

SENATE BILL 481

K3

6lr0920
CF HB 1003

By: Senators Lee, Raskin, Astle, Benson, Conway, Currie, DeGrange, Feldman, Ferguson, Gladden, Guzzone, Kagan, Kasemeyer, Kelley, King, Klausmeier, Madaleno, Manno, Mathias, McFadden, Middleton, Miller, Muse, Nathan-Pulliam, Peters, Pinsky, Pugh, Ramirez, Rosapepe, Young, and Zirkin

Introduced and read first time: February 3, 2016

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 22, 2016

CHAPTER _____

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 workplaces in the same county of the State; providing that a
10 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~~; providing that certain provisions of this Act do not preclude
13 an employee from demonstrating that an employer's reliance on a certain exception
14 is a pretext for certain discrimination; prohibiting an employer from taking certain
15 actions concerning the disclosure or discussion of an employee's wages; authorizing
16 an employer, in a certain policy, to establish certain limitations on certain inquiries
17 about or discussions or disclosures of wages; providing that, under certain
18 circumstances, the failure of an employee to adhere to certain limitations shall be an
19 affirmative defense against certain claims; providing that a certain employer
20 prohibition against the disclosure of certain wage information may not apply under
21 certain circumstances; providing for the construction of certain provisions of this Act;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 requiring the Commissioner of Labor and Industry, in consultation with the
 2 Maryland Commission on Civil Rights, to develop certain educational materials and
 3 make certain training available for certain purposes; altering a certain provision of
 4 law to allow a certain employee to bring a certain action for injunctive relief and to
 5 recover the difference paid between employees of one sex or gender identity and
 6 employees of another sex or gender identity who do ~~work of a comparable nature or~~
 7 the same type of work against an employer who knowingly knew or reasonably
 8 should have known that the employer's action violates a certain provision of law;
 9 authorizing a certain employee to bring a civil action against an employer who
 10 knowingly knew or reasonably should have known that the employer's action violates
 11 a certain provision of law to recover certain damages for a violation of a certain
 12 provision of this Act; ~~authorizing the trier of fact to award certain liquidated~~
 13 ~~damages under certain circumstances; authorizing the Attorney General, on a~~
 14 ~~certain written request, to bring an action on behalf of an employee and consolidate~~
 15 ~~certain claims against an employer;~~ altering a certain provision of law to require that
 16 a certain action be filed within a certain time period after the ~~discovery of a certain~~
 17 ~~act~~ employee receives from the employer the wages paid on the termination of
 18 employment under a certain provision of law; authorizing a court to award certain
 19 prejudgment interest under certain circumstances; ~~authorizing the Attorney~~
 20 ~~General to bring an action for injunctive relief and damages against a person who~~
 21 ~~violates certain provisions of this Act;~~ defining a ~~certain term~~ certain terms; making
 22 conforming changes; providing for the application of this Act; and generally relating
 23 to equal pay for equal work and the disclosure of certain wage information by certain
 24 employees.

25 BY repealing and reenacting, with amendments,
 26 Article – Labor and Employment
 27 Section ~~3-301, 3-304, 3-306, 3-307, and 3-308~~ and 3-307
 28 Annotated Code of Maryland
 29 (2008 Replacement Volume and 2015 Supplement)

30 BY adding to
 31 Article – Labor and Employment
 32 Section 3-304.1
 33 Annotated Code of Maryland
 34 (2008 Replacement Volume and 2015 Supplement)

35 BY repealing and reenacting, without amendments,
 36 Article – Labor and Employment
 37 Section 3-308
 38 Annotated Code of Maryland
 39 (2008 Replacement Volume and 2015 Supplement)

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

42 **Article – Labor and Employment**

1 3-301.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) (1) “Employer” means:

4 (i) a person engaged in a business, industry, profession, trade, or
5 other enterprise in the State;

6 (ii) the State and its units;

7 (iii) a county and its units; and

8 (iv) a municipal government in the State.

9 (2) “Employer” includes a person who acts directly or indirectly in the
10 interest of another employer with an employee.

11 (c) **“GENDER IDENTITY” HAS THE MEANING STATED IN § 20-101 OF THE**
12 **STATE GOVERNMENT ARTICLE.**

13 (D) (1) “Wage” means all compensation for employment.

