

SENATE BILL 424

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By: **Senators Lee, Benson, Conway, Feldman, Ferguson, Guzzone, Kagan, King, Klausmeier, Madaleno, Manno, Montgomery, Nathan-Pulliam, Peters, Pinsky, Pugh, Raskin, Rosapepe, and Young**

Introduced and read first time: February 6, 2015

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Equal Pay for Equal Work**

3 FOR the purpose of altering a certain provision of law concerning equal pay for equal work
4 to prohibit discrimination on the basis of gender identity; prohibiting an employer
5 from discriminating between employees in any occupation by providing certain less
6 favorable employment opportunities based on sex or gender identity; providing that,
7 for purposes of certain provisions of law concerning equal pay for equal work, an
8 employee shall be deemed to work in the same establishment as another employee if
9 the employees work at work places within a certain radius of each other; providing
10 that a certain provision of law does not prohibit a certain variation based on a certain
11 system or bona fide factor; providing that certain exceptions do not apply under
12 certain circumstances; prohibiting an employer from taking certain actions
13 concerning the disclosure or discussion of an employee's wages; authorizing an
14 employer, in a certain policy, to establish certain limitations on certain inquiries
15 about or discussions or disclosures of wages; providing that, under certain
16 circumstances, the failure of an employee to adhere to certain limitations shall be an
17 affirmative defense against certain claims; providing that a certain employer
18 prohibition against the disclosure of certain wage information may not apply under
19 certain circumstances; providing for the construction of certain provisions of this Act;
20 requiring the Commissioner of Labor and Industry, in consultation with the
21 Maryland Commission on Civil Rights, to develop certain educational materials and
22 make certain training available for certain purposes; altering a certain provision of
23 law to allow a certain employee to bring a certain action to recover the difference
24 paid between certain employees who do work of a comparable nature; authorizing a
25 certain employee to bring a civil action against an employer to recover certain
26 damages for a violation of a certain provision of this Act; authorizing the trier of fact
27 to award certain liquidated damages under certain circumstances; authorizing a
28 court to award certain prejudgment interest under certain circumstances; defining a
29 certain term; making conforming changes; providing for the application of this Act;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 and generally relating to equal pay for equal work and the disclosure of certain wage
2 information by certain employees.

3 BY repealing and reenacting, with amendments,
4 Article – Labor and Employment
5 Section 3–304, 3–306, and 3–307
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2014 Supplement)

8 BY adding to
9 Article – Labor and Employment
10 Section 3–304.1
11 Annotated Code of Maryland
12 (2008 Replacement Volume and 2014 Supplement)

13 BY repealing and reenacting, without amendments,
14 Article – Labor and Employment
15 Section 3–308
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 3–304.

22 (a) (1) IN THIS SECTION, “PROVIDING LESS FAVORABLE EMPLOYMENT
23 OPPORTUNITIES” MEANS ASSIGNING OR DIRECTING THE EMPLOYEE INTO A LESS
24 FAVORABLE CAREER TRACK OR POSITION.

25 (2) “PROVIDING LESS FAVORABLE EMPLOYMENT OPPORTUNITIES”
26 INCLUDES:

27 (I) FAILING TO PROVIDE INFORMATION ABOUT PROMOTIONS
28 OR ADVANCEMENT IN THE FULL RANGE OF CAREER TRACKS OFFERED BY THE
29 EMPLOYER; OR

30 (II) ASSIGNING WORK LESS LIKELY TO LEAD TO PROMOTION OR
31 FUTURE OPPORTUNITIES.

32 (B) (1) An employer may not discriminate between employees in any
33 occupation by:

1 **(I)** paying a wage to employees of one sex **OR GENDER IDENTITY** at
2 a rate less than the rate paid to employees of the opposite sex **OR GENDER IDENTITY** if
3 both employees work in the same establishment and perform work of comparable character
4 or work on the same operation, in the same business, or of the same type; **OR**

5 **(II) PROVIDING LESS FAVORABLE EMPLOYMENT**
6 **OPPORTUNITIES BASED ON SEX OR GENDER IDENTITY.**

7 **(2) FOR PURPOSES OF PARAGRAPH (1)(I) OF THIS SUBSECTION, AN**
8 **EMPLOYEE SHALL BE DEEMED TO WORK AT THE SAME ESTABLISHMENT AS ANOTHER**
9 **EMPLOYEE IF THE EMPLOYEES WORK FOR THE SAME EMPLOYER AT WORKPLACES**
10 **LOCATED WITHIN A 75-MILE RADIUS OF EACH OTHER.**

