

SENATE BILL 828

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CF HB 832

By: **Senator McFadden**

Introduced and read first time: February 16, 2007

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Healthy Families and Healthy Workplaces Act**

3 FOR the purpose of requiring an employer to provide paid sick leave to an employee
4 under certain circumstances; providing for the use of paid sick leave; requiring a
5 certain employer to provide a certain amount of paid sick leave to an employee
6 each year from the beginning of the employee's employment; requiring an
7 employer to allow an employee to use certain paid sick leave beginning on a
8 certain day; allowing an employer to require that an employee provide a certain
9 notice; providing for a certain limitation; requiring a certain employee who uses
10 certain paid sick leave for certain days to provide an employer with a certain
11 certificate of illness or disability under certain circumstances; allowing an
12 employee to accumulate certain paid sick leave; allowing an employee to carry
13 over certain paid sick leave under certain circumstances; providing for the
14 forfeiture of certain paid sick leave under certain circumstances; prohibiting an
15 employer from taking certain actions against an employee under certain
16 circumstances; requiring an employer to provide certain notification under
17 certain circumstances; allowing that a certain employee may take a certain
18 action; allowing an employee certain remedies under certain circumstances;
19 allowing an employee to request that the Commissioner of Labor and Industry
20 take certain actions against an employer under certain circumstances; limiting
21 the time a certain action may be taken; allowing a court to award certain
22 attorney's fees and costs under certain circumstances; allowing the
23 Commissioner to bring a certain action; providing that a certain employer may
24 be subject to a certain fine under certain circumstances; prohibiting an
25 employer from disclosing certain information under certain circumstances;
26 providing that certain provisions may not prohibit certain actions by employers;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 providing that the Commissioner adopt certain regulations; allowing the
2 Commissioner to conduct a certain investigation under certain circumstances;
3 defining a certain term; providing for the construction of this Act; and generally
4 relating to paid sick leave for employees in the State.

5 BY repealing and reenacting, with amendments,
6 Article – Labor and Employment
7 Section 2–106(b) and 3–103
8 Annotated Code of Maryland
9 (1999 Replacement Volume and 2006 Supplement)

10 BY adding to
11 Article – Labor and Employment
12 Section 3–901 through 3–914 to be under the new subtitle “Subtitle 9. Sick
13 Leave”
14 Annotated Code of Maryland
15 (1999 Replacement Volume and 2006 Supplement)

16 Preamble

17 WHEREAS, Almost every worker in the State of Maryland will at some time
18 during the year need temporary time off from work to take care of their own health
19 needs or the health needs of members of their families or to deal with safety issues
20 arising from domestic or sexual violence; and

21 WHEREAS, There are many workers in Maryland who are not entitled to any
22 paid sick leave to care for their own health needs or the health needs of members of
23 their families; and

24 WHEREAS, Low-income workers are significantly less likely to have paid sick
25 leave than other members of the workforce; and

26 WHEREAS, Providing workers with time off to attend to their own health care
27 and the health care of family members will ensure a healthier and more productive
28 workforce in Maryland; and

29 WHEREAS, Paid sick leave will have a positive effect on the public health of
30 Maryland by allowing sick workers the occasional option of staying at home to care for
31 themselves when ill, thus lessening their recovery time and reducing the likelihood of
32 spreading illness to other members of the workforce; and

1 WHEREAS, Paid sick leave will allow parents to provide personal care for their
2 sick children resulting in a child's faster recovery, fewer serious illnesses, and better
3 overall mental and physical health; and

4 WHEREAS, Providing minimal paid sick leave is affordable for employers and
5 good for business; and

6 WHEREAS, Employers who provide paid sick leave have greater employee
7 retention and avoid the problem of workers coming to work sick; and

8 WHEREAS, Studies have shown that costs from on-the-job productivity losses
9 resulting from sick workers on the job exceed the cost of absenteeism among
10 employees; now, therefore,

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

13 **Article – Labor and Employment**

14 2–106.

