

# HOUSE BILL 40

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(PRE-FILED)

8lr0755  
CF SB 344

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

Requested: September 25, 2007

Introduced and read first time: January 9, 2008

Assigned to: Economic Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2008

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## 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  
14 leave granted under the federal Family and Medical Leave Act; defining certain  
15 terms; and generally relating to the Flexible Leave Act.

16 BY repealing and reenacting, with amendments,  
17 Article – Labor and Employment  
18 Section 3–801 and 3–802  
19 Annotated Code of Maryland  
20 (1999 Replacement Volume and 2007 Supplement)

21 BY adding to

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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.



1 Article – Labor and Employment  
2 Section 3–802  
3 Annotated Code of Maryland  
4 (1999 Replacement Volume and 2007 Supplement)

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

7 **Article – Labor and Employment**

8 3–801.

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

11 [(b)] (2) “Employer” includes:

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

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

17 [3–802.]

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

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

23 **3–802.**

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

26 (2) (I) “EMPLOYER” MEANS A PERSON ENGAGED IN A  
27 BUSINESS, INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE  
28 STATE.

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

1           (3)    **“IMMEDIATE FAMILY” INCLUDES A CHILD, SPOUSE, AND**  
2 **PARENT.**

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

5                    (II)   **“LEAVE WITH PAY” INCLUDES SICK LEAVE, VACATION**  
6 **TIME, AND COMPENSATORY TIME.**

7           (B)    **THIS SECTION APPLIES TO AN EMPLOYER THAT PROVIDES LEAVE**  
8 **WITH PAY UNDER THE TERMS OF:**

9                    (1)    **A COLLECTIVE BARGAINING AGREEMENT; OR**

10                   (2)    **AN EMPLOYMENT POLICY.**

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

13           (D)    (1)    **AN EMPLOYEE OF AN EMPLOYER:**

14                           (I)    **MAY ONLY USE LEAVE WITH PAY UNDER THIS SECTION**  
15 **THAT HAS BEEN EARNED; AND**

16                           (II)   **WHO EARNS MORE THAN ONE TYPE OF LEAVE WITH PAY**  
17 **MAY ELECT THE TYPE AND AMOUNT OF LEAVE WITH PAY TO BE USED UNDER**  
18 **THIS SECTION.**

19                   (2)    **EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**  
20 **SUBSECTION, AN EMPLOYEE OF AN EMPLOYER WHO USES LEAVE UNDER THIS**  
21 **SECTION SHALL COMPLY WITH THE TERMS OF A COLLECTIVE BARGAINING**  
22 **AGREEMENT OR EMPLOYMENT POLICY.**

23                   (3)    **IF THE TERMS OF A COLLECTIVE BARGAINING AGREEMENT**  
24 **WITH AN EMPLOYER OR AN EMPLOYMENT POLICY OF AN EMPLOYER PROVIDE A**  
25 **LEAVE WITH PAY BENEFIT THAT IS EQUAL TO OR GREATER THAN THE BENEFIT**  
26 **PROVIDED UNDER THIS SECTION, THE COLLECTIVE BARGAINING AGREEMENT**  
27 **OR EMPLOYMENT POLICY PREVAILS.**

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

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

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

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

6                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 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.