain records and  
15 statements are confidential and may be shown only to certain persons; requiring the  
16 Commissioner to take certain action under certain circumstances; authorizing the  
17 Attorney General to bring a certain action for certain relief in a certain county;  
18 prohibiting an employer from taking certain action against an employee under  
19 certain circumstances; authorizing an employee to bring a certain action against an  
20 employer under certain circumstances; authorizing a court, under certain  
21 circumstances, to award an employee certain wages, damages, fees, and other costs;  
22 authorizing the Commissioner to adopt regulations necessary to carry out this Act;  
23 requiring the Commissioner to enforce this Act; authorizing the Commissioner to  
24 conduct a certain investigation under certain circumstances; providing for the  
25 construction of this Act; defining certain terms; making a conforming change; and  
26 generally relating to the Overwork Prohibition Act.

27 BY repealing and reenacting, with amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Labor and Employment  
 2 Section 2–106(b), 3–102(a), and 3–415  
 3 Annotated Code of Maryland  
 4 (2008 Replacement Volume and 2014 Supplement)

5 BY adding to  
 6 Article – Labor and Employment  
 7 Section 3–103(k); and 3–1301 through 3–1310 to be under the new subtitle “Subtitle  
 8 13. Overwork Prohibition Act”  
 9 Annotated Code of Maryland  
 10 (2008 Replacement Volume and 2014 Supplement)

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

13 **Article – Labor and Employment**

14 2–106.

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

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

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

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

21 **[(3)] (4)** Title 4, Subtitle 2, Parts I through III of this article;

22 **[(4)] (5)** Title 5 of this article;

23 **[(5)] (6)** Title 6 of this article; and

24 **[(6)] (7)** Title 7 of this article.

25 3–102.

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

27 (1) enforce Subtitle 2 of this title;

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

29 (3) enforce Subtitle 4 of this title;

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

2 (5) ENFORCE SUBTITLE 13 OF THIS TITLE; AND

3 [(5)] (6) enforce a local minimum wage law.

4 3-103.

5 (K) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE  
6 WHETHER A PROVISION OF SUBTITLE 13 OF THIS TITLE HAS BEEN VIOLATED, ON  
7 THE COMMISSIONER'S OWN INITIATIVE OR ON RECEIPT OF A WRITTEN COMPLAINT  
8 OF AN EMPLOYEE.

9 3-415.

10 (a) Except as otherwise provided in this section AND IN ADDITION TO ANY  
11 OVERTIME WAGE REQUIRED TO BE PAID UNDER SUBTITLE 13 OF THIS TITLE, each  
12 employer shall pay an overtime wage of at least 1.5 times the usual hourly wage, computed  
13 in accordance with § 3-420 of this subtitle.

14 (b) This section does not apply to an employer that is:

15 (1) subject to 49 U.S.C. § 10501;

16 (2) a not for profit concert promoter, legitimate theater, music festival,  
17 music pavilion, or theatrical show; or

18 (3) an amusement or recreational establishment, including a swimming  
19 pool, if the establishment:

20 (i) operates for no more than 7 months in a calendar year; or

21 (ii) for any 6 months during the preceding calendar year, has  
22 average receipts that do not exceed one-third of the average receipts for the other 6 months.

23 (c) This section does not apply to an employer with respect to:

24 (1) an employee for whom the United States Secretary of Transportation  
25 may set qualifications and maximum hours of service under 49 U.S.C. § 31502;

26 (2) a mechanic, partsperson, or salesperson who primarily sells or services  
27 automobiles, farm equipment, trailers, or trucks, if the employer is engaged primarily in  
28 selling those vehicles to ultimate buyers and is not a manufacturer;

29 (3) a driver if the employer is engaged in the business of operating taxicabs;  
30 or

1 (4) unless a collective bargaining agreement between an employer and a  
2 labor organization provides otherwise, an employee of the employer if:

3 (i) the employer is subject to Title II of the federal Railway Labor  
4 Act;

5 (ii) the employer does not require the employee to work more than  
6 40 hours during 1 workweek; and

7 (iii) the employee voluntarily enters into an agreement with another  
8 employee to trade scheduled work hours and as a result the employee works more than 40  
9 hours during a single workweek.