11 **[(b)] (C) [Subsection (a)] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**
12 **SECTION, SUBSECTION (B) of this section does not prohibit a variation in a wage that is**
13 **based on:**

14 (1) a seniority system that does not discriminate on the basis of sex **OR**
15 **GENDER IDENTITY;**

16 (2) a merit increase system that does not discriminate on the basis of sex
17 **OR GENDER IDENTITY;**

18 (3) jobs that require different abilities or skills;

19 (4) jobs that require the regular performance of different duties or services;
20 **[or]**

21 (5) work that is performed on different shifts or at different times of day;

22 **(6) A SYSTEM THAT MEASURES PERFORMANCE BASED ON A QUALITY**
23 **OR QUANTITY OF PRODUCTION; OR**

24 **(7) A BONA FIDE FACTOR OTHER THAN SEX OR GENDER IDENTITY,**
25 **INCLUDING EDUCATION, TRAINING, OR EXPERIENCE, IN WHICH THE FACTOR:**

26 **(I) IS NOT BASED ON OR DERIVED FROM A GENDER-BASED**
27 **DIFFERENTIAL IN COMPENSATION; OR**

28 **(II) IS JOB RELATED WITH RESPECT TO THE POSITION AND**
29 **CONSISTENT WITH A BUSINESS NECESSITY.**

30 **(D) AN EXCEPTION LISTED IN SUBSECTION (C) OF THIS SECTION DOES NOT**
31 **APPLY IF THE EMPLOYEE DEMONSTRATES THAT:**

1 **(1) THE EMPLOYER USES A PARTICULAR EMPLOYMENT PRACTICE**
2 **THAT CAUSES A DISPARATE IMPACT ON THE BASIS OF GENDER;**

3 **(2) ALTERNATIVE EMPLOYMENT PRACTICES EXIST THAT WOULD**
4 **SERVE THE SAME BUSINESS AND NOT PRODUCE THE DISPARATE IMPACT; AND**

5 **(3) THE EMPLOYER HAS REFUSED TO ADOPT AN ALTERNATIVE**
6 **PRACTICE.**

7 **[(c)] (E)** An employer who is paying a wage in violation of this subtitle may not
8 reduce another wage to comply with this subtitle.

9 **3-304.1.**

10 **(A) AN EMPLOYER MAY NOT:**

11 **(1) PROHIBIT AN EMPLOYEE FROM:**

12 **(I) INQUIRING ABOUT, DISCUSSING, OR DISCLOSING THE**
13 **WAGES OF THE EMPLOYEE OR ANOTHER EMPLOYEE; OR**

14 **(II) REQUESTING THAT EMPLOYER PROVIDE A REASON FOR**
15 **WHY THE EMPLOYEE'S WAGES ARE A CONDITION OF EMPLOYMENT;**

16 **(2) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR ANY OTHER**
17 **DOCUMENT THAT PURPORTS TO DENY THE EMPLOYEE THE RIGHT TO DISCLOSE OR**
18 **DISCUSS THE EMPLOYEE'S WAGES; OR**

19 **(3) TAKE ANY ADVERSE EMPLOYMENT ACTION AGAINST AN**
20 **EMPLOYEE FOR:**

21 **(I) INQUIRING ABOUT ANOTHER EMPLOYEE'S WAGES;**

22 **(II) DISCLOSING THE EMPLOYEE'S OWN WAGES;**

23 **(III) DISCUSSING ANOTHER EMPLOYEE'S WAGES IF THOSE**
24 **WAGES HAVE BEEN DISCLOSED VOLUNTARILY;**

25 **(IV) ASKING THE EMPLOYER TO PROVIDE A REASON FOR THE**
26 **EMPLOYEE'S WAGES; OR**

27 **(V) AIDING OR ENCOURAGING ANOTHER EMPLOYEE'S**
28 **EXERCISE OF RIGHTS UNDER THIS SECTION.**

1 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYER**
2 **MAY, IN A WRITTEN POLICY PROVIDED TO EACH EMPLOYEE, ESTABLISH**
3 **REASONABLE WORKDAY LIMITATIONS ON THE TIME, PLACE, AND MANNER FOR**
4 **INQUIRIES ABOUT OR THE DISCUSSION OR DISCLOSURE OF EMPLOYEE WAGES.**

