

HOUSE BILL 136

K3

(PRE-FILED)

4r4567
CF SB 233

By: **Chair, Economic Matters Committee (By Request – Departmental – Labor)**

Requested: September 28, 2023

Introduced and read first time: January 10, 2024

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2024

CHAPTER _____

1 AN ACT concerning

2 **Employment Standards, Prevailing Wage, and Living Wage – Employer Adverse**
3 **Actions—~~Prohibition~~ and Enforcement**

4 FOR the purpose of prohibiting employers from taking or threatening to take adverse action
5 against an employee because the employee takes certain actions regarding rights
6 and responsibilities, complaints, investigations, proceedings, or hearings under
7 certain provisions of law; prohibiting an employer from hindering or delaying certain
8 persons in the enforcement of certain provisions of law; authorizing the
9 Commissioner of Labor and Industry to investigate a violation of this Act on the
10 Commissioner's own initiative or on receipt of a written complaint; prohibiting a
11 person from making or causing to be made a groundless or malicious complaint or
12 bringing, in bad faith, an action under or a proceeding related to the subject of certain
13 provisions of law; and generally relating to employer adverse actions related to and
14 enforcement of employment standards and conditions.

15 BY adding to
16 Article – Labor and Employment
17 Section 3–105
18 Annotated Code of Maryland
19 (2016 Replacement Volume and 2023 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Labor and Employment
22 Section 3–308 and 3–428

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.



1 Annotated Code of Maryland
2 (2016 Replacement Volume and 2023 Supplement)

3 BY repealing

4 Article – Labor and Employment
5 Section 3–912 and 3–916
6 Annotated Code of Maryland
7 (2016 Replacement Volume and 2023 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 **3–105.**

12 (A) THIS SECTION APPLIES ONLY TO AN EMPLOYER ACTION TAKEN UNDER:

13 (1) SUBTITLE 2 OF THIS TITLE;

14 ~~(1)~~ (2) SUBTITLE 3 OF THIS TITLE;

15 ~~(2)~~ (3) SUBTITLE 4 OF THIS TITLE;

16 (4) SUBTITLE 5 OF THIS TITLE;

17 ~~(3)~~ (5) SUBTITLE 9 OF THIS TITLE; OR

18 ~~(4) (6) TITLE 17, SUBTITLE 2 OF THE STATE FINANCE AND~~
19 ~~PROCUREMENT ARTICLE; OR~~

20 ~~(5)~~ TITLE 18 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

21 (B) AN EMPLOYER MAY NOT:

22 (1) DISCHARGE, DEMOTE, DISCRIMINATE AGAINST, TAKE OTHER
23 ADVERSE ACTION, OR THREATEN TO TAKE ADVERSE ACTION AGAINST AN EMPLOYEE
24 BECAUSE THE EMPLOYEE:

25 ~~(1)~~ (I) INQUIRES ABOUT THE RIGHTS AND RESPONSIBILITIES OF
26 THE EMPLOYER OR EMPLOYEE UNDER A PROVISION OF LAW LISTED IN SUBSECTION
27 (A) OF THIS SECTION;

28 ~~(2)~~ (II) MAKES A COMPLAINT, OR COMMUNICATES AN INTENT TO
29 MAKE A COMPLAINT, TO THE EMPLOYER, THE COMMISSIONER, OR ANOTHER

1 PERSON REGARDING A VIOLATION OF A PROVISION OF LAW LISTED IN SUBSECTION
2 (A) OF THIS SECTION; OR

3 ~~(3)~~ (III) TESTIFIES, INTENDS TO TESTIFY, OR OTHERWISE ASSISTS IN
4 ANY MANNER IN AN INVESTIGATION, PROCEEDING, OR HEARING UNDER A
5 PROVISION OF LAW LISTED IN SUBSECTION (A) OF THIS SECTION; OR

6 (2) HINDER OR DELAY THE COMMISSIONER OR AN AUTHORIZED
7 REPRESENTATIVE OF THE COMMISSIONER IN THE ENFORCEMENT OF THIS SECTION
8 OR A PROVISION OF LAW LISTED IN SUBSECTION (A) OF THIS SECTION.

