

# SENATE BILL 425

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By: **Senator Lee**

Introduced and read first time: February 6, 2015

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Wage Disclosure and Discussion Protection**

3 FOR the purpose of prohibiting an employer from taking certain actions concerning the  
4 inquiry about or disclosure or discussion of an employee’s wages; authorizing an  
5 employer, in a certain policy, to establish certain limitations on certain inquiries  
6 about or discussions or disclosures of wages; providing that, under certain  
7 circumstances, the failure of an employee to adhere to certain limitations shall be an  
8 affirmative defense against certain claims; providing that a certain employer  
9 prohibition against the disclosure of certain wage information may not apply under  
10 certain circumstances; providing for the construction of certain provisions of this Act;  
11 requiring the Commissioner of Labor and Industry, on a certain request, to provide  
12 without charge a copy of this Act; requiring each employer to post in a certain  
13 manner a copy of this Act; requiring the Commissioner to develop certain educational  
14 materials and make certain training available for certain purposes; requiring the  
15 Commissioner to take certain actions regarding violations of this Act; authorizing  
16 the Attorney General to take certain actions regarding a violation of this Act;  
17 authorizing a certain employee to bring a civil action against an employer to recover  
18 certain damages for a violation of a certain provision of this Act; authorizing a trier  
19 of fact to award certain liquidated damages under certain circumstances; authorizing  
20 an employee to bring a certain action on behalf of certain employees; requiring an  
21 action under this Act to be filed within a certain period of time; authorizing a court  
22 to award certain fees, costs, and prejudgment interest under certain circumstances;  
23 prohibiting an employer from willfully violating this Act or taking certain other  
24 actions related to this Act; prohibiting an employee from making a certain  
25 groundless or malicious complaint or taking certain actions in bad faith; authorizing  
26 the Commissioner to bring certain actions and, on a certain request, take certain  
27 actions; providing that an employer who violates certain provisions of this Act is  
28 guilty of a misdemeanor and is subject to a certain penalty; defining certain terms;  
29 providing for the application of this Act; and generally relating to employee  
30 protections for the disclosure and discussion of wages.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to  
2 Article – Labor and Employment  
3 Section 3–1301 through 3–1306 to be under the new subtitle “Subtitle 13. Wage  
4 Disclosure and Discussion Protection”  
5 Annotated Code of Maryland  
6 (2008 Replacement Volume and 2014 Supplement)

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

9 **Article – Labor and Employment**

10 **SUBTITLE 13. WAGE DISCLOSURE AND DISCUSSION PROTECTION.**

11 **3–1301.**

12 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
13 INDICATED.

14 (B) (1) “EMPLOYER” MEANS:

15 (I) A PERSON ENGAGED IN A BUSINESS, AN INDUSTRY, A  
16 PROFESSION, A TRADE, OR ANY OTHER ENTERPRISE IN THE STATE;

17 (II) THE STATE AND ITS UNITS;

18 (III) A COUNTY AND ITS UNITS; AND

19 (IV) A MUNICIPAL GOVERNMENT IN THE STATE.

20 (2) “EMPLOYER” INCLUDES A PERSON WHO ACTS DIRECTLY OR  
21 INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

22 (C) (1) “WAGE” MEANS ALL COMPENSATION FOR EMPLOYMENT.

23 (2) “WAGE” INCLUDES BOARD, LODGING, OR ANOTHER ADVANTAGE  
24 PROVIDED TO AN EMPLOYEE FOR THE CONVENIENCE OF THE EMPLOYER.

25 **3–1302.**

26 (A) AN EMPLOYER MAY NOT:

27 (1) PROHIBIT AN EMPLOYEE FROM:

1                   **(I) INQUIRING ABOUT, DISCUSSING, OR DISCLOSING THE**  
2 **WAGES OF THE EMPLOYEE OR ANOTHER EMPLOYEE; OR**

3                   **(II) REQUESTING THAT THE EMPLOYER PROVIDE A REASON FOR**  
4 **WHY THE EMPLOYEE'S WAGES ARE A CONDITION OF EMPLOYMENT;**

5                   **(2) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR OTHER DOCUMENT**  
6 **THAT PURPORTS TO DENY THE EMPLOYEE THE RIGHT TO DISCLOSE OR DISCUSS THE**  
7 **EMPLOYEE'S WAGES; OR**

