A BILL ENTITLED

AN ACT concerning

Labor and Employment – Equal Pay for Equal Work – Revisions

FOR the purpose of authorizing the Commissioner of Labor and Industry to enter the place of employment of an employer for certain purposes, examine a witness under oath, and subpoena the attendance and testimony of certain witnesses and the production of certain documents; requiring the Commissioner to maintain a certain hotline number; establishing the Equal Pay Commission; providing for the composition, terms, chair, and staffing of the Commission; prohibiting a member of the Commission from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Commission to study and promote certain research, sponsor and coordinate certain information and education programs, and recommend certain legislation; requiring the Commission to submit a certain report to the Governor, President of the Senate, and the Speaker of the House of Delegates on or before a certain date each year; requiring an employer to include certain information in a job advertisement to recruit an employee or individual contractor to fill a position within the employer’s organization; prohibiting an employer from paying less than the minimum rate of pay included in a certain job advertisement to a certain employee; prohibiting an employer from seeking salary history information by certain methods and providing salary history information to a prospective employer without a certain written authorization; authorizing, under certain circumstances, an employee to bring an action against an employer to recover certain punitive damages; altering a certain statute of limitations; providing that an officer or agent of an employer is deemed to be the employer for certain purposes under certain circumstances; establishing certain civil penalties; requiring the Commissioner to consider certain factors in determining the amount of certain civil penalties; requiring the Commissioner to assess a certain civil penalty for each employee with respect to whom the employer violated this Act; altering a certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.
penalty; defining a certain term; specifying the terms of the initial members of the Commission; and generally relating to equal pay for equal work.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–303, 3–307, and 3–308
Annotated Code of Maryland
(2008 Replacement Volume and 2015 Supplement)

BY adding to
Article – Labor and Employment
Section 3–303.1, 3–304.1, and 3–307.1
Annotated Code of Maryland
(2008 Replacement Volume and 2015 Supplement)

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

Article – Labor and Employment

3–303.

(A) In addition to any powers set forth elsewhere, the Commissioner may:

(1) use informal methods of conference, conciliation, and persuasion to eliminate pay practices that are unlawful under this subtitle; [and]

(2) supervise the payment of a wage owing to an employee under this subtitle;

(3) ENTER THE PLACE OF EMPLOYMENT OF AN EMPLOYER TO INSPECT AND COPY PAYROLL AND OTHER RECORDS TO COMPARE THE CHARACTER OF WORK IN WHICH INDIVIDUALS EMPLOYED BY THE EMPLOYER ARE ENGAGED, TO QUESTION THE INDIVIDUALS, AND TO OBTAIN ANY OTHER INFORMATION AS IS REASONABLY NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS SUBTITLE; AND

(4) EXAMINE A WITNESS UNDER OATH AND SUBPOENA THE ATTENDANCE AND TESTIMONY OF A WITNESS OR THE PRODUCTION OF DOCUMENTS RELATING TO AN INVESTIGATION INTO AN ALLEGED VIOLATION OF THIS SUBTITLE.

(B) THE COMMISSIONER SHALL MAINTAIN A HOTLINE NUMBER THROUGH WHICH AN EMPLOYEE MAY MAKE A COMPLAINT OR PROVIDE INFORMATION REGARDING A VIOLATION OF THIS SUBTITLE.
3–303.1.

(A) IN THIS SECTION, “COMMISSION” MEANS THE EQUAL PAY COMMISSION.

(B) THERE IS AN EQUAL PAY COMMISSION.

(C) THE COMMISSION CONSISTS OF THE FOLLOWING MEMBERS, APPOINTED BY THE GOVERNOR:

(1) TWO REPRESENTATIVES OF BUSINESSES IN THE STATE WHO HAVE BEEN NOMINATED BY STATE BUSINESS ORGANIZATIONS AND BUSINESS TRADE ASSOCIATIONS;

(2) TWO REPRESENTATIVES OF LABOR ORGANIZATIONS WHO HAVE BEEN NOMINATED BY LABOR FEDERATIONS;

(3) TWO REPRESENTATIVES OF ORGANIZATIONS WHOSE OBJECTIVES INCLUDE THE ELIMINATION OF PAY DISPARITIES BETWEEN MEN AND WOMEN AND MINORITIES AND NONMINORITIES AND WHO HAVE UNDERTAKEN ADVOCACY, EDUCATIONAL, OR LEGISLATIVE INITIATIVES IN PURSUIT OF THAT OBJECTIVE; AND

(4) THREE REPRESENTATIVES OF HIGHER EDUCATION OR RESEARCH INSTITUTIONS WHO HAVE EXPERIENCE AND EXPERTISE IN THE COLLECTION AND ANALYSIS OF DATA CONCERNING PAY DISPARITIES AND WHOSE RESEARCH HAS BEEN USED IN EFFORTS TO PROMOTE THE ELIMINATION OF THOSE DISPARITIES.

