

HB0001/953926/1

BY: Delegate McMillan

AMENDMENTS TO HOUSE BILL 1, AS AMENDED

(First Reading File Bill)

AMENDMENT NO. 1

On page 1 of the bill, strike line 2 in its entirety and substitute “Commonsense Paid Leave Act”; and in line 3, after “of” insert “requiring certain employers to provide employees with certain paid time off; providing for the method of determining whether an employer is required to provide paid time off; providing for the manner in which paid time off is accrued by the employee and treated by the employer; authorizing an employee to file a complaint with the Commissioner of Labor and Industry under certain circumstances; requiring the Commissioner to take certain action under certain circumstances; providing that certain actions are subject to certain notice and hearing requirements; requiring the Commissioner to consider certain factors in determining the amount of a certain civil penalty; authorizing the Commissioner and the Attorney General to bring certain actions; providing that the Attorney General is entitled to certain fees and costs under certain circumstances; authorizing the Commissioner to conduct an investigation, under certain circumstances, to determine whether certain provisions of this Act have been violated; allowing a subtraction modification under the State income tax for up to a certain amount of nonpassive income attributable to certain pass-through entities that meet certain requirements; providing that the subtraction modification applies only to the nonpassive income of a member of an eligible pass-through entity if certain conditions are met; providing that certain individuals and married couples with federal adjusted gross income in excess of certain amounts are not eligible for the subtraction modification; providing for the application of certain provisions of this Act; defining certain terms; and generally relating to paid leave.”.

On pages 1 and 2 of the bill, strike beginning with “requiring” in line 3 on page 1 down through “leave.” in line 21 on page 2; in line 29, strike “3-1311” and substitute “3-1306”; in line 30, strike “Healthy Working Families Act” and substitute “Common Sense Paid Leave Act”; and after line 32, insert:

(Over)

“BY adding to

Article – Tax – General

Section 10–105.1

Annotated Code of Maryland

(2016 Replacement Volume)”.

AMENDMENT NO. 2

In the Economic Matters Committee Amendments (HB0001/323090/1), strike in their entirety Amendment Nos. 2 through 5.

On page 3 of the bill, in line 8, strike “**(1)**”; strike in their entirety lines 11 through 14, inclusive; in line 15, strike “**HEALTHY WORKING FAMILIES ACT**” and substitute “**COMMONSENSE PAID LEAVE ACT**”; and after line 15, insert:

“3–1301.

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

(B) “EMPLOYEE” DOES NOT INCLUDE AN INDIVIDUAL WHO:

(1) DOES NOT HAVE A REGULAR WORK SCHEDULE WITH THE EMPLOYER;

(2) CONTACTS THE EMPLOYER FOR WORK ASSIGNMENTS AND IS SCHEDULED TO WORK THE ASSIGNMENT WITHIN 48 HOURS AFTER CONTACTING THE EMPLOYER;

(3) DOES NOT HAVE AN OBLIGATION TO WORK FOR THE EMPLOYER IF THE INDIVIDUAL DOES NOT CONTACT THE EMPLOYER FOR WORK ASSIGNMENTS; AND

(4) IS NOT EMPLOYED BY A TEMPORARY PLACEMENT AGENCY.

(C) "EMPLOYER" INCLUDES:

(1) A UNIT OF STATE OR LOCAL GOVERNMENT; AND

(2) A PERSON THAT ACTS DIRECTLY OR INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

(D) "PAID TIME OFF" MEANS PAID LEAVE AWAY FROM WORK THAT:

(1) MAY BE USED BY AN EMPLOYEE FOR ANY REASON; AND

(2) IS PROVIDED BY AN EMPLOYER UNDER § 3-1304 OF THIS SUBTITLE.

3-1302.

(A) THIS SUBTITLE MAY NOT BE CONSTRUED TO:

(1) REQUIRE AN EMPLOYER TO COMPENSATE AN EMPLOYEE FOR UNUSED PAID TIME OFF WHEN THE EMPLOYEE LEAVES THE EMPLOYER'S EMPLOYMENT;

(Over)

(2) PREEMPT, LIMIT, OR OTHERWISE AFFECT ANY WORKERS' COMPENSATION BENEFITS THAT ARE AVAILABLE UNDER TITLE 9 OF THIS ARTICLE; OR

(3) REQUIRE AN EMPLOYER WITH AN EXISTING PAID LEAVE POLICY TO PROVIDE ADDITIONAL PAID LEAVE IF THE EMPLOYER PROVIDES PAID LEAVE IN AN AMOUNT AT LEAST EQUIVALENT TO THE TOTAL ANNUAL ACCRUAL AMOUNT PROVIDED FOR IN § 3-1304 OF THIS SUBTITLE AND ALLOWS AN EMPLOYEE TO USE THE PAID LEAVE FOR ANY REASON.