8                   **(3) TAKE ANY ADVERSE EMPLOYMENT ACTION AGAINST AN**  
9 **EMPLOYEE FOR:**

10                   **(I) INQUIRING ABOUT ANOTHER EMPLOYEE'S WAGES;**

11                   **(II) DISCLOSING THE EMPLOYEE'S OWN WAGES;**

12                   **(III) DISCUSSING ANOTHER EMPLOYEE'S WAGES IF THOSE**  
13 **WAGES HAVE BEEN DISCLOSED VOLUNTARILY;**

14                   **(IV) ASKING THE EMPLOYER TO PROVIDE A REASON FOR THE**  
15 **EMPLOYEE'S WAGES; OR**

16                   **(V) AIDING OR ENCOURAGING ANOTHER EMPLOYEE'S**  
17 **EXERCISE OF RIGHTS UNDER THIS SECTION.**

18                   **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYER**  
19 **MAY, IN A WRITTEN POLICY PROVIDED TO EACH EMPLOYEE, ESTABLISH**  
20 **REASONABLE WORKDAY LIMITATIONS ON THE TIME, PLACE, AND MANNER FOR**  
21 **INQUIRIES ABOUT OR THE DISCUSSION OR DISCLOSURE OF EMPLOYEE WAGES.**

22                   **(2) A LIMITATION ESTABLISHED UNDER PARAGRAPH (1) OF THIS**  
23 **SUBSECTION SHALL BE CONSISTENT WITH STANDARDS ADOPTED BY THE**  
24 **COMMISSIONER AND ALL OTHER STATE AND FEDERAL LAWS.**

25                   **(3) SUBJECT TO SUBSECTION (D) OF THIS SECTION, LIMITATIONS**  
26 **ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE**  
27 **PROHIBITING AN EMPLOYEE FROM DISCUSSING OR DISCLOSING THE WAGES OF**  
28 **ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR PERMISSION.**

29                   **(C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE**  
30 **FAILURE OF AN EMPLOYEE TO ADHERE TO A REASONABLE LIMITATION INCLUDED**  
31 **IN A WRITTEN POLICY UNDER SUBSECTION (B) OF THIS SECTION SHALL BE AN**

1 AFFIRMATIVE DEFENSE TO A CLAIM MADE AGAINST AN EMPLOYER BY THE  
2 EMPLOYEE UNDER THIS SECTION IF THE ADVERSE EMPLOYMENT ACTION TAKEN BY  
3 THE EMPLOYER WAS FOR A FAILURE TO ADHERE TO THE REASONABLE LIMITATION  
4 AND NOT FOR AN INQUIRY, A DISCUSSION, OR A DISCLOSURE OF WAGES IN  
5 ACCORDANCE WITH THE LIMITATION.

6 (D) (1) A PROHIBITION ESTABLISHED IN ACCORDANCE WITH  
7 SUBSECTION (B)(3) OF THIS SECTION AGAINST THE DISCUSSION OR DISCLOSURE OF  
8 THE WAGES OF ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR  
9 PERMISSION MAY NOT APPLY TO INSTANCES WHERE AN EMPLOYEE WHO HAS ACCESS  
10 TO THE WAGE INFORMATION OF OTHER EMPLOYEES AS A PART OF THE EMPLOYEE'S  
11 ESSENTIAL JOB FUNCTIONS IF THE DISCUSSION OR DISCLOSURE IS IN RESPONSE TO  
12 A COMPLAINT OR CHARGE OR IN FURTHERANCE OF AN INVESTIGATION, A  
13 PROCEEDING, A HEARING, OR AN ACTION UNDER THIS SUBTITLE, INCLUDING AN  
14 INVESTIGATION CONDUCTED BY THE EMPLOYER.

15 (2) IF AN EMPLOYEE WHO HAS ACCESS TO WAGE INFORMATION AS  
16 PART OF THE ESSENTIAL FUNCTIONS OF THE EMPLOYEE'S JOB DISCLOSES THE  
17 EMPLOYEE'S OWN WAGES OR WAGE INFORMATION ABOUT ANOTHER EMPLOYEE  
18 OBTAINED OUTSIDE THE PERFORMANCE OF THE ESSENTIAL FUNCTIONS OF THE  
19 EMPLOYEE'S JOB, THE EMPLOYEE SHALL BE ENTITLED TO ALL THE PROTECTIONS  
20 AFFORDED UNDER THIS SUBTITLE.