10 **SUBTITLE 13. OVERWORK PROHIBITION ACT.**

11 **3-1301.**

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

14 (B) "EMPLOYEE" DOES NOT INCLUDE:

15 (1) AN EMPLOYEE WHO IS COVERED BY:

16 (I) A COLLECTIVE BARGAINING AGREEMENT; OR

17 (II) § 3-421 OF THIS TITLE; OR

18 (2) AN INDIVIDUAL WHO PERFORMS WORK FOR AN EMPLOYER FOR  
19 REMUNERATION IF:

20 (I) THE INDIVIDUAL IS FREE FROM THE EMPLOYER'S CONTROL  
21 AND DIRECTION FROM THE EMPLOYER REGARDING THE PERFORMANCE OF THE  
22 WORK;

23 (II) THE INDIVIDUAL CUSTOMARILY IS ENGAGED IN AN  
24 INDEPENDENT BUSINESS OR OCCUPATION OF THE SAME NATURE AS THAT INVOLVED  
25 IN THE WORK; AND

26 (III) THE WORK IS:

27 1. OUTSIDE OF THE USUAL COURSE OF BUSINESS OF THE  
28 EMPLOYER; OR

1                                   **2. PERFORMED OUTSIDE OF ANY PLACE OF BUSINESS OF**  
2 **THE 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) “SHIFT” MEANS THE CONSECUTIVE HOURS AN EMPLOYER REQUIRES AN**  
9 **EMPLOYEE TO WORK OR TO BE ON CALL TO WORK.**

10 **3-1302.**

11           **THIS SUBTITLE MAY NOT BE CONSTRUED TO:**

12                   **(1) DISCOURAGE OR PROHIBIT AN EMPLOYER FROM THE ADOPTION**  
13 **OR RETENTION OF POLICIES THAT ARE MORE BENEFICIAL TO EMPLOYEES THAN THE**  
14 **REQUIREMENTS OF THIS SUBTITLE;**

15                   **(2) DIMINISH THE OBLIGATION OF AN EMPLOYER TO COMPLY WITH A**  
16 **CONTRACT, AN EMPLOYMENT BENEFIT PLAN, OR ANY OTHER AGREEMENT THAT**  
17 **ESTABLISHES POLICIES THAT ARE MORE BENEFICIAL TO AN EMPLOYEE THAN THE**  
18 **REQUIREMENTS OF THIS SUBTITLE; OR**

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

23 **3-1303.**

24           **(A) AN EMPLOYER SHALL PAY AN EMPLOYEE AN OVERTIME WAGE OF AT**  
25 **LEAST 1.5 TIMES THE EMPLOYEE’S USUAL HOURLY WAGE FOR HOURS WORKED:**

26                   **(1) IN EXCESS OF 8 CONSECUTIVE HOURS;**

27                   **(2) IF THE EMPLOYEE HAS AGREED TO WORK 7 CONSECUTIVE DAYS,**  
28 **DURING THE 7TH CONSECUTIVE DAY;**

1           **(3) LESS THAN 11 HOURS AFTER THE END OF THE IMMEDIATELY**  
2 **PRECEDING SHIFT; OR**

3           **(4) WITHIN THE 11-HOUR PERIOD IMMEDIATELY FOLLOWING THE**  
4 **END OF A SHIFT THAT SPANNED 2 DAYS.**

5           **(B) FOR THE PURPOSES OF SUBSECTION (A)(1) OF THIS SECTION, A BREAK**  
6 **OF 1 HOUR OR LESS MAY NOT BE CONSIDERED AN INTERRUPTION OF CONSECUTIVE**  
7 **HOURS.**

8 **3-1304.**

9           **(A) AN EMPLOYER MAY NOT REQUIRE AN EMPLOYEE TO WORK HOURS NOT**  
10 **INCLUDED IN THE EMPLOYEE'S INITIAL WORK SCHEDULE UNLESS THE EMPLOYEE**  
11 **CONSENTS IN WRITING TO THE ADDITIONAL WORK HOURS.**

12           **(B) AN EMPLOYEE MAY DECLINE AN EMPLOYER'S REQUEST TO:**

13                   **(1) WORK MORE THAN 6 CONSECUTIVE DAYS;**

14                   **(2) WORK MORE THAN 55 HOURS DURING A WORKWEEK;**

15                   **(3) WORK DURING HOURS THAT OCCUR LESS THAN 11 HOURS AFTER**  
16 **THE END OF THE IMMEDIATELY PRECEDING SHIFT; OR**

17                   **(4) WORK DURING THE 11-HOUR PERIOD IMMEDIATELY FOLLOWING**  
18 **THE END OF A SHIFT THAT SPANNED 2 DAYS.**

19 **3-1305.**

20           **(A) EACH EMPLOYER SHALL KEEP, FOR AT LEAST 2 YEARS, AN ACCURATE**  
21 **RECORD OF:**

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

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

24                   **(3) THE HOURS WORKED EACH DAY AND EACH WEEK BY EACH**  
25 **EMPLOYEE;**

26                   **(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 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 SUBSECTION SHALL CONSTITUTE A**  
17 **SEPARATE VIOLATION.**

18 **3-1306.**

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 § 3-1305(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 **3-1307.**

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 **3-1308.**

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 **3-1309.**

5           **(A) NOTWITHSTANDING ANY REMEDY AVAILABLE UNDER § 3-1308 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 OWED TO THE EMPLOYEE;**

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

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

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

18 **3-1310.**

19           **THIS SUBTITLE MAY BE CITED AS THE MARYLAND OVERWORK PROHIBITION**  
20 **ACT.**

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