15 (b) Except as provided in subsection (c) of this section, and in addition to
16 authority to adopt regulations that is set forth elsewhere, the Commissioner may
17 adopt regulations that are necessary to carry out:

18 (1) Title 3, Subtitle 3 of this article;

19 (2) Title 3, [Subtitle 5] **SUBTITLES 5 AND 9** of this article;

20 (3) Title 4, Subtitle 2, Parts I through III of this article;

21 (4) Title 5 of this article;

22 (5) Title 6 of this article; and

23 (6) Title 7 of this article.

24 3–103.

25 (a) The Commissioner may conduct an investigation under Subtitle 2 of this
26 title, on the Commissioner's own initiative or may require a written complaint.

1 (b) The Commissioner may conduct an investigation under Subtitle 4 of this
2 title, on the Commissioner's own initiative or on receipt of a written complaint.

3 (c) The Commissioner may conduct an investigation to determine whether
4 Subtitle 5 of this title has been violated on receipt of a written complaint of an
5 employee.

6 (d) (1) The Commissioner may investigate whether § 3-701 of this title
7 has been violated on receipt of a written complaint of an applicant for employment.

8 (2) The Commissioner may investigate whether § 3-702 of this title
9 has been violated on receipt of a written complaint of an applicant for employment or
10 an employee.

11 (E) **THE COMMISSIONER MAY CONDUCT AN INVESTIGATION UNDER**
12 **SUBTITLE 9 OF THIS TITLE ON THE COMMISSIONER'S OWN INITIATIVE OR ON**
13 **RECEIPT OF A WRITTEN COMPLAINT.**

14 **SUBTITLE 9. SICK LEAVE.**

15 **3-901.**

16 (A) **IN THIS SUBTITLE, "EMPLOYER" MEANS A PERSON ENGAGED IN A**
17 **BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE**
18 **STATE.**

19 (B) **"EMPLOYER" INCLUDES:**

20 (1) **A UNIT OF STATE OR LOCAL GOVERNMENT THAT EMPLOYS**
21 **INDIVIDUALS WHO ARE NOT SUBJECT TO THE PROVISIONS OF TITLE 9,**
22 **SUBTITLE 5 OF THE STATE PERSONNEL AND PENSIONS ARTICLE; AND**

23 (2) **A PERSON WHO ACTS DIRECTLY OR INDIRECTLY IN THE**
24 **INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.**

25 **3-902.**

26 (A) **EACH EMPLOYER SHALL PROVIDE TO EACH EMPLOYEE SICK LEAVE**
27 **WITH PAY AS PROVIDED IN THIS SUBTITLE.**

28 (B) **SICK LEAVE MAY BE USED:**

1 (1) FOR ILLNESS OR DISABILITY OF THE EMPLOYEE;

2 (2) FOR DEATH, ILLNESS, OR DISABILITY OF A MEMBER OF THE
3 EMPLOYEE'S IMMEDIATE FAMILY;

4 (3) FOLLOWING THE BIRTH OF THE EMPLOYEE'S CHILD;

5 (4) WHEN A CHILD IS PLACED WITH THE EMPLOYEE FOR
6 ADOPTION;

7 (5) FOR A MEDICAL APPOINTMENT OF THE EMPLOYEE OR A
8 MEMBER OF THE EMPLOYEE'S IMMEDIATE FAMILY; OR

9 (6) FOR AN ABSENCE DUE TO DOMESTIC VIOLENCE, PROVIDED
10 THAT THE PURPOSE OF THE LEAVE IS FOR:

11 (I) SEEKING MEDICAL TREATMENT FOR THE EMPLOYEE, A
12 MEMBER OF THE EMPLOYEE'S IMMEDIATE FAMILY, OR A MEMBER OF THE
13 EMPLOYEE'S EXTENDED FAMILY, TO RECOVER FROM PHYSICAL OR
14 PSYCHOLOGICAL INJURY OR DISABILITY CAUSED BY DOMESTIC OR SEXUAL
15 VIOLENCE;

16 (II) OBTAINING SERVICES FROM A VICTIM SERVICES
17 ORGANIZATION;

18 (III) OBTAINING PSYCHOLOGICAL OR OTHER COUNSELING;

19 (IV) SEEKING RELOCATION DUE TO DOMESTIC OR SEXUAL
20 VIOLENCE OR STALKING; OR

21 (V) PARTICIPATING IN A LEGAL ACTION, INCLUDING
22 PARTICIPATING IN A CIVIL OR CRIMINAL PROCEEDING RELATED TO OR
23 RESULTING FROM THE DOMESTIC OR SEXUAL VIOLENCE.

