

# HOUSE BILL 1299

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By: **Delegates Davis, Barkley, Braveboy, Burns, Feldman, Hecht, Hubbard, Huckler, Kirk, Krysiak, Love, Manno, McHale, Taylor, and Vaughn**  
Introduced and read first time: February 18, 2010  
Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Healthy Retail Employee Act**

3 FOR the purpose of requiring certain retail employers to provide a certain nonworking  
4 or working shift break to certain employees under certain circumstances;  
5 authorizing certain employees to file a complaint with the Commissioner of  
6 Labor and Industry under certain circumstances; authorizing the Commissioner  
7 to investigate whether a certain provision of law has been violated under  
8 certain circumstances; requiring the Commissioner to attempt to resolve a  
9 certain issue informally or issue a certain order under certain circumstances;  
10 authorizing the Commissioner to assess a certain civil penalty under certain  
11 circumstances; authorizing certain civil actions under certain circumstances;  
12 authorizing certain remedies under certain circumstances; requiring a court to  
13 award certain attorney’s fees and costs under certain circumstances; providing  
14 for the application of this Act; defining certain terms; and generally relating to  
15 shift breaks for employees.

16 BY repealing and reenacting, with amendments,  
17 Article – Labor and Employment  
18 Section 3–103(d)  
19 Annotated Code of Maryland  
20 (2008 Replacement Volume and 2009 Supplement)

21 BY adding to  
22 Article – Labor and Employment  
23 Section 3–710  
24 Annotated Code of Maryland  
25 (2008 Replacement Volume and 2009 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



**Article – Labor and Employment**

3–103.

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

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

**(3) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3–710 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE AS PROVIDED IN § 3–710(D)(1) OF THIS TITLE.**

**3–710.**

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

**(2) “EMPLOYER” MEANS A PERSON:**

**(I) ENGAGED IN A RETAIL ESTABLISHMENT BUSINESS IN THE STATE THAT HAS AT LEAST 50 EMPLOYEES; OR**

**(II) THAT OWNS ONE OR MORE RETAIL ESTABLISHMENT FRANCHISES WITH THE SAME TRADE NAME WITH AT LEAST 50 EMPLOYEES IN THE STATE.**

**(3) “FRANCHISE” HAS THE MEANING STATED IN § 14–201 OF THE BUSINESS REGULATION ARTICLE.**

**(4) “RETAIL ESTABLISHMENT” HAS THE MEANING STATED IN § 5–401 OF THE ECONOMIC DEVELOPMENT ARTICLE.**

**(B) THIS SECTION DOES NOT APPLY TO AN EMPLOYEE:**

**(1) COVERED BY A COLLECTIVE BARGAINING AGREEMENT OR EMPLOYMENT POLICY THAT INCLUDES SHIFT BREAKS EQUAL TO OR GREATER THAN THOSE PROVIDED UNDER THIS SECTION;**

**(2) EXEMPT FROM OVERTIME PAY REQUIREMENTS UNDER THE FAIR LABOR STANDARDS ACT; OR**

1           **(3) WHO WORKS FOR A UNIT OF THE STATE, A COUNTY, OR A**  
2 **MUNICIPALITY.**

3           **(C) (1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**  
4 **PARAGRAPH, AN EMPLOYER MAY NOT EMPLOY AN EMPLOYEE FOR:**

5                           **1. 4 TO 6 CONSECUTIVE HOURS WITHOUT**  
6 **PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 15 MINUTES; OR**

7                           **2. MORE THAN 6 CONSECUTIVE HOURS WITHOUT**  
8 **PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 30 MINUTES.**

9                           **(II) IF AN EMPLOYEE'S WORK HOURS DO NOT EXCEED 6**  
10 **CONSECUTIVE HOURS, THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS**  
11 **PARAGRAPH MAY BE WAIVED BY WRITTEN AGREEMENT BETWEEN THE**  
12 **EMPLOYER AND EMPLOYEE.**

13           **(2) THE SHIFT BREAK REQUIRED UNDER PARAGRAPH (1) OF THIS**  
14 **SUBSECTION MAY BE CONSIDERED A WORKING SHIFT BREAK IF:**

15                           **(I) 1. THE TYPE OF WORK PREVENTS AN EMPLOYEE**  
16 **FROM BEING RELIEVED OF WORK DURING THE NONWORKING SHIFT BREAK; OR**

17                           **2. THE EMPLOYEE IS ALLOWED TO CONSUME A MEAL**  
18 **WHILE WORKING AND THE WORKING SHIFT BREAK IS COUNTED TOWARDS THE**  
19 **EMPLOYEE'S WORK HOURS; AND**

20                           **(II) THE EMPLOYER AND EMPLOYEE MUTUALLY AGREE TO**  
21 **THE WORKING SHIFT BREAK AND DOCUMENT THE AGREEMENT.**

22           **(D) (1) IF AN EMPLOYER VIOLATES SUBSECTION (C) OF THIS**  
23 **SECTION, AN EMPLOYEE OF THE EMPLOYER MAY FILE A COMPLAINT WITH THE**  
24 **COMMISSIONER.**

25           **(2) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER**  
26 **HAS VIOLATED THIS SECTION, THE COMMISSIONER SHALL:**

27                           **(I) TRY TO RESOLVE THE ISSUE INFORMALLY; OR**

28                           **(II) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS**  
29 **SECTION CONSISTENT WITH THE NOTICE AND HEARING REQUIREMENTS OF**  
30 **TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.**

1           **(3) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED**  
2 **FOR A FIRST VIOLATION UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION, THE**  
3 **COMMISSIONER MAY:**

4                   **(I) BRING AN ACTION TO ENFORCE THE ORDER IN THE**  
5 **CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; AND**

6                   **(II) ASSESS A CIVIL PENALTY OF UP TO \$500 FOR EACH**  
7 **EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS**  
8 **SECTION.**

9           **(4) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED**  
10 **FOR A SUBSEQUENT VIOLATION UNDER PARAGRAPH (2)(II) OF THIS**  
11 **SUBSECTION:**

12                   **(I) THE COMMISSIONER MAY:**

13                           **1. BRING AN ACTION TO ENFORCE THE ORDER IN**  
14 **THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; AND**

15                           **2. ASSESS A CIVIL PENALTY OF UP TO \$500 FOR**  
16 **EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS**  
17 **SECTION; AND**

18                   **(II) THE EMPLOYEE MAY BRING AN ACTION TO ENFORCE**  
19 **THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS**  
20 **LOCATED.**

21           **(5) THE EMPLOYEE SHALL BE ENTITLED TO ANY REMEDIES**  
22 **AVAILABLE AT LAW OR IN EQUITY APPROPRIATE TO REMEDY ANY VIOLATION OF**  
23 **THIS SECTION, INCLUDING BACK PAY OR INJUNCTIVE RELIEF.**

24           **(6) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES**  
25 **AND COSTS TO AN EMPLOYEE WHO PREVAILS IN AN ENFORCEMENT ACTION**  
26 **UNDER THIS SECTION.**

27           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2010.