5 **(2) A LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF THIS**
6 **SUBSECTION SHALL BE CONSISTENT WITH STANDARDS ADOPTED BY THE**
7 **COMMISSIONER AND ALL OTHER STATE AND FEDERAL LAWS.**

8 **(3) SUBJECT TO SUBSECTION (D) OF THIS SECTION, LIMITATIONS**
9 **ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE**
10 **PROHIBITING AN EMPLOYEE FROM DISCUSSING OR DISCLOSING THE WAGES OF**
11 **ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR PERMISSION.**

12 **(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE**
13 **FAILURE OF AN EMPLOYEE TO ADHERE TO A REASONABLE LIMITATION INCLUDED**
14 **IN A WRITTEN POLICY UNDER SUBSECTION (B) OF THIS SECTION SHALL BE AN**
15 **AFFIRMATIVE DEFENSE TO A CLAIM MADE AGAINST AN EMPLOYER BY THE**
16 **EMPLOYEE UNDER THIS SECTION IF THE ADVERSE EMPLOYMENT ACTION TAKEN BY**
17 **THE EMPLOYER WAS FOR A FAILURE TO ADHERE TO THE REASONABLE LIMITATION**
18 **AND NOT FOR AN INQUIRY, A DISCUSSION, OR A DISCLOSURE OF WAGES IN**
19 **ACCORDANCE WITH THE LIMITATION.**

20 **(D) (1) A PROHIBITION ESTABLISHED IN ACCORDANCE WITH**
21 **SUBSECTION (B)(3) OF THIS SECTION AGAINST THE DISCUSSION OR DISCLOSURE OF**
22 **THE WAGES OF ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR**
23 **PERMISSION MAY NOT APPLY TO INSTANCES IN WHICH AN EMPLOYEE WHO HAS**
24 **ACCESS TO THE WAGE INFORMATION OF OTHER EMPLOYEES AS A PART OF THE**
25 **EMPLOYEE'S ESSENTIAL JOB FUNCTIONS IF THE DISCUSSION OR DISCLOSURE IS IN**
26 **RESPONSE TO A COMPLAINT OR CHARGE OR IN FURTHERANCE OF AN**
27 **INVESTIGATION, A PROCEEDING, A HEARING, OR AN ACTION UNDER THIS SUBTITLE,**
28 **INCLUDING AN INVESTIGATION CONDUCTED BY THE EMPLOYER.**

29 **(2) IF AN EMPLOYEE WHO HAS ACCESS TO WAGE INFORMATION AS**
30 **PART OF THE ESSENTIAL FUNCTIONS OF THE EMPLOYEE'S JOB DISCLOSES THE**
31 **EMPLOYEE'S OWN WAGES OR WAGE INFORMATION ABOUT ANOTHER EMPLOYEE**
32 **OBTAINED OUTSIDE THE PERFORMANCE OF THE ESSENTIAL FUNCTIONS OF THE**
33 **EMPLOYEE'S JOB, THE EMPLOYEE SHALL BE ENTITLED TO ALL THE PROTECTIONS**
34 **AFFORDED UNDER THIS SUBTITLE.**

35 **(E) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO:**

1 **(1) REQUIRE AN EMPLOYEE TO DISCLOSE THE EMPLOYEE'S WAGES;**

2 **(2) DIMINISH EMPLOYEES' RIGHTS TO NEGOTIATE THE TERMS AND**
3 **CONDITIONS OF EMPLOYMENT UNDER FEDERAL, STATE, OR LOCAL LAW;**

4 **(3) LIMIT THE RIGHTS OF AN EMPLOYEE PROVIDED UNDER ANY**
5 **OTHER PROVISION OF LAW OR COLLECTIVE BARGAINING AGREEMENT;**

6 **(4) CREATE AN OBLIGATION ON ANY EMPLOYER OR EMPLOYEE TO**
7 **DISCLOSE WAGES;**

8 **(5) PERMIT AN EMPLOYEE, WITHOUT THE WRITTEN CONSENT OF AN**
9 **EMPLOYER, TO DISCLOSE PROPRIETARY INFORMATION, TRADE SECRET**
10 **INFORMATION, OR INFORMATION THAT IS OTHERWISE SUBJECT TO A LEGAL**
11 **PRIVILEGE OR PROTECTED BY LAW; OR**

12 **(6) PERMIT AN EMPLOYEE TO DISCLOSE WAGE INFORMATION TO A**
13 **COMPETITOR OF THE EMPLOYER.**

14 3-306.