24 **3-903.**

25 (A) AN EMPLOYER SHALL PROVIDE 1 HOUR FOR EVERY 37 HOURS
26 WORKED BY AN EMPLOYEE, NOT TO EXCEED 56 HOURS, OF PAID SICK LEAVE TO

1 ACCRUE TO AN EMPLOYEE EACH YEAR, FROM THE BEGINNING OF THE
2 EMPLOYEE'S EMPLOYMENT.

3 (B) FOR AN EMPLOYER WITH LESS THAN 10 EMPLOYEES, THE
4 EMPLOYER SHALL PROVIDE 1 HOUR FOR EVERY 80 HOURS WORKED BY AN
5 EMPLOYEE, NOT TO EXCEED 26 HOURS, OF PAID SICK LEAVE TO ACCRUE TO AN
6 EMPLOYEE EACH YEAR, FROM THE BEGINNING OF THE EMPLOYEE'S
7 EMPLOYMENT.

8 **3-904.**

9 AN EMPLOYER SHALL ALLOW AN EMPLOYEE TO USE ACCRUED PAID SICK
10 LEAVE, AS PERMITTED UNDER § 3-903 OF THIS SUBTITLE, BEGINNING ON THE
11 90TH DAY OF THE EMPLOYEE'S EMPLOYMENT.

12 **3-905.**

13 (A) AN EMPLOYER MAY REQUIRE THAT AN EMPLOYEE PROVIDE
14 REASONABLE NOTICE OF THE NEED FOR ANTICIPATED PAID SICK LEAVE.

15 (B) THE REQUIREMENT FOR A NOTICE UNDER SUBSECTION (A) OF THIS
16 SECTION MAY NOT EXCEED 7 DAYS ADVANCED NOTICE.

17 **3-906.**

18 (A) (1) AN EMPLOYEE WHO USES PAID SICK LEAVE FOR 3 OR MORE
19 CONSECUTIVE WORKDAYS AS PERMITTED UNDER § 3-902(B)(1) THROUGH (5)
20 OF THIS SUBTITLE MAY NOT RECEIVE PAID SICK LEAVE UNDER THIS SUBTITLE
21 UNLESS THE EMPLOYEE GIVES THE EMPLOYER AN ORIGINAL CERTIFICATE OF
22 ILLNESS OR DISABILITY.

23 (2) THE CERTIFICATE REQUIRED UNDER PARAGRAPH (1) OF THIS
24 SUBSECTION SHALL BE SIGNED BY ONE OF THE FOLLOWING:

25 (I) A MEDICAL DOCTOR WHO IS AUTHORIZED TO PRACTICE
26 MEDICINE OR SURGERY BY THE STATE IN WHICH THE DOCTOR PRACTICES;

27 (II) IF AUTHORIZED TO PRACTICE IN A STATE AND
28 PERFORMING WITHIN THE SCOPE OF THAT AUTHORITY:

- 1 1. **A CHIROPRACTOR;**
- 2 2. **A CLINICAL PSYCHOLOGIST;**
- 3 3. **A DENTIST;**
- 4 4. **A LICENSED CERTIFIED SOCIAL**
- 5 **WORKER-CLINICAL;**
- 6 5. **A NURSE MIDWIFE;**
- 7 6. **A NURSE PRACTITIONER;**
- 8 7. **AN ORAL SURGEON;**
- 9 8. **AN OPTOMETRIST;**
- 10 9. **A PHYSICAL THERAPIST; OR**
- 11 10. **A PODIATRIST;**