9 (C) ~~NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE~~ THE
10 COMMISSIONER:

11 (1) MAY INVESTIGATE A VIOLATION OF THIS SECTION ON THE
12 COMMISSIONER'S OWN INITIATIVE OR ON RECEIPT OF A WRITTEN COMPLAINT; AND

13 (2) SHALL CONDUCT THE INVESTIGATION AND ENFORCEMENT OF A
14 VIOLATION OF THIS SECTION IN ACCORDANCE WITH SUBSECTIONS (D) AND (E) OF
15 THIS SECTION.

16 (D) (1) WITHIN 90 DAYS AFTER THE RECEIPT OF A WRITTEN COMPLAINT,
17 THE COMMISSIONER SHALL CONDUCT AN INVESTIGATION AND ATTEMPT TO
18 RESOLVE THE ISSUE INFORMALLY THROUGH MEDIATION.

19 (2) (I) IF THE COMMISSIONER IS UNABLE TO RESOLVE AN ISSUE
20 THROUGH MEDIATION DURING THE PERIOD STATED IN PARAGRAPH (1) OF THIS
21 SUBSECTION AND THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS
22 VIOLATED THIS SUBTITLE, THE COMMISSIONER SHALL ISSUE AN ORDER.

23 (II) AN ORDER ISSUED UNDER SUBPARAGRAPH (I) OF THIS
24 PARAGRAPH:

25 1. SHALL DESCRIBE THE VIOLATION;

26 2. SHALL DIRECT, IF APPROPRIATE, THE RECOVERY OF
27 LOST WAGES AND DAMAGES EQUAL TO THE AMOUNT OF WAGES, SALARY,
28 EMPLOYMENT BENEFITS, OR OTHER COMPENSATION DENIED OR LOST, AND ANY
29 ACTUAL ECONOMIC DAMAGES;

30 3. MAY, IN THE COMMISSIONER'S DISCRETION, SEEK
31 REINSTATEMENT OR THE HIRING OF EMPLOYEES WITH OR WITHOUT BACK PAY; AND

1 4. MAY, IN THE COMMISSIONER'S DISCRETION, ASSESS A
2 CIVIL PENALTY OF UP TO \$1,000 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER
3 IS NOT IN COMPLIANCE WITH THIS TITLE.

4 (3) THE ACTIONS TAKEN UNDER PARAGRAPHS (1) AND (2) OF THIS
5 SUBSECTION ARE SUBJECT TO THE HEARING AND NOTICE REQUIREMENTS OF TITLE
6 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

7 (E) (1) WITHIN 30 DAYS AFTER THE COMMISSIONER ISSUES AN ORDER,
8 AN EMPLOYER SHALL COMPLY WITH THE ORDER.

9 (2) IF AN EMPLOYER DOES NOT COMPLY WITH AN ORDER WITHIN THE
10 TIME PERIOD STATED IN PARAGRAPH (1) OF THIS SUBSECTION:

11 (I) THE COMMISSIONER MAY:

12 1. WITH THE WRITTEN CONSENT OF THE EMPLOYEE, ASK
13 THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF OF THE EMPLOYEE IN
14 THE COUNTY WHERE THE EMPLOYER IS LOCATED; OR

15 2. BRING AN ACTION TO ENFORCE THE ORDER FOR THE
16 CIVIL PENALTY IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; AND

17 (II) WITHIN 3 YEARS AFTER THE DATE OF THE ORDER, AN
18 EMPLOYEE MAY BRING A CIVIL ACTION TO ENFORCE THE ORDER IN THE COUNTY
19 WHERE THE EMPLOYER IS LOCATED.

20 (3) IF AN EMPLOYEE PREVAILS IN AN ACTION BROUGHT UNDER
21 PARAGRAPH (2)(II) OF THIS SUBSECTION TO ENFORCE AN ORDER, THE COURT MAY
22 AWARD:

23 (I) THREE TIMES THE VALUE OF THE EMPLOYEE'S LOST WAGES
24 AND DAMAGES EQUAL TO THE AMOUNT OF WAGES, SALARY, EMPLOYMENT
25 BENEFITS, OR OTHER COMPENSATION DENIED OR LOST;

26 (II) PUNITIVE DAMAGES IN AN AMOUNT TO BE DETERMINED BY
27 THE COURT;

28 (III) REASONABLE COUNSEL FEES AND OTHER COSTS;

29 (IV) INJUNCTIVE RELIEF, IF APPROPRIATE; AND

1 (V) ANY OTHER RELIEF THAT THE COURT DETERMINES IS
2 APPROPRIATE.

