

SENATE BILL 738

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9lr1125
CF 9lr1101

By: **Senators Lee, Benson, Lam, Nathan–Pulliam, Washington, Young, and Zucker**
Introduced and read first time: February 4, 2019
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Wage History and Wage Range**

3 FOR the purpose of requiring an employer, on request, to provide to an applicant for
4 employment the wage range for the position for which the applicant applied;
5 prohibiting an employer from taking certain actions against an applicant for
6 employment under certain circumstances; prohibiting an employer from relying on
7 wage history, except under certain circumstances, for certain purposes, and from
8 seeking the wage history by certain methods and from certain persons; authorizing
9 an employer to seek to confirm the wage history of an applicant for employment
10 under certain circumstances; authorizing an affected applicant for employment to
11 bring a certain action against an employer if the employer’s action violates certain
12 provisions of this Act; authorizing an applicant for employment to bring a certain
13 action against an employer with certain other employees or applicants for
14 employment; prohibiting an employer from discharging or otherwise discriminating
15 against an applicant for employment under certain circumstances; prohibiting an
16 employer from violating certain provisions of this Act; specifying that an employer is
17 not subject to a certain criminal penalty for a violation of certain provisions of this
18 Act; requiring the Commissioner of Labor and Industry to issue a certain order under
19 certain circumstances; authorizing the Commissioner to bring a certain action
20 against a person who violates a certain provision of this Act and assess a certain
21 penalty not exceeding a certain amount under certain circumstances; requiring the
22 Commissioner to consider certain factors when determining the amount of a certain
23 penalty; specifying that, if the Commissioner assesses a certain penalty, the penalty
24 shall be subject to certain hearing and notice provisions of law; prohibiting an
25 applicant for employment from taking certain actions related to a certain action or
26 proceeding; providing for the construction of certain provisions of this Act; making a
27 conforming change; and generally relating to wage ranges and wage history.

28 BY repealing and reenacting, without amendments,
29 Article – Labor and Employment
30 Section 3–101(a) and (b)

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 2018 Supplement)

3 BY adding to
4 Article – Labor and Employment
5 Section 3–304.2
6 Annotated Code of Maryland
7 (2016 Replacement Volume and 2018 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Labor and Employment
10 Section 3–307(a) and 3–308
11 Annotated Code of Maryland
12 (2016 Replacement Volume and 2018 Supplement)

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

15 **Article – Labor and Employment**

16 3–101.

17 (a) In this title the following words have the meanings indicated.

18 (b) “Commissioner” means the Commissioner of Labor and Industry.

19 **3–304.2.**

20 (A) ON REQUEST, AN EMPLOYER SHALL PROVIDE TO AN APPLICANT FOR
21 EMPLOYMENT THE WAGE RANGE FOR THE POSITION FOR WHICH THE APPLICANT
22 APPLIED.

23 (B) (1) AN EMPLOYER MAY NOT:

24 (I) RETALIATE AGAINST OR REFUSE TO INTERVIEW, HIRE, OR
25 EMPLOY AN APPLICANT FOR EMPLOYMENT BECAUSE THE APPLICANT:

26 1. DID NOT PROVIDE WAGE HISTORY; OR

27 2. REQUESTED THE WAGE RANGE IN ACCORDANCE WITH
28 THIS SECTION FOR THE POSITION FOR WHICH THE APPLICANT APPLIED; AND

29 (II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
30 SUBSECTION:

31 1. RELY ON THE WAGE HISTORY OF AN APPLICANT FOR

1 EMPLOYMENT IN SCREENING OR CONSIDERING THE APPLICANT FOR EMPLOYMENT
2 OR IN DETERMINING THE WAGES FOR THE APPLICANT; OR

3 2. SEEK THE WAGE HISTORY FOR AN APPLICANT FOR
4 EMPLOYMENT ORALLY, IN WRITING, OR THROUGH AN EMPLOYEE OR AN AGENT OR
5 FROM A CURRENT OR FORMER EMPLOYER.

