

HOUSE BILL 1026

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CF SB 737

By: Delegates A. Kelly, Hucker, Barkley, Barnes, Bobo, Braveboy, Clippinger, Cullison, Frick, Glenn, Gutierrez, Haynes, Impallaria, Kramer, Love, McHale, A. Miller, Mitchell, Oaks, Olszewski, Pena-Melnyk, Pendergrass, Reznik, S. Robinson, Valderrama, Vaughn, and A. Washington

Introduced and read first time: February 6, 2014

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 12, 2014

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – Unpaid Parental Leave – Birth or Adoption of a**
3 **Child**

4 FOR the purpose of providing certain employees a certain number of workweeks of
5 unpaid parental leave in a certain period under certain circumstances;
6 authorizing an employer to deny unpaid parental leave to an eligible employee
7 under certain circumstances; authorizing, under certain circumstances, an
8 employer to require an eligible employee, or an eligible employee to elect, to
9 substitute paid vacation leave for any part of or all of the period of parental
10 leave; authorizing an employer to require an eligible employee to provide
11 written notice of the eligible employee's intention to take parental leave under
12 certain circumstances; requiring that an eligible employee returning to work
13 after taking leave be restored to the position of employment held by the
14 employee when the leave began under certain circumstances; authorizing an
15 employer, during the period of parental leave, to terminate employment of an
16 eligible employee only for cause; requiring an employer to maintain certain
17 health coverage for the duration of the eligible employee's leave under certain
18 circumstances; authorizing an employer, except under certain circumstances, to
19 recover the premium for maintaining certain health coverage by deducting the
20 amount of the premium from certain wages; requiring an employer to pay
21 certain commissions to certain employees during any period of parental leave;

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 requiring the Commissioner of Labor and Industry to adopt certain regulations;
 2 requiring the Commissioner to take certain actions regarding certain violations
 3 of certain provisions of law; authorizing the Attorney General to take a certain
 4 action under a certain provision of this Act; authorizing an employee to bring an
 5 action against an employer for certain damages under certain circumstances;
 6 prohibiting certain acts; authorizing the Commissioner to conduct, under
 7 certain circumstances, an investigation regarding whether a certain provision of
 8 law has been violated; defining certain terms; providing for the construction of
 9 this Act; and generally relating to parental leave for the birth or adoption of a
 10 child.

11 BY adding to
 12 Article – Labor and Employment
 13 Section 3–103(i); and 3–1201 through 3–1211 to be under the new subtitle
 14 “Subtitle 12. Parental Leave Act”
 15 Annotated Code of Maryland
 16 (2008 Replacement Volume and 2013 Supplement)

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

19 **Article – Labor and Employment**

20 3–103.

21 **(I) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO**
 22 **DETERMINE WHETHER SUBTITLE 12 OF THIS TITLE HAS BEEN VIOLATED ON**
 23 **RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE.**

24 **SUBTITLE 12. PARENTAL LEAVE ACT.**

25 **3–1201.**

26 **(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS**
 27 **INDICATED.**

28 ~~**(B) “DEPARTMENT” MEANS THE DEPARTMENT OF LABOR, LICENSING,**~~
 29 ~~**AND REGULATION.**~~

30 ~~**(B)**~~ **(1) “ELIGIBLE EMPLOYEE” MEANS AN INDIVIDUAL WHO**
 31 **HAS REQUESTED THAT AN EMPLOYER PROVIDE PARENTAL LEAVE AND WHO, AS**
 32 **OF THE DATE THAT THE REQUESTED PARENTAL LEAVE BEGINS, WILL HAVE**
 33 **BEEN EMPLOYED BY THAT EMPLOYER FOR AT LEAST:**

34 **(I) A 12-MONTH PERIOD; AND**

1 (II) 1,250 HOURS DURING THE PREVIOUS 12 MONTHS.

2 (2) "ELIGIBLE EMPLOYEE" DOES NOT INCLUDE AN INDIVIDUAL:

3 (I) WHO IS EMPLOYED AT A WORK SITE AT WHICH THE
4 EMPLOYER EMPLOYS FEWER THAN 15 EMPLOYEES IF THE TOTAL NUMBER OF
5 EMPLOYEES EMPLOYED BY THAT EMPLOYER WITHIN 75 MILES OF THE WORK
6 SITE IS ALSO FEWER THAN 15; OR

7 (II) WHO IS AN INDEPENDENT CONTRACTOR.

