

# HOUSE BILL 40

K3

(8lr0755)

## **ENROLLED BILL**

—*Economic Matters / Finance*—

Introduced by ~~Delegate Doory~~ **Delegates Doory, Braveboy, Feldman, Harrison, Hecht, Kirk, Krysiak, Love, Manno, Mathias, McHale, Minnick, Taylor, and Vaughn**

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.

\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
Speaker.

CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Flexible Leave Act**

3 FOR the purpose of authorizing employees of certain employers to use leave with pay  
4 for the illness of the employee's immediate family; providing that an employee  
5 may only use leave with pay that has been earned; providing that an employee  
6 who earns more than one type of leave with pay may elect the type and amount  
7 of leave with pay to be used; requiring an employee who uses leave with pay  
8 under this Act to comply with the terms of a collective bargaining agreement or  
9 employment policy with a certain exception; providing that the terms of a  
10 collective bargaining agreement or employment policy shall prevail under  
11 certain circumstances; prohibiting an employer from taking certain actions  
12 against an employee who exercises certain rights, files a complaint, testifies  
13 against, or assists in a certain action; providing that this Act does not affect

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**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.

*Italics* indicate opposite chamber / conference committee amendments.



1 leave granted under the federal Family and Medical Leave Act; defining certain  
2 terms; and generally relating to the Flexible Leave Act.

3 BY repealing and reenacting, with amendments,  
4 Article – Labor and Employment  
5 Section 3–801 and 3–802  
6 Annotated Code of Maryland  
7 (1999 Replacement Volume and 2007 Supplement)

8 BY adding to  
9 Article – Labor and Employment  
10 Section 3–802  
11 Annotated Code of Maryland  
12 (1999 Replacement Volume and 2007 Supplement)

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

15 **Article – Labor and Employment**

16 3–801.

17 (a) (1) In this [subtitle] SECTION, “employer” means a person engaged in  
18 a business, industry, profession, trade, or other enterprise in the State.

19 [(b)] (2) “Employer” includes:

20 [(1)] (I) a unit of State or local government that employs individuals  
21 who are not subject to the provisions of Title 9, Subtitle 5 of the State Personnel and  
22 Pensions Article; and

23 [(2)] (II) a person who acts directly or indirectly in the interest of  
24 another employer with an employee.

25 [3–802.]

26 [(a)] (B) This [subtitle] SECTION applies to an employer who provides leave  
27 with pay to an employee following the birth of the employee’s child.

28 [(b)] (C) An employer who provides leave with pay to an employee following  
29 the birth of the employee’s child shall provide the same leave with pay to an employee  
30 when a child is placed with the employee for adoption.

31 **3–802.**

1           (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
2 MEANINGS INDICATED.

3                   (2) (I) “EMPLOYER” MEANS A PERSON THAT EMPLOYS 15 OR  
4 MORE INDIVIDUALS AND IS ENGAGED IN A BUSINESS, INDUSTRY, PROFESSION,  
5 TRADE, OR OTHER ENTERPRISE IN THE STATE.

6                           (II) “EMPLOYER” INCLUDES A PERSON WHO ACTS DIRECTLY  
7 OR INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

8                   (3) “IMMEDIATE FAMILY” INCLUDES A CHILD, SPOUSE, AND  
9 PARENT.

10                   (4) (I) “LEAVE WITH PAY” MEANS TIME AWAY FROM WORK FOR  
11 WHICH AN EMPLOYEE RECEIVES COMPENSATION.

12                           (II) “LEAVE WITH PAY” INCLUDES SICK LEAVE, VACATION  
13 TIME, AND COMPENSATORY TIME.

14           (B) THIS SECTION APPLIES TO AN EMPLOYER THAT PROVIDES LEAVE  
15 WITH PAY UNDER THE TERMS OF:

16                   (1) A COLLECTIVE BARGAINING AGREEMENT; OR

17                   (2) AN EMPLOYMENT POLICY.

18           (C) AN EMPLOYEE OF AN EMPLOYER MAY USE LEAVE WITH PAY FOR  
19 THE ILLNESS OF THE EMPLOYEE’S IMMEDIATE FAMILY.

20           (D) (1) AN EMPLOYEE OF AN EMPLOYER:

21                           (I) MAY ONLY USE LEAVE WITH PAY UNDER THIS SECTION  
22 THAT HAS BEEN EARNED; AND

23                           (II) WHO EARNS MORE THAN ONE TYPE OF LEAVE WITH PAY  
24 MAY ELECT THE TYPE AND AMOUNT OF LEAVE WITH PAY TO BE USED UNDER  
25 THIS SECTION.

26                   (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS  
27 SUBSECTION, AN EMPLOYEE OF AN EMPLOYER WHO USES LEAVE UNDER THIS  
28 SECTION SHALL COMPLY WITH THE TERMS OF A COLLECTIVE BARGAINING  
29 AGREEMENT OR EMPLOYMENT POLICY.

1           **(3) IF THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT**  
2 **WITH AN EMPLOYER OR AN EMPLOYMENT POLICY OF AN EMPLOYER PROVIDE A**  
3 **LEAVE WITH PAY BENEFIT THAT IS EQUAL TO OR GREATER THAN THE BENEFIT**  
4 **PROVIDED UNDER THIS SECTION, THE COLLECTIVE BARGAINING AGREEMENT**  
5 **OR EMPLOYMENT POLICY PREVAILS.**

6           **(E) AN EMPLOYER MAY NOT DISCHARGE, DEMOTE, SUSPEND,**  
7 **DISCIPLINE, OR OTHERWISE DISCRIMINATE AGAINST AN EMPLOYEE OR**  
8 **THREATEN TO TAKE ANY OF THESE ACTIONS AGAINST AN EMPLOYEE:**

9           **(1) WHO EXERCISES RIGHTS GRANTED UNDER THIS SECTION; OR**

10           **(2) WHO FILES A COMPLAINT, TESTIFIES AGAINST, OR ASSISTS IN**  
11 **AN ACTION BROUGHT AGAINST THE EMPLOYER FOR A VIOLATION OF THIS**  
12 **SECTION.**

13           **(F) THIS SECTION DOES NOT AFFECT LEAVE GRANTED UNDER THE**  
14 **FEDERAL FAMILY AND MEDICAL LEAVE ACT OF 1993.**

15           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2008.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.