

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, Metzger, 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

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2018

CHAPTER _____

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 prohibiting certain employers from seeking wage history information by certain
14 methods for an employee and screening an applicant for employment based on the
15 applicant's wage history by taking certain actions; prohibiting an employer from
16 violating a certain provision of law; specifying that an employer is not subject to a
17 certain criminal penalty for a violation of certain provisions of this Act; requiring the
18 Commissioner of Labor and Industry to issue a certain order under certain
19 circumstances; authorizing the Commissioner to assess a certain penalty not
20 exceeding a certain amount under certain circumstances; requiring the

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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; providing for the construction of certain provisions of this Act; providing for the application of certain provisions of this Act; providing for a delayed effective date; making a conforming change; and generally relating to ~~pay scales and~~ wage history information.

BY repealing and reenacting, with amendments,

Article – Labor and Employment

Section 3–304.1(e) and 3–308

Annotated Code of Maryland

(2016 Replacement Volume and 2017 Supplement)

BY adding to

Article – Labor and Employment

Section 3–304.2

Annotated Code of Maryland

(2016 Replacement Volume and 2017 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Labor and Employment~~

~~Section 3–307(a)(2) and 3–308~~

~~Annotated Code of Maryland~~

~~(2016 Replacement Volume and 2017 Supplement)~~

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

Article – Labor and Employment

3–304.1.

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

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

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

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

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

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

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

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

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

4 3-304.2.

5 (A) THIS SECTION APPLIES ONLY TO AN EMPLOYER THAT EMPLOYS 15 OR
6 MORE EMPLOYEES. AN EMPLOYER SHALL PROVIDE THE PAY SCALE FOR A POSITION
7 TO AN APPLICANT FOR EMPLOYMENT ON REQUEST.

8 (B) (1) ~~EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,~~
9 ~~AN AN EMPLOYER MAY NOT:~~

10 (I) ~~RELY ON THE WAGE HISTORY OF AN APPLICANT FOR~~
11 ~~EMPLOYMENT IN SCREENING OR CONSIDERING THE APPLICANT FOR EMPLOYMENT~~
12 ~~OR IN DETERMINING THE WAGES FOR THE APPLICANT;~~

13 (II) ~~RELY ON THE WAGE HISTORY OF AN EMPLOYEE IN~~
14 ~~CONSIDERING THE EMPLOYEE FOR A NEW POSITION WITH THE EMPLOYER,~~
15 ~~INCLUDING PROMOTION, OR IN DETERMINING THE WAGES FOR THE EMPLOYEE; OR~~

16 (III) ~~SEEK THE WAGE HISTORY INFORMATION:~~

17 1. ~~FOR AN APPLICANT FOR EMPLOYMENT ORALLY, IN~~
18 ~~WRITING, OR THROUGH AN EMPLOYEE OR AN AGENT OR FROM A CURRENT OR~~
19 ~~FORMER EMPLOYER; OR~~

20 2. ~~FOR ANY EMPLOYEE FROM A FORMER EMPLOYER.~~

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

22 (I) ~~THE EMPLOYER MAKES AN OFFER OF EMPLOYMENT, WITH~~
23 ~~AN OFFER OF COMPENSATION, TO THE APPLICANT AND THE APPLICANT~~
24 ~~THEREAFTER VOLUNTARILY PROVIDES THE APPLICANT'S WAGE HISTORY TO~~
25 ~~SUPPORT A WAGE HIGHER THAN THE WAGE OFFERED BY THE EMPLOYER;~~

26 (II) SEEK ORALLY, IN WRITING, OR THROUGH AN EMPLOYEE OR
27 AN AGENT WAGE HISTORY INFORMATION, INCLUDING COMPENSATION AND
28 BENEFITS, FOR AN EMPLOYEE; OR

(II) SCREEN AN APPLICANT FOR EMPLOYMENT BASED ON THE APPLICANT’S WAGE HISTORY BY:

1. REQUIRING THAT THE APPLICANT’S WAGE HISTORY, INCLUDING COMPENSATION AND BENEFITS, SATISFY MINIMUM OR MAXIMUM CRITERIA; OR

2. SEEKING ORALLY, IN WRITING, OR THROUGH AN EMPLOYEE OR AN AGENT WAGE HISTORY INFORMATION, INCLUDING COMPENSATION AND BENEFITS, FOR THE APPLICANT, INCLUDING BY REQUESTING OR REQUIRING THAT THE APPLICANT PROVIDE WAGE HISTORY INFORMATION AS A CONDITION OF:

A. BEING INTERVIEWED;

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

C. AN OFFER OF EMPLOYMENT; OR

D. AN OFFER OF COMPENSATION.

~~(H) THE EMPLOYER MAKES AN OFFER OF A NEW POSITION, WITH AN OFFER OF COMPENSATION, TO AN EMPLOYEE, AND THE EMPLOYEE THEREAFTER VOLUNTARILY PROVIDES THE EMPLOYEE’S WAGE HISTORY TO SUPPORT A WAGE HIGHER THAN THE WAGE OFFERED BY THE EMPLOYER; OR~~

~~(H) THE EMPLOYER IS USING THE EMPLOYEE’S WAGE HISTORY WITH THE EMPLOYER TO SUPPORT PAYING A HIGHER WAGE TO THE EMPLOYEE THAN THE EMPLOYER WOULD OTHERWISE PAY THE EMPLOYEE FOR THE POSITION.~~

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

~~3-307.~~

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

3-308.

1 (a) An employer may not:

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

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

5 (3) refuse entry to the Commissioner or an authorized representative of the
6 Commissioner into a place of employment that the Commissioner is authorized under this
7 subtitle to inspect; **[or]**

8 (4) discharge or otherwise discriminate against an employee because the
9 employee:

10 (i) makes a complaint to the employer, the Commissioner, or
11 another person;

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

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

16 ~~(5) REFUSE TO INTERVIEW, HIRE, PROMOTE, OR OTHERWISE EMPLOY,~~
17 ~~OR OTHERWISE RETALIATE AGAINST, AN APPLICANT FOR EMPLOYMENT OR AN~~
18 ~~EMPLOYEE BECAUSE THE APPLICANT OR EMPLOYEE DID NOT PROVIDE WAGE~~
19 ~~HISTORY; OR~~

20 ~~(6) VIOLATE § 3-304.2(A) OR (B) § 3-304.2(B) OF THIS SUBTITLE.~~

21 (b) An employee may not:

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

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

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

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

29 (c) The Commissioner may bring an action for injunctive relief and damages
30 against a person who violates subsection (a)(1) ~~for~~, ~~(4), (5), OR (6)~~ (4) or subsection (b)(1),
31 (3), or (4) of this section.

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

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

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

9 (I) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND

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

12 1. UP TO ~~\$1,000~~ \$300 FOR EACH APPLICANT FOR
 13 EMPLOYMENT OR EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE; OR

14 2. UP TO ~~\$5,000~~ \$600 FOR EACH APPLICANT FOR
 15 EMPLOYMENT OR EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE IF
 16 THE VIOLATION OCCURRED WITHIN 3 YEARS AFTER AN APPLICANT FOR
 17 EMPLOYMENT OR EMPLOYEE FILED A PREVIOUS COMPLAINT THAT LED TO A
 18 DETERMINATION THAT A VIOLATION HAD OCCURRED.

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

21 (I) THE GRAVITY OF THE VIOLATION;

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

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

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

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

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