8 ~~(D)~~ (C) (1) "EMPLOYER" MEANS A PERSON WHO EMPLOYS AT
9 LEAST 15 BUT NOT MORE THAN 49 INDIVIDUALS IN THE STATE FOR EACH
10 WORKING DAY DURING EACH OF 20 OR MORE CALENDAR WORKWEEKS IN THE
11 CURRENT OR PRECEDING CALENDAR YEAR.

12 (2) "EMPLOYER" INCLUDES:

13 (I) A PERSON WHO ACTS, DIRECTLY OR INDIRECTLY, IN THE
14 INTEREST OF AN EMPLOYER WITH RESPECT TO AN EMPLOYEE OF THE
15 EMPLOYER; AND

16 (II) A SUCCESSOR IN INTEREST OF AN EMPLOYER.

17 ~~(E)~~ (D) (1) "EMPLOYMENT BENEFITS" MEANS BENEFITS PROVIDED
18 OR MADE AVAILABLE TO AN EMPLOYEE BY AN EMPLOYER.

19 (2) "EMPLOYMENT BENEFITS" INCLUDES GROUP LIFE
20 INSURANCE, HEALTH INSURANCE, DISABILITY INSURANCE, SICK LEAVE,
21 ANNUAL LEAVE, EDUCATIONAL BENEFITS, AND PENSIONS.

22 ~~(F)~~ (E) "PARENTAL LEAVE" MEANS LEAVE DESCRIBED IN § 3-1202 OF
23 THIS SUBTITLE.

24 ~~(G)~~ (F) "SECRETARY" MEANS THE SECRETARY OF LABOR,
25 LICENSING, AND REGULATION.

26 3-1202.

27 (A) AN EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN
28 ELIGIBLE EMPLOYEE IS ENTITLED TO A TOTAL OF 6 WORKWEEKS OF UNPAID
29 PARENTAL LEAVE DURING ANY 12-MONTH PERIOD FOR ONE OR MORE OF THE
30 FOLLOWING:

1 (1) THE BIRTH OF A CHILD OF THE EMPLOYEE; OR

2 (2) THE PLACEMENT OF A CHILD WITH THE EMPLOYEE FOR
3 ADOPTION OR FOSTER CARE.

4 (B) AN EMPLOYER MAY DENY UNPAID PARENTAL LEAVE TO AN
5 ELIGIBLE EMPLOYEE IF:

6 (1) THE DENIAL IS NECESSARY TO PREVENT SUBSTANTIAL AND
7 GRIEVOUS ECONOMIC INJURY TO THE OPERATIONS OF THE EMPLOYER; AND

8 (2) THE EMPLOYER NOTIFIES THE EMPLOYEE OF THE DENIAL
9 BEFORE THE EMPLOYEE BEGINS TAKING THE LEAVE.

10 (C) IF AN EMPLOYER PROVIDES PAID VACATION LEAVE TO AN ELIGIBLE
11 EMPLOYEE, THE EMPLOYER MAY REQUIRE THE ELIGIBLE EMPLOYEE, OR THE
12 ELIGIBLE EMPLOYEE MAY ELECT, TO SUBSTITUTE THE PAID VACATION LEAVE
13 FOR ANY PART OF OR ALL OF THE PERIOD OF PARENTAL LEAVE.

14 **3-1203.**

15 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN
16 EMPLOYER MAY REQUIRE AN ELIGIBLE EMPLOYEE TO GIVE THE EMPLOYER
17 WRITTEN NOTICE OF THE EMPLOYEE'S INTENTION TO TAKE PARENTAL LEAVE
18 AT LEAST 30 DAYS BEFORE COMMENCING PARENTAL LEAVE.

19 (B) AN ELIGIBLE EMPLOYEE MAY BEGIN TAKING PARENTAL LEAVE
20 WITHOUT PRIOR NOTICE FOLLOWING A PREMATURE BIRTH, UNEXPECTED
21 ADOPTION, OR UNEXPECTED FOSTER PLACEMENT.

22 **3-1204.**

23 (A) AN ELIGIBLE EMPLOYEE WHO RETURNS TO WORK AFTER TAKING
24 PARENTAL LEAVE IS ENTITLED TO BE RESTORED BY AN EMPLOYER:

25 (1) TO THE POSITION OF EMPLOYMENT HELD BY THE EMPLOYEE
26 WHEN THE PARENTAL LEAVE BEGAN; OR

27 (2) TO AN EQUIVALENT POSITION WITH EQUIVALENT
28 EMPLOYMENT BENEFITS, PAY, AND OTHER TERMS AND CONDITIONS OF
29 EMPLOYMENT.

