

HB0398/463698/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 398

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, after “K. Young,” insert “Fennell,”; in line 2, strike “Equal Pay – Job Announcement and”; and strike beginning with “requiring” in line 4 down through “employee;” in line 8.

On page 3, in line 31, strike “**§ 3-304.2(D)**” and substitute “**§ 3-304.2(B)**”.

On page 4, strike beginning with “**AN**” in line 3 down through “**(D)**” in line 19.

AMENDMENT NO. 2

On page 1, strike beginning with “, except” in line 10 down through “circumstances,” in line 11; and strike beginning with “authorizing” in line 12 down through “circumstances;” in line 13 and substitute “prohibiting an employer from violating a certain provision of law; specifying that an employer is not subject to a certain criminal penalty for a violation of certain provisions of this Act; requiring the Commissioner of Labor and Industry to issue a certain order under certain circumstances; authorizing the Commissioner to assess a certain penalty not exceeding a certain amount under certain circumstances; requiring the Commissioner to consider certain factors when determining the amount of a certain penalty; specifying that, if the Commissioner assesses a certain penalty, the penalty shall be subject to certain hearing and notice provisions of law;”.

On page 4, in line 19, strike “**(1)**”; and in lines 20, 23, and 25, strike “**(I)**”, “**(II)**”, and “**1.**”, respectively, and substitute “**(1)**”, “**(2)**”, and “**(I)**”, respectively.

(Over)

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On page 5, in lines 1, 6, 7, 9, and 10, strike “**2.**”, “**A.**”, “**B.**”, “**C.**”, and “**D.**”, respectively, and substitute “**(II)**”, “**1.**”, “**2.**”, “**3.**”, and “**4.**”, respectively; strike beginning with “**EXCEPT**” in line 1 down through “**SUBSECTION,**” in line 2; and strike in their entirety lines 11 through 22, inclusive.

AMENDMENT NO. 3

On page 1, in line 18, after “3-304.1” insert “and 3-308”.

On page 5, after line 22, insert:

“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

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

(5) VIOLATE § 3-304.2 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) (1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, 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.

(2) AN EMPLOYER IS NOT SUBJECT TO THE PENALTY UNDER PARAGRAPH (1) OF THIS SUBSECTION FOR A VIOLATION OF § 3-304.2 OF THIS SUBTITLE.

(Over)

(E) (1) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS VIOLATED § 3-304.2 OF THIS SUBTITLE, THE COMMISSIONER:

(I) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND

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

1. UP TO \$300 FOR EACH APPLICANT FOR EMPLOYMENT OR EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE; OR

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

(2) IN DETERMINING THE AMOUNT OF THE PENALTY, IF ASSESSED, THE COMMISSIONER SHALL CONSIDER:

(I) THE GRAVITY OF THE VIOLATION;

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

(III) THE EMPLOYER'S GOOD FAITH; AND

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

(3) IF THE COMMISSIONER ASSESSES A PENALTY UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION, THE PENALTY SHALL BE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

AMENDMENT NO. 4

On page 1, in line 14, after “Act;” insert “providing for the construction of certain provisions of this Act; providing for a delayed effective date.”

On page 5, after line 10, insert:

“(C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN APPLICANT FOR EMPLOYMENT FROM VOLUNTARILY SHARING SALARY HISTORY INFORMATION WITH AN EMPLOYER.”

AMENDMENT NO. 5

On page 5, in line 24, strike “October 1, 2017” and substitute “January 1, 2018”.