12 (III) **AN ACCREDITED CHRISTIAN SCIENCE PRACTITIONER;**
 13 **OR**

14 (IV) **A HEALTH CARE PROVIDER AS DEFINED BY THE**
 15 **FEDERAL FAMILY MEDICAL LEAVE ACT.**

16 (3) **THE CERTIFICATE REQUIRED UNDER THIS SUBSECTION DUE**
 17 **TO AN EMPLOYEE’S ILLNESS OR DISABILITY SHALL INCLUDE A PROGNOSIS**
 18 **ABOUT THE EMPLOYEE’S ABILITY TO RETURN TO WORK.**

19 (B) (1) **AN EMPLOYEE WHO USES PAID SICK LEAVE FOR 3 OR MORE**
 20 **CONSECUTIVE WORKDAYS AS PERMITTED UNDER § 3-903(B)(6) OF THIS**
 21 **SUBTITLE MAY NOT RECEIVE PAID SICK LEAVE UNDER THIS SUBTITLE UNLESS**
 22 **THE EMPLOYEE GIVES THE EMPLOYER AN ORIGINAL CERTIFICATE OF ILLNESS**
 23 **OR DISABILITY.**

1 **(2) THE CERTIFICATE REQUIRED UNDER PARAGRAPH (1) OF THIS**
2 **SUBSECTION SHALL BE SIGNED BY ONE OF THE FOLLOWING:**

3 **(I) AN EMPLOYEE OR VOLUNTEER WORKING FOR A**
4 **VICTIMS' SERVICES ORGANIZATION;**

5 **(II) AN ATTORNEY;**

6 **(III) A POLICE OFFICER; OR**

7 **(IV) ANY OTHER ANTI-VIOLENCE COUNSELOR.**

8 **3-907.**

9 **(A) (1) AN EMPLOYEE MAY ACCUMULATE UNUSED PAID SICK LEAVE**
10 **AND USE AS PERMITTED UNDER § 3-903 OF THIS SUBTITLE.**

11 **(2) AN EMPLOYEE'S ACCUMULATED UNUSED PAID SICK LEAVE**
12 **MAY CARRY OVER FROM 1 YEAR TO THE NEXT YEAR UP TO 40 HOURS OF THAT**
13 **UNUSED SICK LEAVE.**

14 **(3) ANY ACCUMULATED AND UNUSED PAID SICK LEAVE IN EXCESS**
15 **OF 40 HOURS SHALL BE FORFEITED AT THE BEGINNING OF THE NEXT**
16 **CALENDAR YEAR.**

17 **(B) ON TERMINATION OF AN EMPLOYEE'S EMPLOYMENT WITH AN**
18 **EMPLOYER FOR ANY REASON, THE EMPLOYEE FORFEITS ALL UNUSED PAID SICK**
19 **LEAVE.**

20 **3-908.**

21 **(A) AN EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE ANY PERSONNEL**
22 **ACTION AGAINST AN EMPLOYEE WHO HAS TAKEN OR REQUESTED PAID SICK**
23 **LEAVE UNDER THIS SUBTITLE.**

24 **(B) AN EMPLOYER MAY NOT TERMINATE, DISCIPLINE, DISCRIMINATE**
25 **AGAINST, OR OTHERWISE PENALIZE AN EMPLOYEE WHO HAS FILED AN ACTION**
26 **AGAINST THE EMPLOYER UNDER § 3-910 OF THIS SUBTITLE.**

1 **3-909.**

2 (A) EACH EMPLOYER SHALL:

3 (1) PROVIDE EACH EMPLOYEE WITH A COPY OF THIS SUBTITLE;
4 OR

5 (2) KEEP A COPY OF THIS SUBTITLE POSTED CONSPICUOUSLY IN
6 EACH PLACE OF EMPLOYMENT.

7 (B) THE POSTING REQUIRED UNDER SUBSECTION (A) OF THIS SECTION
8 SHALL BE IN ENGLISH AND SPANISH.