30 (B) AN EMPLOYER MAY:

1 (1) DENY RESTORATION OF THE ELIGIBLE EMPLOYEE'S POSITION
2 OF EMPLOYMENT UNDER SUBSECTION (A) OF THIS SECTION IF:

3 (I) THE DENIAL IS NECESSARY TO PREVENT SUBSTANTIAL
4 AND GRIEVOUS ECONOMIC INJURY TO THE OPERATIONS OF THE EMPLOYER;

5 (II) THE EMPLOYER NOTIFIES THE EMPLOYEE OF THE
6 INTENT OF THE EMPLOYER TO DENY RESTORATION OF THE EMPLOYEE'S
7 POSITION OF EMPLOYMENT AT THE TIME THE EMPLOYER DETERMINES THAT
8 ECONOMIC INJURY WOULD OCCUR; AND

9 (III) IN A CASE OF PARENTAL LEAVE THAT HAS ALREADY
10 BEGUN, THE EMPLOYEE ELECTS NOT TO RETURN TO EMPLOYMENT AFTER
11 RECEIVING NOTICE OF THE EMPLOYER'S INTENTION TO DENY RESTORATION OF
12 THE EMPLOYEE'S POSITION OF EMPLOYMENT; AND

13 (2) DURING THE PARENTAL LEAVE PERIOD, TERMINATE
14 EMPLOYMENT OF AN ELIGIBLE EMPLOYEE USING PARENTAL LEAVE ONLY FOR
15 CAUSE.

16 **3-1205.**

17 (A) (1) ~~EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,~~
18 ~~DURING~~ DURING ANY PERIOD THAT AN ELIGIBLE EMPLOYEE TAKES PARENTAL
19 LEAVE, AN EMPLOYER SHALL MAINTAIN COVERAGE OF A GROUP HEALTH PLAN
20 FOR THE DURATION OF THE PARENTAL LEAVE AND IN THE SAME MANNER THAT
21 COVERAGE WOULD HAVE BEEN PROVIDED IF THE EMPLOYEE HAD CONTINUED
22 IN EMPLOYMENT CONTINUOUSLY FOR THE DURATION OF THE PARENTAL LEAVE.

23 ~~(B)~~ ~~(1)~~ (2) (I) AN EMPLOYER MAY RECOVER THE PREMIUM
24 THAT THE EMPLOYER PAID FOR MAINTAINING COVERAGE FOR AN ELIGIBLE
25 EMPLOYEE UNDER A GROUP HEALTH PLAN DURING THE PERIOD OF PARENTAL
26 LEAVE IF THE EMPLOYEE FAILS TO RETURN TO EMPLOYMENT WITH THE
27 EMPLOYER AFTER THE PERIOD OF PARENTAL LEAVE TO WHICH THE EMPLOYEE
28 IS ENTITLED HAS EXPIRED.

29 ~~(2)~~ (II) ~~THIS SUBSECTION~~ PARAGRAPH DOES NOT APPLY IN THE
30 CASE OF AN EMPLOYEE WHO FAILS TO RETURN TO WORK BECAUSE OF OTHER
31 CIRCUMSTANCES BEYOND THE CONTROL OF THE EMPLOYEE.

32 (3) AN EMPLOYER MAY RECOVER A PREMIUM UNDER PARAGRAPH
33 (2)(I) OF THIS SUBSECTION BY DEDUCTING THE AMOUNT OF THE PREMIUM
34 FROM THE WAGES PAID TO THE EMPLOYEE ON THE TERMINATION OF
35 EMPLOYMENT UNDER § 3-505 OF THIS TITLE.

