

SENATE BILL 305

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7lr0177
CF 7lr0178

By: **The President (By Request – Administration)**

Introduced and read first time: January 20, 2017

Assigned to: Finance and Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Commonsense Paid Leave Act**

3 FOR the purpose of requiring certain employers to provide employees with certain paid
4 time off; providing for the method of determining whether an employer is required
5 to provide paid time off; providing for the manner in which paid time off is accrued
6 by the employee and treated by the employer; authorizing an employee to file a
7 complaint with the Commissioner of Labor and Industry under certain
8 circumstances; requiring the Commissioner to take certain action under certain
9 circumstances; providing that certain actions are subject to certain notice and
10 hearing requirements; requiring the Commissioner to consider certain factors in
11 determining the amount of a certain civil penalty; authorizing the Commissioner and
12 the Attorney General to bring certain actions; providing that the Attorney General
13 is entitled to certain fees and costs under certain circumstances; authorizing the
14 Commissioner to conduct an investigation, under certain circumstances, to
15 determine whether certain provisions of this Act have been violated; allowing a
16 subtraction modification under the State income tax for up to a certain amount of
17 nonpassive income attributable to certain pass-through entities that meet certain
18 requirements; providing that the subtraction modification applies only to the
19 nonpassive income of a member of an eligible pass-through entity if certain
20 conditions are met; providing that certain individuals and married couples with
21 federal adjusted gross income in excess of certain amounts are not eligible for the
22 subtraction modification; providing for the application of certain provisions of this
23 Act; defining certain terms; and generally relating to paid leave.

24 BY repealing and reenacting, with amendments,
25 Article – Labor and Employment
26 Section 2–106(b)
27 Annotated Code of Maryland
28 (2016 Replacement Volume)

29 BY adding to

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Labor and Employment
 2 Section 3–103(k); and 3–1301 through 3–1306 to be under the new subtitle “Subtitle
 3 13. Common Sense Paid Leave Act”
 4 Annotated Code of Maryland
 5 (2016 Replacement Volume)

6 BY adding to
 7 Article – Tax – General
 8 Section 10–105.1
 9 Annotated Code of Maryland
 10 (2016 Replacement Volume)

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

13 **Article – Labor and Employment**

14 2–106.

15 (b) Except as provided in subsection (c) of this section, and in addition to authority
 16 to adopt regulations that is set forth elsewhere, the Commissioner may adopt regulations
 17 that are necessary to carry out:

- 18 (1) Title 3, Subtitle 3 of this article;
 19 (2) Title 3, Subtitle 5 of this article;
 20 (3) **TITLE 3, SUBTITLE 13 OF THIS ARTICLE;**
 21 (4) Title 4, Subtitle 2, Parts I through III of this article;
 22 [(4)] (5) Title 5 of this article;
 23 [(5)] (6) Title 6 of this article; and
 24 [(6)] (7) Title 7 of this article.

25 3–103.

26 (K) **THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE**
 27 **WHETHER SUBTITLE 13 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A**
 28 **WRITTEN COMPLAINT BY AN EMPLOYEE.**

29 **SUBTITLE 13. COMMON SENSE PAID LEAVE ACT.**

30 **3–1301.**

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

3 (B) "EMPLOYEE" DOES NOT INCLUDE AN INDIVIDUAL WHO:

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

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

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

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

13 (C) "EMPLOYER" INCLUDES:

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

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

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

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

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

21 3-1302.

22 (A) THIS SUBTITLE MAY NOT BE CONSTRUED TO:

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

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

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

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

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

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

15 **3-1303.**

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

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

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

21 **(3) IS EMPLOYED IN THE CONSTRUCTION INDUSTRY;**

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

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

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

29 **(1) A JANITOR;**

- 1 **(2) A BUILDING CLEANER;**
- 2 **(3) A BUILDING SECURITY OFFICER;**
- 3 **(4) A CONCIERGE;**
- 4 **(5) A DOORPERSON;**
- 5 **(6) A HANDYPERSON; OR**
- 6 **(7) A BUILDING SUPERINTENDENT.**

7 **3-1304.**

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

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

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

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

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

26 **(II) EACH EMPLOYEE OF AN EMPLOYER SHALL BE INCLUDED IN**
27 **THE CALCULATION MADE UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH**
28 **PROVIDED THAT THE EMPLOYEE WAS EMPLOYED BY THE EMPLOYER FOR AT LEAST**
29 **120 DAYS TOTAL AND AT LEAST 30 HOURS PER WEEK DURING THE IMMEDIATELY**
30 **PRECEDING CALENDAR YEAR.**

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

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

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

7 **(1) OCTOBER 1, 2017; OR**

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

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

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

16 **3-1305.**

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

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

21 **(I) TRY TO RESOLVE THE ISSUE INFORMALLY; OR**

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

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

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

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

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

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

7 (4) THE ACTIONS TAKEN UNDER PARAGRAPHS (2)(II) AND (3) OF THIS
8 SUBSECTION ARE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE
9 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

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

13 (I) THE SERIOUSNESS OF THE VIOLATION;

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

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

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

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

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

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

5 3-1306.

6 THIS SUBTITLE MAY BE CITED AS THE COMMON SENSE PAID LEAVE ACT.

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

9 Article – Tax – General

10 10-105.1.

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

13 (2) “MEMBER” MEANS:

14 (I) A SHAREHOLDER OF AN S CORPORATION;

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

17 (III) A MEMBER OF A LIMITED LIABILITY COMPANY;

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

20 (V) A SOLE PROPRIETOR.

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

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

26 (4) “PASS-THROUGH ENTITY” MEANS:

27 (I) AN S CORPORATION;

1 (II) A PARTNERSHIP;

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

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

6 (V) A SOLE PROPRIETORSHIP.

7 (B) (1) AN INDIVIDUAL WHO IS A MEMBER OF A PASS-THROUGH ENTITY
8 THAT MEETS THE REQUIREMENTS OF THIS SECTION AND TITLE 3, SUBTITLE 13 OF
9 THE LABOR AND EMPLOYMENT ARTICLE MAY SUBTRACT FROM FEDERAL ADJUSTED
10 GROSS INCOME TO DETERMINE MARYLAND ADJUSTED GROSS INCOME THE FIRST
11 \$20,000 OF NONPASSIVE INCOME THAT IS ATTRIBUTABLE TO A PASS-THROUGH
12 ENTITY.

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

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

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

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

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

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

29 (2) A MARRIED COUPLE FILING A JOINT RETURN IS NOT ELIGIBLE
30 FOR THE SUBTRACTION UNDER THIS SECTION IF THE MARRIED COUPLE HAS
31 FEDERAL ADJUSTED GROSS INCOME FOR THE TAXABLE YEAR THAT EXCEEDS
32 \$250,000.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2017, and Section 2 of this Act shall be applicable to all taxable years beginning
3 after December 31, 2017.