3 (F) (1) A PERSON MAY NOT:

4 (I) MAKE OR CAUSE TO BE MADE A GROUNDLESS OR MALICIOUS
5 COMPLAINT TO THE COMMISSIONER; OR

6 (II) IN BAD FAITH, BRING AN ACTION UNDER A PROVISION OF
7 LAW LISTED IN SUBSECTION (A) OF THIS SECTION OR A PROCEEDING RELATED TO
8 THE SUBJECT OF A PROVISION OF LAW LISTED IN SUBSECTION (A) OF THIS SECTION.

9 (2) THE COMMISSIONER SHALL INVESTIGATE ANY ALLEGATION THAT
10 A PERSON VIOLATED PARAGRAPH (1) OF THIS SUBSECTION.

11 (3) (I) IF THE COMMISSIONER DETERMINES THAT A PERSON HAS
12 VIOLATED PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER MAY ASSESS
13 THE PERSON AN ADMINISTRATIVE PENALTY OF UP TO \$1,000.

14 (II) AN ADMINISTRATIVE PENALTY ASSESSED UNDER
15 SUBPARAGRAPH (I) OF THIS PARAGRAPH IS SUBJECT TO THE NOTICE AND HEARING
16 REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

17 (III) A PERSON WHO MUST DEFEND AN ACTION TAKEN AS A
18 RESULT OF A GROUNDLESS OR MALICIOUS COMPLAINT MAY BE ENTITLED TO
19 RECOVER ATTORNEYS' FEES.

20 3-308.

21 (a) An employer may not:

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

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

25 (3) refuse entry to the Commissioner or an authorized representative of the
26 Commissioner into a place of employment that the Commissioner is authorized under this
27 subtitle to inspect; OR

28 [(4) discharge or otherwise discriminate against an employee or applicant
29 for employment because the employee or applicant for employment;

1 (i) makes a complaint to the employer, the Commissioner, or
2 another person;

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

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

7 ~~(5)~~ (3) violate § 3–304.2 of this subtitle.

8 (b) [An employee or an applicant for employment may not:

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

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

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

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

16 ~~(c)~~ The Commissioner may bring an action for injunctive relief and damages
17 against a person who violates subsection (a)(1) [or (4) or subsection (b)(1), (3), or (4)] of this
18 section.

19 ~~[(d)]~~ (C) (1) Except as provided in paragraph (2) of this subsection, an
20 employer who violates any provision of subsection (a)(2) [or (3)] of this section is guilty of a
21 misdemeanor and on conviction is subject to a fine not exceeding \$300.

22 (2) (i) This paragraph does not apply to a violation of § 3–304.2 of this
23 subtitle.

24 (ii) If an employer is found to have violated this subtitle two or more
25 times within a 3–year period, the Commissioner or a court may require the employee to pay
26 a civil penalty equal to 10% of the amount of damages owed by the employer.

27 (iii) Each civil penalty assessed under this paragraph shall be paid to
28 the General Fund of the State to offset the cost of enforcing this subtitle.

29 ~~[(e)]~~ (D) (1) If the Commissioner determines that an employer has violated §
30 3–304.2 of this subtitle, the Commissioner:

31 (i) shall issue an order compelling compliance; and

1 (ii) may, in the Commissioner's discretion:

2 1. for a first violation, issue a letter to the employer
3 compelling compliance;

4 2. for a second violation, assess a civil penalty of up to \$300
5 for each applicant for employment for whom the employer is not in compliance; or

6 3. for each subsequent violation, assess a civil penalty of up
7 to \$600 for each applicant for employment for whom the employer is not in compliance if
8 the violation occurred within 3 years after a previous determination that a violation had
9 occurred.

10 (2) In determining the amount of the penalty, if assessed, the
11 Commissioner shall consider:

12 (i) the gravity of the violation;

13 (ii) the size of the employer's business;

14 (iii) the employer's good faith; and

15 (iv) the employer's history of violations under this subtitle.

16 (3) If the Commissioner assesses a penalty under paragraph (1)(ii) of this
17 subsection, the penalty shall be subject to the notice and hearing requirements of Title 10,
18 Subtitle 2 of the State Government Article.

19 3-428.

20 (a) [In this section, "complaint" includes a written or oral complaint, claim, or
21 assertion of right by an employee, regarding the payment of wages under this subtitle, that
22 is made to:

23 (1) the employer or a supervisor, manager, or foreman employed by the
24 employer whether it is made through the employer's internal grievance process or
25 otherwise; or

26 (2) the Commissioner or an authorized representative of the
27 Commissioner.