6 (2) AFTER AN EMPLOYER MAKES AN INITIAL OFFER OF EMPLOYMENT
7 WITH AN OFFER OF COMPENSATION TO AN APPLICANT FOR EMPLOYMENT, AN
8 EMPLOYER MAY:

9 (I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, RELY ON
10 THE WAGE HISTORY VOLUNTARILY PROVIDED BY THE APPLICANT FOR
11 EMPLOYMENT WITHOUT PROMPTING FROM THE EMPLOYER TO SUPPORT A WAGE
12 OFFER HIGHER THAN THE INITIAL WAGE OFFERED BY THE EMPLOYER; OR

13 (II) SEEK TO CONFIRM THE WAGE HISTORY VOLUNTARILY
14 PROVIDED BY THE APPLICANT FOR EMPLOYMENT TO SUPPORT A WAGE OFFER
15 HIGHER THAN THE INITIAL WAGE OFFERED BY THE EMPLOYER.

16 (3) AN EMPLOYER MAY RELY ON WAGE HISTORY UNDER PARAGRAPH
17 (2) OF THIS SUBSECTION ONLY IF THE HIGHER WAGE DOES NOT CREATE AN
18 UNLAWFUL PAY DIFFERENTIAL BASED ON PROTECTED CHARACTERISTICS UNDER §
19 3-304 OF THIS SUBTITLE.

20 (C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN APPLICANT
21 FOR EMPLOYMENT FROM SHARING WAGE HISTORY WITH AN EMPLOYER
22 VOLUNTARILY AND WITHOUT PROMPTING FROM THE EMPLOYER.

23 3-307.

24 (a) (1) If an employer knew or reasonably should have known that the
25 employer's action violates § 3-304 of this subtitle, an affected employee may bring an action
26 against the employer for injunctive relief and to recover the difference between the wages
27 paid to employees of one sex or gender identity and the wages paid to employees of another
28 sex or gender identity who do the same type work and an additional equal amount as
29 liquidated damages.

30 (2) If an employer knew or reasonably should have known that the
31 employer's action violates § 3-304.1 of this subtitle, an affected employee may bring an
32 action against the employer for injunctive relief and to recover actual damages and an
33 additional equal amount as liquidated damages.

34 (3) IF AN EMPLOYER VIOLATES § 3-304.2(A) OR (B)(1)(I) OF THIS
35 SUBTITLE, AN AFFECTED APPLICANT FOR EMPLOYMENT MAY BRING AN ACTION

1 AGAINST THE EMPLOYER FOR INJUNCTIVE RELIEF AND TO RECOVER ACTUAL
2 DAMAGES.

3 (4) IF AN EMPLOYER VIOLATES § 3-304.2(B)(1)(II) OF THIS SUBTITLE,
4 AN AFFECTED APPLICANT FOR EMPLOYMENT MAY BRING AN ACTION AGAINST THE
5 EMPLOYER:

6 (I) FOR INJUNCTIVE RELIEF; AND

7 (II) TO RECOVER, WHICHEVER IS GREATER:

8 1. ACTUAL DAMAGES; OR

9 2. SPECIAL DAMAGES, NOT TO EXCEED \$10,000.

10 [(3)] (5) An employee OR APPLICANT FOR EMPLOYMENT may bring an
11 action on behalf of the employee OR APPLICANT FOR EMPLOYMENT and other employees
12 OR APPLICANTS FOR EMPLOYMENT similarly affected.

13 3-308.

14 (a) An employer may not:

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

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

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

21 (4) discharge or otherwise discriminate against an employee OR
22 APPLICANT FOR EMPLOYMENT because the employee OR APPLICANT FOR
23 EMPLOYMENT:

24 (i) makes a complaint to the employer, the Commissioner, or
25 another person;

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

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

1 **(5) VIOLATE § 3-304.2 OF THIS SUBTITLE.**

2 (b) An employee **OR AN APPLICANT FOR EMPLOYMENT** may not:

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

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

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

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

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

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

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

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

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

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

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

26 **2. UP TO \$5,000 FOR EACH APPLICANT FOR**
27 **EMPLOYMENT FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE IF THE VIOLATION**
28 **OCCURRED WITHIN 3 YEARS AFTER AN APPLICANT FOR EMPLOYMENT FILED A**
29 **PREVIOUS COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD**
30 **OCCURRED.**

31 **(2) IN DETERMINING THE AMOUNT OF THE PENALTY, IF ASSESSED,**

1 THE COMMISSIONER SHALL CONSIDER:

2 (I) THE GRAVITY OF THE VIOLATION;

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

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

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

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2019.