1 **(B) IF AN ELIGIBLE EMPLOYEE WORKS ON A COMMISSION BASIS, AN**
2 **EMPLOYER SHALL PAY TO THE ELIGIBLE EMPLOYEE DURING ANY PERIOD OF**
3 **PARENTAL LEAVE ANY COMMISSION THAT BECOMES DUE BECAUSE OF WORK**
4 **THE ELIGIBLE EMPLOYEE PERFORMED BEFORE TAKING PARENTAL LEAVE.**

5 **3-1206.**

6 **THE COMMISSIONER SHALL ADOPT REGULATIONS TO IMPLEMENT THE**
7 **PROVISIONS OF THIS SUBTITLE.**

8 **3-1207.**

9 **(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE**
10 **HAS BEEN VIOLATED, THE COMMISSIONER SHALL:**

11 **(1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION**
12 **INFORMALLY BY MEDIATION; OR**

13 **(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON**
14 **BEHALF OF THE ~~APPLICANT OR~~ EMPLOYEE.**

15 **(B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS**
16 **SECTION IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED FOR**
17 **INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF.**

18 **3-1208.**

19 **(A) IF AN EMPLOYER VIOLATES THIS SUBTITLE, AN AFFECTED**
20 **EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER TO RECOVER**
21 **DAMAGES EQUAL TO THE AMOUNT OF ANY WAGES, SALARY, EMPLOYMENT**
22 **BENEFITS, OR OTHER COMPENSATION DENIED OR LOST ~~AND AN ADDITIONAL~~**
23 **~~EQUAL AMOUNT AS LIQUIDATED DAMAGES.~~**

24 **(B) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO**
25 **JUDGMENT IN AN ACTION UNDER THIS SECTION, THE COURT SHALL ALLOW**
26 **AGAINST THE EMPLOYER REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF**
27 **THE ACTION.**

28 **(C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A**
29 **SUPERVISORY EMPLOYEE OF AN EMPLOYER MAY NOT BE PERSONALLY LIABLE**
30 **FOR A VIOLATION OF THIS SUBTITLE.**

31 **3-1209.**

1 **(A) AN EMPLOYER MAY NOT:**

2 **(1) VIOLATE ANY PROVISION OF THIS SUBTITLE;**

3 **(2) HINDER, DELAY, OR OTHERWISE INTERFERE WITH THE**
4 **SECRETARY OR AN AUTHORIZED REPRESENTATIVE OF THE SECRETARY IN THE**
5 **ENFORCEMENT OF THIS SUBTITLE; OR**

6 **(3) DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN**
7 **EMPLOYEE BECAUSE THE EMPLOYEE:**

8 **(I) HAS REQUESTED OR TAKEN PARENTAL LEAVE**
9 **AUTHORIZED UNDER THIS SUBTITLE;**

10 **(II) MAKES A COMPLAINT TO THE EMPLOYER, THE**
11 **SECRETARY, OR ANOTHER PERSON;**

12 **(III) BRINGS AN ACTION UNDER THIS SUBTITLE OR A**
13 **PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE OR CAUSES**
14 **THE ACTION OR PROCEEDING TO BE BROUGHT; OR**

15 **(IV) HAS TESTIFIED OR WILL TESTIFY IN AN ACTION UNDER**
16 **THIS SUBTITLE OR A PROCEEDING THAT RELATES TO THE SUBJECT OF THIS**
17 **SUBTITLE.**

18 **(B) THE COMMISSIONER MAY BRING AN ACTION FOR INJUNCTIVE**
19 **RELIEF AND DAMAGES AGAINST A PERSON WHO VIOLATES SUBSECTION (A)(1)**
20 **OR (3) OF THIS SECTION.**

21 **3-1210.**

22 **(A) THIS SUBTITLE MAY NOT BE CONSTRUED TO DIMINISH THE**
23 **OBLIGATION OF AN EMPLOYER TO COMPLY WITH A COLLECTIVE BARGAINING**
24 **AGREEMENT OR AN EMPLOYMENT BENEFIT PROGRAM OR PLAN THAT PROVIDES**
25 **GREATER FAMILY OR MEDICAL LEAVE RIGHTS TO EMPLOYEES THAN THE**
26 **RIGHTS ESTABLISHED UNDER THIS SUBTITLE.**

27 **(B) THE RIGHTS ESTABLISHED FOR EMPLOYEES UNDER THIS SUBTITLE**
28 **MAY NOT BE DIMINISHED BY A COLLECTIVE BARGAINING AGREEMENT OR AN**
29 **EMPLOYMENT BENEFIT PROGRAM OR PLAN.**

30 **3-1211.**

1 **THIS SUBTITLE MAY NOT BE CONSTRUED TO DISCOURAGE EMPLOYERS**
2 **FROM ADOPTING OR RETAINING LEAVE POLICIES MORE GENEROUS THAN**
3 **POLICIES THAT COMPLY WITH THIS SUBTITLE.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.