

SENATE BILL 344

K3
SB 260/07 – FIN

8lr0336
CF HB 40

By: **Senators Garagiola, Astle, Exum, Kelley, Klausmeier, and Pugh**
Introduced and read first time: January 28, 2008
Assigned to: Finance

Committee Report: Favorable
Senate action: Adopted with floor amendments
Read second time: March 20, 2008

CHAPTER _____

1 AN ACT concerning

2 **The 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~~ certain children of the
5 employee; providing that an employee may only use leave with pay that has
6 been earned; providing that an employee who earns more than one type of leave
7 with pay may elect the type and amount of leave with pay to be used; requiring
8 an employee who uses leave with pay under this Act to comply with the terms of
9 a collective bargaining agreement or employment policy with a certain
10 exception; providing that the terms of a collective bargaining agreement or
11 employment policy shall prevail under certain circumstances; prohibiting an
12 employer from taking certain actions against an employee who exercises certain
13 rights, files a complaint, testifies against, or assists in a certain action;
14 providing that this Act does not affect leave granted under the federal Family
15 and Medical Leave Act; defining certain terms; and generally relating to leave
16 with pay and illness of an employee's ~~immediate family~~ children.

17 BY repealing and reenacting, with amendments,
18 Article – Labor and Employment
19 Section 3–801 and 3–802
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2007 Supplement)

22 BY adding to
23 Article – Labor and Employment
24 Section 3–802

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 (1999 Replacement Volume and 2007 Supplement)

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

5 **Article – Labor and Employment**

6 3–801.

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

9 [(b)] (2) “Employer” includes:

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

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

15 [3–802.]

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

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

21 **3–802.**

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

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

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

29 ~~(3) “IMMEDIATE FAMILY” INCLUDES A CHILD, SPOUSE, AND~~
30 ~~PARENT.~~

1 ~~(4)~~ **(3)** (I) “LEAVE WITH PAY” MEANS TIME AWAY FROM
2 WORK FOR WHICH AN EMPLOYEE RECEIVES COMPENSATION.

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

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

7 (1) A COLLECTIVE BARGAINING AGREEMENT; OR

8 (2) AN EMPLOYMENT POLICY.

9 **(C) AN EMPLOYEE OF AN EMPLOYER MAY USE LEAVE WITH PAY FOR**
10 **THE ILLNESS OF THE EMPLOYEE’S ~~IMMEDIATE FAMILY~~ CHILD IF THE CHILD IS:**

11 (1) UNDER THE AGE OF 18 YEARS; OR

12 (2) AT LEAST 18 YEARS OLD AND INCAPABLE OF SELF-CARE DUE
13 TO A MENTAL OR PHYSICAL DISABILITY.

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

15 (1) MAY ONLY USE LEAVE WITH PAY UNDER THIS SECTION
16 THAT HAS BEEN EARNED; AND

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

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

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

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

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

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.