(D) (1) THE TERM OF A MEMBER IS 4 YEARS.


(3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(E) THE GOVERNOR SHALL DESIGNATE THE CHAIR OF THE COMMISSION.
(F) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION SHALL PROVIDE STAFF FOR THE COMMISSION.

(G) A MEMBER OF THE COMMISSION:

(1) MAY NOT RECEIVE COMPENSATION; BUT

(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

(H) THE COMMISSION SHALL:

(1) STUDY AND PROMOTE RESEARCH REGARDING:

(I) THE EXTENT OF WAGE DISPARITIES, BOTH IN THE PUBLIC AND PRIVATE SECTORS, BETWEEN MEN AND WOMEN AND BETWEEN MINORITIES AND NONMINORITIES;

(II) THE FACTORS WHICH CAUSE, OR WHICH TEND TO CAUSE, WAGE DISPARITIES, INCLUDING:

1. SEGREGATION BETWEEN MEN AND WOMEN AND BETWEEN MINORITIES AND NONMINORITIES ACROSS AND WITHIN OCCUPATIONS;

2. PAYMENT OF LOWER WAGES FOR WORK IN FEMALE–DOMINATED OCCUPATIONS;

3. CHILD–REARING RESPONSIBILITIES;

4. THE NUMBER OF WOMEN WHO ARE HEADS OF HOUSEHOLDS;

5. EDUCATION;

6. HOURS WORKED; AND

7. YEARS ON THE JOB;

(III) THE CONSEQUENCES OF WAGE DISPARITIES ON THE ECONOMY AND FAMILIES AFFECTED; AND

(IV) ACTIONS THAT ARE LIKELY TO LEAD TO THE ELIMINATION AND PREVENTION OF WAGE DISPARITIES;
(2) PROMOTE, IN COOPERATION WITH THE FEDERAL GOVERNMENT
AND STATE, LOCAL, AND PRIVATE ENTITIES, PROGRAMS TO ELIMINATE WAGE
DISPARITIES BETWEEN MEN AND WOMEN AND BETWEEN MINORITIES AND
NONMINORITIES;

(3) SPONSOR AND COORDINATE INFORMATION AND EDUCATIONAL
PROGRAMS IN THE STATE INTENDED TO REDUCE OR END WAGE DISPARITIES
BETWEEN MEN AND WOMEN AND BETWEEN MINORITIES AND NONMINORITIES; AND

(4) RECOMMEND ANY SPECIFIC LEGISLATION THAT IS NECESSARY TO
ELIMINATE WAGE DISPARITIES BETWEEN MEN AND WOMEN AND BETWEEN
MINORITIES AND NONMINORITIES.

(I) (1) ON OR BEFORE SEPTEMBER 30 AND EACH YEAR THEREAFTER,
THE COMMISSION SHALL SUBMIT A REPORT TO THE GOVERNOR AND, IN
ACCORDANCE WITH § 2–1246 OF THE STATE GOVERNMENT ARTICLE, THE
PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF DELEGATES.

(2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS
SUBSECTION SHALL INCLUDE:

(I) THE RESULTS OF ANY STUDY OR RESEARCH PROMOTED BY
THE COMMISSION UNDER SUBSECTION (H)(1) OF THIS SECTION;

(II) THE ACTIVITIES OF THE COMMISSION; AND

(III) ANY LEGISLATION RECOMMENDED UNDER SUBSECTION
(H)(4) OF THIS SECTION.

3–304.1.

(A) AN EMPLOYER SHALL INCLUDE IN A JOB ADVERTISEMENT TO RECRUIT
AN EMPLOYEE OR INDEPENDENT CONTRACTOR TO FILL A POSITION WITHIN THE
EMPLOYER’S ORGANIZATION THE FOLLOWING INFORMATION:

(1) THE MINIMUM RATE OF PAY;

(2) WHETHER THE RATE OF PAY IS:

(I) BY THE HOUR, SHIFT, DAY, WEEK, OR PIECE;

(II) A SALARY;
(III) A COMMISSION; OR

(IV) ANOTHER METHOD;

(3) WHETHER THE POSITION IS ELIGIBLE FOR OVERTIME AND, IF
APPLICABLE, HOW OVERTIME WILL BE PAID; AND

(4) WHETHER ANY ALLOWANCES, INCLUDING A TIP CREDIT OR A
MEAL OR LODGING ALLOWANCE, WILL BE CLAIMED BY THE EMPLOYER.

