

SENATE BILL 789

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By: **Senators Garagiola, Brochin, Conway, Currie, Forehand, Frosh, Gladden, Harrington, Jones, Kelley, King, Klausmeier, Lenett, Madaleno, McFadden, Muse, Peters, Pinsky, Pugh, Raskin, Rosapepe, and Stone**
Introduced and read first time: February 10, 2010
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – The 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)

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



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

3 **Article – Labor and Employment**

4 3–103.

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

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

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

13 **3–710.**

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

16 (2) **“EMPLOYER” MEANS A PERSON:**

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

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

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

24 (4) **“RETAIL ESTABLISHMENT” HAS THE MEANING STATED IN §**
25 **5–401 OF THE ECONOMIC DEVELOPMENT ARTICLE.**

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

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

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

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

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

7 **1. 4 TO 6 CONSECUTIVE HOURS WITHOUT**
8 **PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 15 MINUTES; OR**

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

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

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

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

19 **2. THE EMPLOYEE IS ALLOWED TO CONSUME A MEAL**
20 **WHILE WORKING AND THE WORKING SHIFT BREAK IS COUNTED TOWARDS THE**
21 **EMPLOYEE’S WORK HOURS; AND**

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

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

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

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

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

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

7 **1. BRING AN ACTION TO ENFORCE THE ORDER IN**
8 **THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; OR**

9 **2. ASSESS A CIVIL PENALTY OF UP TO \$500 FOR**
10 **EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS**
11 **SECTION.**

12 **(4) (I) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER**
13 **ISSUED FOR A SUBSEQUENT VIOLATION UNDER PARAGRAPH (2)(II) OF THIS**
14 **SUBSECTION:**

15 **1. THE COMMISSIONER MAY:**

16 **A. BRING AN ACTION TO ENFORCE THE ORDER IN**
17 **THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; AND**

18 **B. ASSESS A CIVIL PENALTY OF UP TO \$500 FOR**
19 **EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS**
20 **SECTION; AND**

21 **2. THE EMPLOYEE MAY BRING AN ACTION TO**
22 **ENFORCE THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE**
23 **EMPLOYER IS LOCATED.**

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

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

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