

# SENATE BILL 404

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CF HB 398

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By: **Senators Lee, Benson, Guzzone, Kagan, King, Nathan–Pulliam, Robinson,  
Smith, Young, and Zucker**

Introduced and read first time: January 27, 2017

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Equal Pay – Job Announcement and Salary History**  
3 **Information Disclosures**

4 FOR the purpose of requiring certain employers to include certain information in a job  
5 announcement to recruit an employee or independent contractor to fill a position  
6 within the employer’s organization; prohibiting certain employers from paying less  
7 than the minimum rate of pay included in a certain job announcement to a certain  
8 employee; prohibiting certain employers from seeking salary history information by  
9 certain methods for an employee, screening an applicant for employment based on  
10 the applicant’s salary history by taking certain actions, and providing, except under  
11 certain circumstances, salary history information to a prospective employer;  
12 authorizing certain employers to seek the salary history of an applicant for  
13 employment for a certain purpose under certain circumstances; providing for the  
14 application of certain provisions of this Act; making a conforming change; and  
15 generally relating to job announcements and salary history information disclosures.

16 BY repealing and reenacting, with amendments,

17 Article – Labor and Employment

18 Section 3–304.1

19 Annotated Code of Maryland

20 (2016 Replacement Volume)

21 BY adding to

22 Article – Labor and Employment

23 Section 3–304.2

24 Annotated Code of Maryland

25 (2016 Replacement Volume)

26 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

27 That the Laws of Maryland read as follows:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Labor and Employment**

3–304.1.

(a) An employer may not:

(1) prohibit an employee from:

(i) inquiring about, discussing, or disclosing the wages of the employee or another employee; or

(ii) requesting that the employer provide a reason for why the employee's wages are a condition of employment;

(2) require an employee to sign a waiver or any other document that purports to deny the employee the right to disclose or discuss the employee's wages; or

(3) take any adverse employment action against an employee for:

(i) inquiring about another employee's wages;

(ii) disclosing the employee's own wages;

(iii) discussing another employee's wages if those wages have been disclosed voluntarily;

(iv) asking the employer to provide a reason for the employee's wages; or

(v) aiding or encouraging another employee's exercise of rights under this section.

(b) (1) Subject to paragraph (2) of this subsection, an employer may, in a written policy provided to each employee, establish reasonable workday limitations on the time, place, and manner for inquiries about or the discussion or disclosure of employee wages.

(2) A limitation established under paragraph (1) of this subsection shall be consistent with standards adopted by the Commissioner and all other State and federal laws.

(3) Subject to subsection (d) of this section, limitations established under paragraph (1) of this subsection may include prohibiting an employee from discussing or disclosing the wages of another employee without that employee's prior permission.

1 (c) Except as provided in subsection (d) of this section, the failure of an employee  
2 to adhere to a reasonable limitation included in a written policy under subsection (b) of this  
3 section shall be an affirmative defense to a claim made against an employer by the  
4 employee under this section if the adverse employment action taken by the employer was  
5 for a failure to adhere to the reasonable limitation and not for an inquiry, a discussion, or  
6 a disclosure of wages in accordance with the limitation.

7 (d) (1) A prohibition established in accordance with subsection (b)(3) of this  
8 section against the discussion or disclosure of the wages of another employee without that  
9 employee's prior permission may not apply to instances in which an employee who has  
10 access to the wage information of other employees as a part of the employee's essential job  
11 functions if the discussion or disclosure is in response to a complaint or charge or in  
12 furtherance of an investigation, a proceeding, a hearing, or an action under this subtitle,  
13 including an investigation conducted by the employer.

14 (2) If an employee who has access to wage information as part of the  
15 essential functions of the employee's job discloses the employee's own wages or wage  
16 information about another employee obtained outside the performance of the essential  
17 functions of the employee's job, the employee shall be entitled to all the protections afforded  
18 under this subtitle.

19 (e) Nothing in this section shall be construed to:

20 (1) require an employee to disclose the employee's wages;

21 (2) diminish employees' rights to negotiate the terms and conditions of  
22 employment under federal, State, or local law;

23 (3) limit the rights of an employee provided under any other provision of  
24 law or collective bargaining agreement;

25 (4) create an obligation on any employer or employee to disclose wages;

26 (5) permit an employee, without the written consent of an employer, to  
27 disclose proprietary information, trade secret information, or information that is otherwise  
28 subject to a legal privilege or protected by law; or

29 (6) permit an employee to disclose wage information:

30 (I) to a competitor of the employer; OR

31 (II) IN VIOLATION OF § 3-304.2(D) OF THIS SUBTITLE.

