

HOUSE BILL 512

K3

8lr1035
CF SB 377

By: Delegates K. Young, Fennell, Angel, Barron, Barve, Brooks, Carr, Clippinger, Cullison, Ebersole, Fraser-Hidalgo, Frick, Gutierrez, Hayes, Hettleman, Hill, C. Howard, Jackson, Jones, Kelly, Korman, Krimm, J. Lewis, R. Lewis, Lierman, Lisanti, Luedtke, McIntosh, Metzgar, A. Miller, Moon, Morales, Morhaim, Pena-Melnyk, Platt, Queen, Robinson, Sample-Hughes, Tarlau, Turner, Valderrama, M. Washington, Wilkins, and P. Young

Introduced and read first time: January 26, 2018

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Pay Scales and Wage History Information**

3 FOR the purpose of requiring an employer to provide the pay scale for a position to an
4 applicant for employment on request; prohibiting employers from relying on wage
5 history information, except under certain circumstances, for certain purposes and
6 from seeking the wage history information by certain methods and from certain
7 persons; prohibiting an employer from refusing to take certain action or otherwise
8 retaliating against an applicant for employment or an employee because the
9 applicant or employee did not provide wage history information and from violating
10 certain provisions of this Act; specifying that an affected employee or applicant for
11 employment may bring a certain action against an employer if an employer knew or
12 should have known that the employer's action violates certain provisions of this Act;
13 specifying that an employer is not subject to a certain criminal penalty for a violation
14 of certain provisions of this Act; requiring the Commissioner of Labor and Industry
15 to issue a certain order under certain circumstances; authorizing the Commissioner
16 to assess a certain penalty not exceeding a certain amount under certain
17 circumstances; requiring the Commissioner to consider certain factors when
18 determining the amount of a certain penalty; specifying that, if the Commissioner
19 assesses a certain penalty, the penalty shall be subject to certain hearing and notice
20 provisions of law; providing for the construction of certain provisions of this Act;
21 providing for a delayed effective date; making a conforming change; and generally
22 relating to pay scales and wage history information.

23 BY adding to
24 Article – Labor and Employment
25 Section 3–304.2

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2016 Replacement Volume and 2017 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article – Labor and Employment
5 Section 3–307(a)(2) and 3–308
6 Annotated Code of Maryland
7 (2016 Replacement Volume and 2017 Supplement)

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

10 **Article – Labor and Employment**

11 **3–304.2.**

12 (A) AN EMPLOYER SHALL PROVIDE THE PAY SCALE FOR A POSITION TO AN
13 APPLICANT FOR EMPLOYMENT ON REQUEST.

14 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
15 AN EMPLOYER MAY NOT:

16 (I) RELY ON THE WAGE HISTORY OF AN APPLICANT FOR
17 EMPLOYMENT IN SCREENING OR CONSIDERING THE APPLICANT FOR EMPLOYMENT
18 OR IN DETERMINING THE WAGES FOR THE APPLICANT;

19 (II) RELY ON THE WAGE HISTORY OF AN EMPLOYEE IN
20 CONSIDERING THE EMPLOYEE FOR A NEW POSITION WITH THE EMPLOYER,
21 INCLUDING PROMOTION, OR IN DETERMINING THE WAGES FOR THE EMPLOYEE; OR

22 (III) SEEK THE WAGE HISTORY INFORMATION:

23 1. FOR AN APPLICANT FOR EMPLOYMENT ORALLY, IN
24 WRITING, OR THROUGH AN EMPLOYEE OR AN AGENT OR FROM A CURRENT OR
25 FORMER EMPLOYER; OR

26 2. FOR ANY EMPLOYEE FROM A FORMER EMPLOYER.

27 (2) AN EMPLOYER MAY RELY ON WAGE HISTORY IF:

28 (I) THE EMPLOYER MAKES AN OFFER OF EMPLOYMENT, WITH
29 AN OFFER OF COMPENSATION, TO THE APPLICANT AND THE APPLICANT
30 THEREAFTER VOLUNTARILY PROVIDES THE APPLICANT'S WAGE HISTORY TO
31 SUPPORT A WAGE HIGHER THAN THE WAGE OFFERED BY THE EMPLOYER;

1 **(II) THE EMPLOYER MAKES AN OFFER OF A NEW POSITION, WITH**
2 **AN OFFER OF COMPENSATION, TO AN EMPLOYEE, AND THE EMPLOYEE THEREAFTER**
3 **VOLUNTARILY PROVIDES THE EMPLOYEE'S WAGE HISTORY TO SUPPORT A WAGE**
4 **HIGHER THAN THE WAGE OFFERED BY THE EMPLOYER; OR**

5 **(III) THE EMPLOYER IS USING THE EMPLOYEE'S WAGE HISTORY**
6 **WITH THE EMPLOYER TO SUPPORT PAYING A HIGHER WAGE TO THE EMPLOYEE**
7 **THAN THE EMPLOYER WOULD OTHERWISE PAY THE EMPLOYEE FOR THE POSITION.**

8 **(C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN APPLICANT**
9 **FOR EMPLOYMENT OR AN EMPLOYEE FROM SHARING WAGE HISTORY INFORMATION**
10 **WITH AN EMPLOYER VOLUNTARILY AND WITHOUT PROMPTING.**

11 3-307.

12 (a) (2) If an employer knew or reasonably should have known that the
13 employer's action violates § 3-304.1 **OR § 3-304.2** of this subtitle, an affected employee **OR**
14 **APPLICANT FOR EMPLOYMENT** may bring an action against the employer for injunctive
15 relief and to recover actual damages [and], an additional equal amount as liquidated
16 damages, **AND SPECIAL DAMAGES NOT TO EXCEED \$10,000.**

17 3-308.

18 (a) An employer may not:

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

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

22 (3) refuse entry to the Commissioner or an authorized representative of the
23 Commissioner into a place of employment that the Commissioner is authorized under this
24 subtitle to inspect; [or]

25 (4) discharge or otherwise discriminate against an employee because the
26 employee:

27 (i) makes a complaint to the employer, the Commissioner, or
28 another person;

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

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

1 **(5) REFUSE TO INTERVIEW, HIRE, PROMOTE, OR OTHERWISE EMPLOY,**
2 **OR OTHERWISE RETALIATE AGAINST, AN APPLICANT FOR EMPLOYMENT OR AN**
3 **EMPLOYEE BECAUSE THE APPLICANT OR EMPLOYEE DID NOT PROVIDE WAGE**
4 **HISTORY; OR**

5 **(6) VIOLATE § 3-304.2(A) OR (B) OF THIS SUBTITLE.**

6 (b) An employee may not:

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

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

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

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

14 (c) The Commissioner may bring an action for injunctive relief and damages
15 against a person who violates subsection (a)(1) [or], (4), **(5), OR (6)** or subsection (b)(1), (3),
16 or (4) of this section.

17 (d) **(1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
18 **SUBSECTION, AN** employer who violates any provision of subsection (a)(2) or (3) of this
19 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$300.

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

23 **(E) (1) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS**
24 **VIOLATED § 3-304.2(A) OR (B) OF THIS SUBTITLE, THE COMMISSIONER:**

25 **(I) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND**

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

28 **1. UP TO \$1,000 FOR EACH APPLICANT FOR**
29 **EMPLOYMENT OR EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE; OR**

30 **2. UP TO \$5,000 FOR EACH APPLICANT FOR**

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

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

7 (I) THE GRAVITY OF THE VIOLATION;

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

9 (III) THE EMPLOYER'S GOOD FAITH; AND

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

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 January 1, 2019.