(B) THIS SUBTITLE PREEMPTS THE AUTHORITY OF A LOCAL JURISDICTION TO:

(1) ENACT A LAW ON OR AFTER OCTOBER 1, 2017, THAT REGULATES LEAVE PROVIDED BY AN EMPLOYER; AND

(2) ENFORCE A LAW ENACTED THAT REGULATES LEAVE PROVIDED BY AN EMPLOYER.

3-1303.

(A) THIS SUBTITLE DOES NOT APPLY TO AN EMPLOYEE WHO:

(1) REGULARLY WORKS LESS THAN 30 HOURS A WEEK FOR AN EMPLOYER;

(2) IS EMPLOYED BY THE EMPLOYER FOR LESS THAN 120 DAYS DURING A 12-MONTH PERIOD;

(3) IS EMPLOYED IN THE CONSTRUCTION INDUSTRY;

(4) IS COVERED BY A BONA FIDE COLLECTIVE BARGAINING AGREEMENT; OR

(5) IS EMPLOYED IN THE AGRICULTURAL SECTOR ON AN AGRICULTURAL OPERATION AS DEFINED IN § 5-403(A) OF THE COURTS ARTICLE.

(B) FOR THE PURPOSE OF SUBSECTION (A)(3) OF THIS SECTION, AN EMPLOYEE WHO IS EMPLOYED IN THE CONSTRUCTION INDUSTRY DOES NOT INCLUDE AN EMPLOYEE EMPLOYED AS:

(1) A JANITOR;

(2) A BUILDING CLEANER;

(3) A BUILDING SECURITY OFFICER;

(4) A CONCIERGE;

(5) A DOORPERSON;

(6) A HANDYPERSON; OR

(7) A BUILDING SUPERINTENDENT.

3-1304.

(Over)

(A) (1) AN EMPLOYER THAT EMPLOYS 50 OR MORE EMPLOYEES AT EACH LOCATION OF THE EMPLOYER SHALL PROVIDE AN EMPLOYEE WITH PAID TIME OFF THAT IS PAID AT THE SAME WAGE RATE AS THE EMPLOYEE NORMALLY EARNS.

(2) AN EMPLOYER THAT EMPLOYS FEWER THAN 50 EMPLOYEES AT EACH LOCATION OF THE EMPLOYER IS ELIGIBLE FOR THE SUBTRACTION MODIFICATION UNDER § 10-105.1 OF THE TAX – GENERAL ARTICLE IF THE EMPLOYER:

(I) PROVIDES ALL EMPLOYEES WITH PAID LEAVE IN AN AMOUNT AT LEAST EQUIVALENT TO THE TOTAL ANNUAL ACCRUAL AMOUNT PROVIDED FOR IN THIS SECTION; AND

(II) ALLOWS ALL EMPLOYEES TO USE THE PAID LEAVE FOR ANY REASON.

(3) (I) FOR THE PURPOSE OF DETERMINING WHETHER AN EMPLOYER IS REQUIRED TO PROVIDE PAID TIME OFF UNDER THIS SUBSECTION, THE NUMBER OF EMPLOYEES AT EACH LOCATION OF AN EMPLOYER SHALL BE DETERMINED BY CALCULATING THE AVERAGE MONTHLY NUMBER OF EMPLOYEES EMPLOYED BY THE EMPLOYER AT THAT LOCATION DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR.

(II) EACH EMPLOYEE OF AN EMPLOYER SHALL BE INCLUDED IN THE CALCULATION MADE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH PROVIDED THAT THE EMPLOYEE WAS EMPLOYED BY THE EMPLOYER FOR AT LEAST 120 DAYS TOTAL AND AT LEAST 30 HOURS PER WEEK DURING THE IMMEDIATELY PRECEDING CALENDAR YEAR.