32 **3-304.2.**

1           **(A) THIS SECTION APPLIES ONLY TO AN EMPLOYER THAT EMPLOYS 15 OR**  
2 **MORE EMPLOYEES.**

3           **(B) AN EMPLOYER SHALL INCLUDE IN A JOB ANNOUNCEMENT TO RECRUIT**  
4 **AN EMPLOYEE OR INDEPENDENT CONTRACTOR TO FILL A POSITION WITHIN THE**  
5 **EMPLOYER'S ORGANIZATION THE FOLLOWING INFORMATION:**

6                   **(1) THE MINIMUM RATE OF PAY;**

7                   **(2) WHETHER THE PAY IS CALCULATED:**

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

9                           **(II) AS A SALARY;**

10                           **(III) AS A COMMISSION; OR**

11                           **(IV) BY ANOTHER METHOD;**

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

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

16           **(C) AN EMPLOYER MAY NOT PAY LESS THAN THE MINIMUM RATE OF PAY**  
17 **INCLUDED IN A JOB ANNOUNCEMENT UNDER SUBSECTION (B) OF THIS SECTION TO**  
18 **AN EMPLOYEE WHO IS HIRED TO FILL THE POSITION ANNOUNCED.**

19           **(D) (1) AN EMPLOYER MAY NOT:**

20                           **(I) SEEK ORALLY, IN WRITING, OR THROUGH AN EMPLOYEE OR**  
21 **AN AGENT SALARY HISTORY INFORMATION, INCLUDING COMPENSATION AND**  
22 **BENEFITS, FOR AN EMPLOYEE; OR**

23                           **(II) SCREEN AN APPLICANT FOR EMPLOYMENT BASED ON THE**  
24 **APPLICANT'S SALARY HISTORY BY:**

25                                   **1. REQUIRING THAT THE APPLICANT'S SALARY HISTORY,**  
26 **INCLUDING COMPENSATION AND BENEFITS, SATISFY MINIMUM OR MAXIMUM**  
27 **CRITERIA; OR**

1                   **2. EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
2 **SUBSECTION, SEEKING ORALLY, IN WRITING, OR THROUGH AN EMPLOYEE OR AN**  
3 **AGENT SALARY HISTORY INFORMATION, INCLUDING COMPENSATION AND**  
4 **BENEFITS, FOR THE APPLICANT, INCLUDING BY REQUESTING OR REQUIRING THAT**  
5 **THE APPLICANT PROVIDE SALARY HISTORY INFORMATION AS A CONDITION OF:**

6                   **A. BEING INTERVIEWED;**

7                   **B. CONTINUING TO BE CONSIDERED FOR AN OFFER OF**  
8 **EMPLOYMENT;**

9                   **C. AN OFFER OF EMPLOYMENT; OR**

10                   **D. AN OFFER OF COMPENSATION.**

11                   **(2) AN EMPLOYER MAY SEEK THE SALARY HISTORY OF AN APPLICANT**  
12 **FOR EMPLOYMENT FOR THE SOLE PURPOSE OF CONFIRMING THE APPLICANT'S**  
13 **SALARY HISTORY IF:**

14                   **(I) THE EMPLOYER HAS MADE AN OFFER OF EMPLOYMENT**  
15 **THAT INCLUDES AN OFFER OF SPECIFIC COMPENSATION TO THE APPLICANT FOR**  
16 **EMPLOYMENT; AND**

17                   **(II) THE APPLICANT FOR EMPLOYMENT AUTHORIZES THE**  
18 **EMPLOYER TO SEEK THE SALARY HISTORY INFORMATION.**

19                   **(3) AN EMPLOYER MAY NOT PROVIDE THE SALARY HISTORY OF A**  
20 **CURRENT OR FORMER EMPLOYEE TO A PROSPECTIVE EMPLOYER, UNLESS THE**  
21 **PROSPECTIVE EMPLOYER IS SEEKING THE SALARY HISTORY UNDER PARAGRAPH (2)**  
22 **OF THIS SUBSECTION.**

23                   **SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect**  
24 **October 1, 2017.**