9 **3-910.**

10 (A) (1) IF AN EMPLOYER VIOLATES THIS SUBTITLE, AN AFFECTED
11 EMPLOYEE MAY BRING AN ACTION IN A CIRCUIT COURT AGAINST THE
12 EMPLOYER TO RECOVER THE FULL AMOUNT OF ANY UNPAID SICK LEAVE AND
13 ANY ADDITIONAL REMEDIES AVAILABLE AT LAW OR IN EQUITY APPROPRIATE TO
14 REMEDY ANY VIOLATION OF THIS SUBTITLE, INCLUDING BACK PAY OR
15 INJUNCTIVE RELIEF.

16 (2) AN EMPLOYEE MAY BRING AN ACTION ON BEHALF OF THE
17 EMPLOYEE AND OTHER EMPLOYEES SIMILARLY AFFECTED.

18 (B) ON THE WRITTEN REQUEST OF AN EMPLOYEE WHO IS ENTITLED TO
19 BRING AN ACTION UNDER THIS SECTION, THE COMMISSIONER MAY:

20 (1) TAKE AN ASSIGNMENT OF THE CLAIM IN TRUST FOR THE
21 EMPLOYEE;

22 (2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION IN
23 ACCORDANCE WITH THIS SECTION ON BEHALF OF THE EMPLOYEE; AND

24 (3) CONSOLIDATE TWO OR MORE CLAIMS AGAINST AN EMPLOYER.

25 (C) AN ACTION UNDER THIS SECTION SHALL BE FILED WITHIN 5 YEARS
26 OF THE ACT ON WHICH THE ACTION IS BASED.

1 (D) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO
2 JUDGMENT IN AN ACTION UNDER THIS SECTION, THE COURT SHALL ALLOW
3 AGAINST THE EMPLOYER REASONABLE COUNSEL FEES AND OTHER COSTS OF
4 THE ACTION.

5 **3-911.**

6 (A) IF AN EMPLOYER VIOLATES § 3-908(B) OF THIS SUBTITLE, THE
7 EMPLOYEE MAY BRING A CIVIL ACTION AGAINST THE EMPLOYER IN A CIRCUIT
8 COURT.

9 (B) THE EMPLOYEE SHALL BE ENTITLED TO ANY REMEDIES AVAILABLE
10 AT LAW OR IN EQUITY APPROPRIATE TO REMEDY ANY VIOLATION OF THIS
11 SUBTITLE, INCLUDING BACK PAY OR INJUNCTIVE RELIEF.

12 (C) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES AND
13 COSTS TO AN EMPLOYEE WHO PREVAILS IN AN ENFORCEMENT ACTION UNDER
14 THIS SECTION.

15 **3-912.**

16 (A) THE COMMISSIONER MAY BRING AN ACTION FOR INJUNCTIVE
17 RELIEF AND DAMAGES AGAINST A PERSON WHO VIOLATES THIS SUBTITLE.

18 (B) AN EMPLOYER WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS
19 GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT
20 EXCEEDING \$1,000.

21 **3-913.**

22 IF AN EMPLOYER POSSESSES AN EMPLOYEE'S HEALTH INFORMATION OR
23 ANY OTHER INFORMATION ABOUT AN EMPLOYEE OR A MEMBER OF AN
24 EMPLOYEE'S IMMEDIATE OR EXTENDED FAMILY UNDER § 3-902 OF THIS
25 SUBTITLE, THE INFORMATION SHALL BE CONFIDENTIAL AND NOT DISCLOSED
26 BY THE EMPLOYER EXCEPT TO THE EMPLOYEE WITH THE EMPLOYEE'S WRITTEN
27 PERMISSION.

28 **3-914.**

1 **THE PROVISIONS OF THIS SUBTITLE MAY NOT:**

2 **(1) BE CONSTRUED TO PROHIBIT AN EMPLOYER FROM ADOPTING**
3 **OR RETAINING PAID SICK LEAVE POLICIES THAT EXCEED THE PROVISIONS OF**
4 **THIS SUBTITLE; OR**

5 **(2) DIMINISH THE OBLIGATION OF AN EMPLOYER FROM**
6 **COMPLYING WITH A CONTRACT, COLLECTIVE BARGAINING AGREEMENT, OR ANY**
7 **OTHER AGREEMENT.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 October 1, 2007.