14 (2) “Wage” includes board, lodging, or other advantage provided to an
15 employee for the convenience of the employer.

16 3-304.

17 (a) ~~(1)~~ **IN THIS SECTION, “PROVIDING LESS FAVORABLE EMPLOYMENT**
18 **OPPORTUNITIES” MEANS:**

19 **(1) ASSIGNING OR DIRECTING THE EMPLOYEE INTO A LESS**
20 **FAVORABLE CAREER TRACK, IF CAREER TRACKS ARE OFFERED, OR POSITION;**

21 ~~(2) “PROVIDING LESS FAVORABLE EMPLOYMENT OPPORTUNITIES”~~
22 ~~INCLUDES:~~

23 ~~(1) (2) FAILING TO PROVIDE INFORMATION ABOUT~~
24 ~~PROMOTIONS OR ADVANCEMENT IN THE FULL RANGE OF CAREER TRACKS OFFERED~~
25 ~~BY THE EMPLOYER; OR~~

26 ~~(2) ASSIGNING WORK LESS LIKELY TO LEAD TO PROMOTION OR~~
27 ~~FUTURE OPPORTUNITIES.~~

(3) LIMITING OR DEPRIVING AN EMPLOYEE OF EMPLOYMENT OPPORTUNITIES THAT WOULD OTHERWISE BE AVAILABLE TO THE EMPLOYEE BUT FOR THE EMPLOYEE'S SEX OR GENDER IDENTITY.

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

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

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

(2) FOR PURPOSES OF PARAGRAPH (1)(I) OF THIS SUBSECTION, AN EMPLOYEE SHALL BE DEEMED TO WORK AT THE SAME ESTABLISHMENT AS ANOTHER EMPLOYEE IF THE EMPLOYEES WORK FOR THE SAME EMPLOYER AT WORKPLACES LOCATED IN THE SAME COUNTY OF THE STATE.

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

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

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

(3) jobs that require different abilities or skills;

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

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

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

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

1 (I) IS NOT BASED ON OR DERIVED FROM A GENDER-BASED
2 DIFFERENTIAL IN COMPENSATION;

3 (II) IS JOB-RELATED WITH RESPECT TO THE POSITION AND
4 CONSISTENT WITH A BUSINESS NECESSITY; AND

5 (III) ACCOUNTS FOR THE ENTIRE DIFFERENTIAL.

6 (D) ~~AN EXCEPTION LISTED IN SUBSECTION (C) OF THIS SECTION DOES NOT~~
7 ~~APPLY IF THE EMPLOYEE DEMONSTRATES THAT:~~

8 ~~(1) THE EMPLOYER USES A PARTICULAR EMPLOYMENT PRACTICE~~
9 ~~THAT CAUSES A DISPARATE IMPACT ON THE BASIS OF SEX OR GENDER IDENTITY;~~

10 ~~(2) ALTERNATIVE EMPLOYMENT PRACTICES EXIST THAT WOULD~~
11 ~~SERVE THE SAME BUSINESS AND NOT PRODUCE THE DISPARATE IMPACT; AND~~

12 ~~(3) THE EMPLOYER HAS REFUSED TO ADOPT AN ALTERNATIVE~~
13 ~~PRACTICE~~ THIS SECTION DOES NOT PRECLUDE AN EMPLOYEE FROM
14 DEMONSTRATING THAT AN EMPLOYER'S RELIANCE ON AN EXCEPTION LISTED IN
15 SUBSECTION (C) OF THIS SECTION IS A PRETEXT FOR DISCRIMINATION ON THE BASIS
16 OF SEX OR GENDER IDENTITY.

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

19 **3-304.1.**

20 (A) AN EMPLOYER MAY NOT:

21 (1) PROHIBIT AN EMPLOYEE FROM:

22 (I) INQUIRING ABOUT, DISCUSSING, OR DISCLOSING THE
23 WAGES OF THE EMPLOYEE OR ANOTHER EMPLOYEE; OR

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

26 (2) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR ANY OTHER
27 DOCUMENT THAT PURPORTS TO DENY THE EMPLOYEE THE RIGHT TO DISCLOSE OR
28 DISCUSS THE EMPLOYEE'S WAGES; OR

29 (3) TAKE ANY ADVERSE EMPLOYMENT ACTION AGAINST AN
30 EMPLOYEE FOR:

1 **(I) INQUIRING ABOUT ANOTHER EMPLOYEE’S WAGES;**

2 **(II) DISCLOSING THE EMPLOYEE’S OWN WAGES;**

3 **(III) DISCUSSING ANOTHER EMPLOYEE’S WAGES IF THOSE**
4 **WAGES HAVE BEEN DISCLOSED VOLUNTARILY;**

5 **(IV) ASKING THE EMPLOYER TO PROVIDE A REASON FOR THE**
6 **EMPLOYEE’S WAGES; OR**

7 **(V) AIDING OR ENCOURAGING ANOTHER EMPLOYEE’S**
8 **EXERCISE OF RIGHTS UNDER THIS SECTION.**

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

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

16 **(3) SUBJECT TO SUBSECTION (D) OF THIS SECTION, LIMITATIONS**
17 **ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE**
18 **PROHIBITING AN EMPLOYEE FROM DISCUSSING OR DISCLOSING THE WAGES OF**
19 **ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE’S PRIOR PERMISSION.**

20 **(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE**
21 **FAILURE OF AN EMPLOYEE TO ADHERE TO A REASONABLE LIMITATION INCLUDED**
22 **IN A WRITTEN POLICY UNDER SUBSECTION (B) OF THIS SECTION SHALL BE AN**
23 **AFFIRMATIVE DEFENSE TO A CLAIM MADE AGAINST AN EMPLOYER BY THE**
24 **EMPLOYEE UNDER THIS SECTION IF THE ADVERSE EMPLOYMENT ACTION TAKEN BY**
25 **THE EMPLOYER WAS FOR A FAILURE TO ADHERE TO THE REASONABLE LIMITATION**
26 **AND NOT FOR AN INQUIRY, A DISCUSSION, OR A DISCLOSURE OF WAGES IN**
27 **ACCORDANCE WITH THE LIMITATION.**

28 **(D) (1) A PROHIBITION ESTABLISHED IN ACCORDANCE WITH**
29 **SUBSECTION (B)(3) OF THIS SECTION AGAINST THE DISCUSSION OR DISCLOSURE OF**
30 **THE WAGES OF ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE’S PRIOR**
31 **PERMISSION MAY NOT APPLY TO INSTANCES IN WHICH AN EMPLOYEE WHO HAS**
32 **ACCESS TO THE WAGE INFORMATION OF OTHER EMPLOYEES AS A PART OF THE**
33 **EMPLOYEE’S ESSENTIAL JOB FUNCTIONS IF THE DISCUSSION OR DISCLOSURE IS IN**
34 **RESPONSE TO A COMPLAINT OR CHARGE OR IN FURTHERANCE OF AN**

1 INVESTIGATION, A PROCEEDING, A HEARING, OR AN ACTION UNDER THIS SUBTITLE,
2 INCLUDING AN INVESTIGATION CONDUCTED BY THE EMPLOYER.

3 (2) IF AN EMPLOYEE WHO HAS ACCESS TO WAGE INFORMATION AS
4 PART OF THE ESSENTIAL FUNCTIONS OF THE EMPLOYEE'S JOB DISCLOSES THE
5 EMPLOYEE'S OWN WAGES OR WAGE INFORMATION ABOUT ANOTHER EMPLOYEE
6 OBTAINED OUTSIDE THE PERFORMANCE OF THE ESSENTIAL FUNCTIONS OF THE
7 EMPLOYEE'S JOB, THE EMPLOYEE SHALL BE ENTITLED TO ALL THE PROTECTIONS
8 AFFORDED UNDER THIS SUBTITLE.

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

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

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

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

15 (4) CREATE AN OBLIGATION ON ANY EMPLOYER OR EMPLOYEE TO
16 DISCLOSE WAGES;

17 (5) PERMIT AN EMPLOYEE, WITHOUT THE WRITTEN CONSENT OF AN
18 EMPLOYER, TO DISCLOSE PROPRIETARY INFORMATION, TRADE SECRET
19 INFORMATION, OR INFORMATION THAT IS OTHERWISE SUBJECT TO A LEGAL
20 PRIVILEGE OR PROTECTED BY LAW; OR

21 (6) PERMIT AN EMPLOYEE TO DISCLOSE WAGE INFORMATION TO A
22 COMPETITOR OF THE EMPLOYER.