15 (a) On request of an employer, the Commissioner shall provide without charge a
16 copy of this subtitle to the employer.

17 (b) Each employer shall keep posted conspicuously in each place of employment a
18 copy of this subtitle.

19 **(C) THE COMMISSIONER, IN CONSULTATION WITH THE MARYLAND**
20 **COMMISSION ON CIVIL RIGHTS, SHALL DEVELOP EDUCATIONAL MATERIALS AND**
21 **MAKE TRAINING AVAILABLE TO ASSIST EMPLOYERS IN ADOPTING TRAINING,**
22 **POLICIES, AND PROCEDURES THAT COMPLY WITH THE REQUIREMENTS OF THIS**
23 **SUBTITLE.**

24 3-307.

25 (a) (1) If an employer violates **§ 3-304 OF** this subtitle, an affected employee
26 may bring an action against the employer to recover the difference between the wages paid
27 to male and female employees who do **WORK OF COMPARABLE NATURE OR** the same type
28 work and an additional equal amount as liquidated damages.

29 **(2) (I) IF AN EMPLOYER VIOLATES § 3-304.1 OF THIS SUBTITLE, AN**
30 **AFFECTED EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER FOR**
31 **INJUNCTIVE RELIEF AND TO RECOVER BOTH ACTUAL AND LIQUIDATED DAMAGES.**

1 **(II) IN AWARDING LIQUIDATED DAMAGES UNDER**
2 **SUBPARAGRAPH (I) OF THIS PARAGRAPH, A TRIER OF FACT MAY AWARD, IN THE**
3 **CASE OF A WILLFUL VIOLATION OF THIS SUBTITLE, AN AMOUNT UP TO THREE TIMES**
4 **THE TOTAL AMOUNT OF THE WAGES FOUND TO BE DUE.**

5 **(3)** An employee may bring an action on behalf of the employee and other
6 employees similarly affected.

7 (b) On the written request of an employee who is entitled to bring an action under
8 this section, the Commissioner may:

9 (1) take an assignment of the claim in trust for the employee;

10 (2) ask the Attorney General to bring an action in accordance with this
11 section on behalf of the employee; and

12 (3) consolidate 2 or more claims against an employer.

13 (c) An action under this section shall be filed within 3 years of the act on which
14 the action is based.

15 (d) The agreement of an employee to work for less than the wage to which the
16 employee is entitled under this subtitle is not a defense to an action under this section.

17 (e) If a court determines that an employee is entitled to judgment in an action
18 under this section, the court shall allow against the employer reasonable counsel fees and
19 other costs of the action, **AS WELL AS PREJUDGMENT INTEREST IN ACCORDANCE WITH**
20 **THE MARYLAND RULES.**

21 3-308.

22 (a) An employer may not:

23 (1) willfully violate any provision of this subtitle;

24 (2) hinder, delay, or otherwise interfere with the Commissioner or an
25 authorized representative of the Commissioner in the enforcement of this subtitle;

26 (3) refuse entry to the Commissioner or an authorized representative of the
27 Commissioner into a place of employment that the Commissioner is authorized under this
28 subtitle to inspect; or

29 (4) discharge or otherwise discriminate against an employee because the
30 employee:

1 (i) makes a complaint to the employer, the Commissioner, or
2 another person;

3 (ii) brings an action under this subtitle or a proceeding that relates
4 to the subject of this subtitle or causes the action or proceeding to be brought; or

5 (iii) has testified or will testify in an action under this subtitle or a
6 proceeding that relates to the subject of this subtitle.

7 (b) An employee may not:

8 (1) make a groundless or malicious complaint to the Commissioner or an
9 authorized representative of the Commissioner;

10 (2) in bad faith, bring an action under this subtitle;

11 (3) in bad faith, bring a proceeding that relates to the subject of this
12 subtitle; or

13 (4) in bad faith, testify in an action under this subtitle or a proceeding that
14 relates to the subject of this subtitle.

15 (c) The Commissioner may bring an action for injunctive relief and damages
16 against a person who violates subsection (a)(1) or (4) or subsection (b)(1), (3), or (4) of this
17 section.

18 (d) An employer who violates any provision of subsection (a)(2) or (3) of this
19 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$300.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to
21 apply only prospectively and may not be applied or interpreted to have any effect on or
22 application to any cause of action arising before the effective date of this Act.

23 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
24 October 1, 2015.