28 (b) (1) An employer may not[:

29 (i) pay or agree to pay less than the wage required under this
30 subtitle[;

1 (ii) hinder or delay the Commissioner or an authorized
2 representative of the Commissioner in the enforcement of this subtitle;

3 (iii) take adverse action against an employee because the employee:

4 1. makes a complaint that the employee has not been paid in
5 accordance with this subtitle;

6 2. brings an action under this subtitle or a proceeding that
7 relates to the subject of this subtitle; or

8 3. has testified in an action under this subtitle or a
9 proceeding related to the subject of this subtitle; or

10 (iv) violate any other provision of this subtitle].

11 [(2) Adverse action prohibited under paragraph (1) of this subsection
12 includes:

13 (i) discharge;

14 (ii) demotion;

15 (iii) threatening the employee with discharge or demotion; and

16 (iv) any other retaliatory action that results in a change to the terms
17 or conditions of employment that would dissuade a reasonable employee from making a
18 complaint, bringing an action, or testifying in an action under this subtitle.

19 (c) An employee may not:

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

22 (2) in bad faith, bring an action under this subtitle or a proceeding related
23 to the subject of this subtitle; or

24 (3) in bad faith, testify in an action under this subtitle or a proceeding
25 related to the subject of this subtitle.]

26 [(d) (B) A person who violates [any provision of] this section is guilty of a
27 misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

28 [(e) An employer may not be convicted under this section unless the evidence
29 demonstrates that the employer had knowledge of the relevant complaint, testimony, or
30 action for which the prosecution for retaliation is sought.]

1 [3-912.

2 (a) An employer may not discriminate in any manner or take adverse action
3 against an individual because the individual:

4 (1) files a complaint with the employer or the Commissioner alleging that
5 the employer violated any provision of this subtitle or any regulation adopted under this
6 subtitle;

7 (2) brings an action under this subtitle or a proceeding involving a violation
8 of this subtitle; or

9 (3) testifies in an action authorized under this subtitle or a proceeding
10 involving a violation of this subtitle.

11 (b) (1) An individual who believes that an employer has discriminated in any
12 manner or taken adverse action against the individual in violation of subsection (a) of this
13 section may submit to the Commissioner a written complaint that alleges the
14 discrimination and that includes the signature of the individual.

15 (2) An individual shall file a complaint under this subsection within 180
16 days after the alleged discrimination occurs.

17 (c) (1) On receipt of a complaint under subsection (b) of this section, the
18 Commissioner may investigate.

19 (2) The Commissioner shall provide the employer with an opportunity to
20 respond to the allegations in the complaint.

21 (3) If, after investigation and consideration of any response from the
22 employer, the Commissioner determines that an employer or other person has violated
23 subsection (a) of this section, the Commissioner shall file a complaint to enjoin the violation,
24 to reinstate the employee to the former position with back pay, and to award any other
25 appropriate damages or other relief in the circuit court for:

26 (i) the county in which the alleged violation occurred;

27 (ii) the county in which the employer has its principal office; or

28 (iii) Baltimore City.

29 (4) Within 120 days after the Commissioner receives a complaint, the
30 Commissioner shall notify the employee of the determination under this subsection.]

31 [3-916.

1 (a) A person may not:

2 (1) make or cause to be made a groundless or malicious complaint to the
3 Commissioner or an authorized representative of the Commissioner;

4 (2) in bad faith, bring an action under this subtitle or a proceeding related
5 to the subject of this subtitle; or

6 (3) in bad faith, testify in an action under this subtitle or a proceeding
7 related to the subject of this subtitle.

8 (b) The Commissioner shall investigate any allegations that a person has violated
9 any provision of this section.

10 (c) (1) If the Commissioner determines that a person has violated any
11 provision of this section, that person may be subject to an administrative penalty of up to
12 \$1,000, assessed by the Commissioner.

13 (2) A sanction under paragraph (1) of this subsection shall be subject to the
14 notice and hearing requirements of § 3-906 of this subtitle.

15 (3) If the person found in violation of this section is a person alleged to be
16 employed by the respondent, the Commissioner shall disclose the identity of the
17 complainant.

18 (d) Any person who must defend an action taken as a result of a groundless or
19 malicious complaint may be entitled to recover attorneys' fees.]

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July
21 1, 2024.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.