23 3-306.

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

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

28 (C) THE COMMISSIONER, IN CONSULTATION WITH THE MARYLAND
29 COMMISSION ON CIVIL RIGHTS, SHALL DEVELOP EDUCATIONAL MATERIALS AND
30 MAKE TRAINING AVAILABLE TO ASSIST EMPLOYERS IN ADOPTING TRAINING,
31 POLICIES, AND PROCEDURES THAT COMPLY WITH THE REQUIREMENTS OF THIS
32 SUBTITLE.

1 3-307.

2 (a) (1) If an employer ~~KNOWINGLY KNEW OR REASONABLY SHOULD HAVE~~
 3 ~~KNOWN THAT THE EMPLOYER'S ACTION~~ violates **§ 3-304** OF this subtitle, an affected
 4 employee may bring an action against the employer **FOR INJUNCTIVE RELIEF AND** to
 5 recover the difference between the wages paid to [male and female] employees **OF ONE SEX**
 6 **OR GENDER IDENTITY AND THE WAGES PAID TO EMPLOYEES OF ANOTHER SEX OR**
 7 **GENDER IDENTITY** who do ~~WORK OF COMPARABLE NATURE OR~~ the same type work and
 8 an additional equal amount as liquidated damages.

9 (2) ~~IF AN EMPLOYER KNOWINGLY KNEW OR REASONABLY SHOULD~~
 10 ~~HAVE KNOWN THAT THE EMPLOYER'S ACTION VIOLATES § 3-304.1 OF THIS~~
 11 ~~SUBTITLE, AN AFFECTED EMPLOYEE MAY BRING AN ACTION AGAINST THE~~
 12 ~~EMPLOYER FOR INJUNCTIVE RELIEF AND TO RECOVER BOTH ACTUAL DAMAGES AND~~
 13 ~~AN ADDITIONAL EQUAL AMOUNT AS LIQUIDATED DAMAGES.~~

14 (3) ~~IN AWARDING LIQUIDATED DAMAGES UNDER PARAGRAPHS (1)~~
 15 ~~AND (2) OF THIS SUBSECTION, A TRIER OF FACT MAY AWARD, IN THE CASE OF A~~
 16 ~~WILLFUL VIOLATION OF THIS SUBTITLE, AN AMOUNT UP TO THREE TIMES THE TOTAL~~
 17 ~~AMOUNT OF THE WAGES FOUND TO BE DUE.~~

18 ~~(2)~~ (4) An employee ~~OR THE ATTORNEY GENERAL~~ may bring an
 19 action on behalf of the employee and other employees similarly affected.

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

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

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

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

26 (c) ~~ON THE WRITTEN REQUEST OF AN EMPLOYEE WHO IS ENTITLED TO~~
 27 ~~BRING AN ACTION UNDER THIS SECTION, THE ATTORNEY GENERAL MAY:~~

28 (1) ~~BRING AN ACTION IN ACCORDANCE WITH THIS SECTION ON~~
 29 ~~BEHALF OF THE EMPLOYEE; AND~~

30 (2) ~~CONSOLIDATE 2 OR MORE CLAIMS AGAINST AN EMPLOYER.~~

31 (d) An action under this section shall be filed within 3 years ~~of~~ **AFTER** the
 32 ~~DISCOVERY OF THE~~ act on which the action is based **EMPLOYEE RECEIVES FROM THE**

1 EMPLOYER THE WAGES PAID ON THE TERMINATION OF EMPLOYMENT UNDER §
2 3-505(A) OF THIS TITLE.

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

5 ~~[(e)]~~ ~~(F)~~ If a court determines that an employee is entitled to judgment in an
6 action under this section, the court shall allow against the employer reasonable counsel
7 fees and other costs of the action, **AS WELL AS PREJUDGMENT INTEREST IN**
8 **ACCORDANCE WITH THE MARYLAND RULES.**

9 3-308.

10 (a) An employer may not:

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

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

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

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

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

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

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

25 (b) An employee may not:

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

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

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

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

3 (c) The Commissioner ~~OR THE ATTORNEY GENERAL~~ may bring an action for
4 injunctive relief and damages against a person who violates subsection (a)(1) or (4) or
5 subsection (b)(1), (3), or (4) of this section.

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.