(B) AN EMPLOYER MAY NOT PAY LESS THAN THE MINIMUM RATE OF PAY
INCLUDED IN A JOB ADVERTISEMENT UNDER SUBSECTION (A) OF THIS SECTION TO
AN EMPLOYEE WHO IS HIRED TO FILL THE POSITION ADVERTISED.

(C) (1) AN EMPLOYER MAY NOT SEEK ORALLY, IN WRITING, OR THROUGH
AN EMPLOYEE OR AN AGENT, SALARY HISTORY INFORMATION, INCLUDING
COMPENSATION AND BENEFITS FOR AN EMPLOYEE OR APPLICANT FOR
EMPLOYMENT, WITHOUT THE WRITTEN AUTHORIZATION OF THE EMPLOYEE OR
APPLICANT.

(2) AN EMPLOYER MAY NOT PROVIDE THE SALARY HISTORY OF A
CURRENT OR FORMER EMPLOYEE TO A PROSPECTIVE EMPLOYER WITHOUT
WRITTEN AUTHORIZATION PROVIDED BY THE CURRENT OR FORMER EMPLOYEE.


(a) (1) If an employer violates this subtitle, an affected employee may bring an
action against the employer to recover:

(I) the difference between the wages paid to male and female
employees who do the same type work [and];

(II) an additional equal amount as liquidated damages; AND

(III) AN ADDITIONAL EQUAL AMOUNT AS PUNITIVE DAMAGES.

(2) An employee may bring an action on behalf of the employee and other
employees similarly affected.

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

(1) take an assignment of the claim in trust for the employee;
(2) ask the Attorney General to bring an action in accordance with this
section on behalf of the employee; and

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

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

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

(e) If a court determines that an employee is entitled to judgment in an action
under this section, the court shall allow against the employer reasonable counsel fees and
other costs of the action.

(F) IF AN OFFICER OR AGENT OF AN EMPLOYER WILLFULLY AND
KNOWINGLY PERMITS THE EMPLOYER TO EVADE A JUDGMENT IN AN ACTION UNDER
THIS SECTION, THE OFFICER OR AGENT SHALL BE DEEMED TO BE THE EMPLOYER
FOR THE PURPOSE OF ENFORCING A JUDGMENT IN AN ACTION UNDER THIS
SECTION.


(A) IF AN EMPLOYER WHO EMPLOYS FEWER THAN FOUR EMPLOYEES
violates this subtitle, the COMMISSIONER may assess a civil penalty of:

(1) FOR A FIRST VIOLATION, NOT MORE THAN $500;

(2) FOR A SECOND VIOLATION, NOT MORE THAN $2,500; AND

(3) FOR A THIRD OR SUBSEQUENT VIOLATION, NOT MORE THAN
$5,000.

(B) IF AN EMPLOYER THAT EMPLOYS FOUR OR MORE EMPLOYEES-violates
this subtitle, the COMMISSION may assess a civil penalty of:

(1) FOR A FIRST VIOLATION, NOT MORE THAN $2,500;

(2) FOR A SECOND VIOLATION, NOT MORE THAN $3,000; AND

(3) FOR A THIRD OR SUBSEQUENT VIOLATION, NOT MORE THAN
$5,000.
(C) In determining the amount of a civil penalty to be assessed under subsection (A) or (B) of this section, the Commissioner shall consider the size of the employer and the gravity of the violation.

(D) If the Commissioner assesses a civil penalty under subsection (A) or (B) of this section, the Commission shall assess the penalty for each employee with respect to whom the employer violated this subtitle.

3–308.

(a) An employer may not:

(1) willfully violate any provision of this subtitle;

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

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

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

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

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

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

(b) An employee may not:

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

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

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

(4) in bad faith, testify in an action under this subtitle or a proceeding that relates to the subject of this subtitle.
(c) The Commissioner may bring an action for injunctive relief and damages against a person who violates subsection (a)(1) or (4) or subsection (b)(1), (3), or (4) of this section.

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

$5,000.

SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial members of the Equal Pay Commission shall expire as follows:

(1) two members in 2017;

(2) two members in 2018;

(3) two members in 2019; and

(4) three members in 2020.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2016.