(B) THE PAID TIME OFF PROVIDED UNDER SUBSECTION (A) OF THIS SECTION SHALL ACCRUE AT A RATE OF AT LEAST 1 HOUR FOR EVERY 30 HOURS AN EMPLOYEE WORKS.

(C) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE TO EARN MORE THAN 40 HOURS OF PAID TIME OFF IN A YEAR.

(D) PAID TIME OFF SHALL BEGIN TO ACCRUE ON:

(1) OCTOBER 1, 2017; OR

(2) IF THE EMPLOYEE IS HIRED AFTER OCTOBER 1, 2017, THE DATE ON WHICH THE EMPLOYEE BEGINS EMPLOYMENT WITH THE EMPLOYER.

(E) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF AN EMPLOYEE HAS UNUSED PAID TIME OFF AT THE END OF A YEAR, THE EMPLOYEE MAY CARRY THE BALANCE OF THE PAID TIME OFF OVER TO THE FOLLOWING YEAR.

(2) AN EMPLOYER MAY NOT BE REQUIRED TO ALLOW AN EMPLOYEE TO CARRY OVER MORE THAN A TOTAL OF 40 HOURS OF PAID TIME OFF UNDER PARAGRAPH (1) OF THIS SUBSECTION.

3-1305.

(A) (1) IF AN EMPLOYEE BELIEVES THAT AN EMPLOYER HAS VIOLATED THIS SUBTITLE, THE EMPLOYEE MAY FILE A COMPLAINT WITH THE COMMISSIONER.

(Over)

(2) IF THE COMMISSIONER RECEIVES A COMPLAINT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL:

(I) TRY TO RESOLVE THE ISSUE INFORMALLY; OR

(II) DETERMINE WHETHER THE EMPLOYER HAS VIOLATED THIS SUBTITLE.

(3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER HAS VIOLATED THIS SUBTITLE, THE COMMISSIONER SHALL:

(I) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS SUBTITLE; AND

(II) IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL PENALTY OF:

1. UP TO \$300 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SUBTITLE; OR

2. UP TO \$600 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SUBTITLE IF THE VIOLATION OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD OCCURRED.

(4) THE ACTIONS TAKEN UNDER PARAGRAPHS (2)(II) AND (3) OF THIS SUBSECTION ARE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(5) IN DETERMINING THE AMOUNT OF ANY CIVIL PENALTY TO BE IMPOSED UNDER PARAGRAPH (3)(II) OF THIS SUBSECTION, THE COMMISSIONER SHALL CONSIDER:

(I) THE SERIOUSNESS OF THE VIOLATION;

(II) THE SIZE OF THE EMPLOYER'S BUSINESS;

(III) THE EMPLOYER'S GOOD FAITH IN COMPLYING WITH THIS SUBTITLE; AND

(IV) THE EMPLOYER'S HISTORY OF VIOLATIONS OF THIS SUBTITLE.

(6) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A FIRST VIOLATION UNDER PARAGRAPH (3) OF THIS SUBSECTION, THE COMMISSIONER MAY BRING AN ACTION TO ENFORCE THE ORDER AND ANY CIVIL PENALTY IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED.

(7) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED UNDER PARAGRAPH (3) OF THIS SUBSECTION, FOR A SUBSEQUENT VIOLATION AGAINST THE SAME EMPLOYEE THAT OCCURRED WITHIN 3 YEARS AFTER THE EMPLOYEE FILED A PREVIOUS COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD OCCURRED, THE ATTORNEY GENERAL MAY BRING AN ACTION FOR INJUNCTIVE RELIEF AND TO ENFORCE ANY ORDERS ISSUED UNDER PARAGRAPH (3) OF THIS SUBSECTION IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED.

(Over)

(8) IF THE ATTORNEY GENERAL PREVAILS IN AN ACTION BROUGHT UNDER PARAGRAPH (7) OF THIS SUBSECTION, THE ATTORNEY GENERAL MAY BE ENTITLED TO ACTUAL DAMAGES AND REASONABLE ATTORNEY’S FEES AND COURT COSTS.

On pages 3 through 16, strike in their entirety the lines beginning with line 16 on page 3 through line 4 on page 16, inclusive; in line 5, strike “**3-1311.**” and substitute “**3-1306.**”; in lines 6 and 7, strike “**MARYLAND HEALTHY WORKING FAMILIES**” and substitute “**COMMONSENSE PAID LEAVE**”; after line 7, insert:

“SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Tax – General

10-105.1.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “MEMBER” MEANS:

(I) A SHAREHOLDER OF AN S CORPORATION;

(II) A GENERAL OR LIMITED PARTNER OF A PARTNERSHIP, LIMITED PARTNERSHIP, OR LIMITED LIABILITY PARTNERSHIP;

(III) A MEMBER OF A LIMITED LIABILITY COMPANY;

(IV) A BENEFICIARY OF A BUSINESS TRUST OR STATUTORY TRUST; OR

(V) A SOLE PROPRIETOR.

(3) (I) “NONPASSIVE INCOME” MEANS INCOME OTHER THAN INCOME FROM PASSIVE ACTIVITY AS DETERMINED UNDER § 469 OF THE INTERNAL REVENUE CODE.

(II) “NONPASSIVE INCOME” DOES NOT INCLUDE WAGES, INTEREST, DIVIDENDS, OR CAPITAL GAINS.

(4) “PASS-THROUGH ENTITY” MEANS:

(I) AN S CORPORATION;

(II) A PARTNERSHIP;

(III) A LIMITED LIABILITY COMPANY THAT IS NOT TAXED AS A CORPORATION UNDER THIS TITLE;

(IV) A BUSINESS TRUST OR STATUTORY TRUST THAT IS NOT TAXED AS A CORPORATION UNDER THIS TITLE; OR

(V) A SOLE PROPRIETORSHIP.

(B) (1) AN INDIVIDUAL WHO IS A MEMBER OF A PASS-THROUGH ENTITY THAT MEETS THE REQUIREMENTS OF THIS SECTION AND TITLE 3, SUBTITLE 13 OF THE LABOR AND EMPLOYMENT ARTICLE MAY SUBTRACT FROM

FEDERAL ADJUSTED GROSS INCOME TO DETERMINE MARYLAND ADJUSTED GROSS INCOME THE FIRST \$20,000 OF NONPASSIVE INCOME THAT IS ATTRIBUTABLE TO A PASS-THROUGH ENTITY.

(2) THE SUBTRACTION UNDER THIS SECTION APPLIES TO NONPASSIVE INCOME ATTRIBUTABLE TO A PASS-THROUGH ENTITY IF:

(I) THE TAXPAYER MATERIALLY PARTICIPATES IN THE DAY-TO-DAY OPERATIONS OF THE TRADE OR BUSINESS;

(II) THE PASS-THROUGH ENTITY EMPLOYS AT LEAST ONE PERSON WHO IS NOT A MEMBER OF THE PASS-THROUGH ENTITY; AND

(III) AT LEAST 1,200 AGGREGATE HOURS OF WORK IN THE STATE ARE PERFORMED BY THE CLOSE OF THE TAXABLE YEAR FOR WHICH THE SUBTRACTION IS TAKEN BY EMPLOYEES WHO MEET THE REQUIREMENTS OF THIS PARAGRAPH AND WHO ARE EMPLOYED BY THE PASS-THROUGH ENTITY.

(3) IN DETERMINING WHETHER THE REQUIREMENT UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION IS MET, ONLY HOURS WORKED IN A WEEK IN WHICH THE EMPLOYEE WORKS AT LEAST 30 HOURS MAY BE CONSIDERED.

(C) (1) AN INDIVIDUAL IS NOT ELIGIBLE FOR THE SUBTRACTION UNDER THIS SECTION IF THE INDIVIDUAL HAS FEDERAL ADJUSTED GROSS INCOME FOR THE TAXABLE YEAR THAT EXCEEDS \$200,000.

(2) A MARRIED COUPLE FILING A JOINT RETURN IS NOT ELIGIBLE FOR THE SUBTRACTION UNDER THIS SECTION IF THE MARRIED COUPLE HAS

**FEDERAL ADJUSTED GROSS INCOME FOR THE TAXABLE YEAR THAT EXCEEDS
\$250,000.**;

strike in their entirety lines 8 through 12, inclusive; and strike line 14 in its entirety and substitute "October 1, 2017, and Section 2 of this Act shall be applicable to all taxable years beginning after December 31, 2017.".