21 (E) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO:

22 (1) REQUIRE AN EMPLOYEE TO DISCLOSE THE EMPLOYEE'S WAGES;

23 (2) DIMINISH EMPLOYEES' RIGHTS UNDER FEDERAL, STATE, OR  
24 LOCAL LAW TO NEGOTIATE THE TERMS AND CONDITIONS OF EMPLOYMENT;

25 (3) LIMIT THE RIGHTS OF AN EMPLOYEE PROVIDED UNDER ANY  
26 OTHER PROVISION OF LAW OR COLLECTIVE BARGAINING AGREEMENT;

27 (4) CREATE AN OBLIGATION ON ANY EMPLOYER OR EMPLOYEE TO  
28 DISCLOSE WAGES;

29 (5) PERMIT AN EMPLOYEE, WITHOUT THE WRITTEN CONSENT OF THE  
30 EMPLOYER, TO DISCLOSE PROPRIETARY INFORMATION, TRADE SECRET  
31 INFORMATION, OR INFORMATION THAT IS OTHERWISE SUBJECT TO A LEGAL  
32 PRIVILEGE OR PROTECTED BY LAW; OR

33 (6) PERMIT THE EMPLOYEE TO DISCLOSE WAGE INFORMATION TO A  
34 COMPETITOR OF THE EMPLOYER.

1 **3-1303.**

2 (A) ON REQUEST OF AN EMPLOYER, THE COMMISSIONER SHALL PROVIDE  
3 WITHOUT CHARGE A COPY OF THIS SUBTITLE TO THE EMPLOYER.

4 (B) EACH EMPLOYER SHALL KEEP POSTED CONSPICUOUSLY IN EACH PLACE  
5 OF EMPLOYMENT A COPY OF THIS SUBTITLE.

6 (C) THE COMMISSIONER SHALL DEVELOP EDUCATIONAL MATERIALS AND  
7 MAKE TRAINING AVAILABLE TO ASSIST EMPLOYERS IN ADOPTING TRAINING,  
8 POLICIES, AND PROCEDURES COMPLIANT WITH THE REQUIREMENTS OF THIS  
9 SUBTITLE.

10 **3-1304.**

11 (A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE  
12 HAS BEEN VIOLATED, THE COMMISSIONER SHALL:

13 (1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION  
14 INFORMALLY BY MEDIATION; OR

15 (2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF  
16 OF THE APPLICANT OR EMPLOYEE.

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

20 **3-1305.**

21 (A) (1) (I) IF AN EMPLOYER VIOLATES THIS SUBTITLE, AN AFFECTED  
22 EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER FOR INJUNCTIVE  
23 RELIEF AND TO RECOVER BOTH ACTUAL AND LIQUIDATED DAMAGES.

24 (II) IN AWARDING LIQUIDATED DAMAGES UNDER  
25 SUBPARAGRAPH (I) OF THIS PARAGRAPH, A TRIER OF FACT MAY AWARD, IN THE  
26 CASE OF A WILLFUL VIOLATION OF THIS SUBTITLE, AN AMOUNT UP TO THREE TIMES  
27 THE TOTAL AMOUNT OF THE WAGES FOUND TO BE DUE.

28 (2) AN EMPLOYEE MAY BRING AN ACTION ON BEHALF OF THE  
29 EMPLOYEE AND OTHER EMPLOYEES SIMILARLY AFFECTED.

1           **(B) ON THE WRITTEN REQUEST OF AN EMPLOYEE WHO IS ENTITLED TO**  
2 **BRING AN ACTION UNDER THIS SECTION, THE COMMISSIONER MAY:**

3           **(1) TAKE AN ASSIGNMENT OF THE CLAIM IN TRUST FOR THE**  
4 **EMPLOYEE;**

5           **(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION IN**  
6 **ACCORDANCE WITH THIS SECTION ON BEHALF OF THE EMPLOYEE; AND**

7           **(3) CONSOLIDATE TWO OR MORE CLAIMS AGAINST AN EMPLOYER.**

8           **(C) AN ACTION UNDER THIS SECTION SHALL BE FILED WITHIN 3 YEARS OF**  
9 **THE ACT ON WHICH THE ACTION IS BASED.**

10           **(D) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO**  
11 **JUDGMENT IN AN ACTION UNDER THIS SECTION, THE COURT SHALL ALLOW AGAINST**  
12 **THE EMPLOYER REASONABLE COUNSEL FEES AND OTHER COSTS OF THE ACTION, AS**  
13 **WELL AS PREJUDGMENT INTEREST IN ACCORDANCE WITH THE MARYLAND RULES.**

14 **3-1306.**

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

16           **(1) WILLFULLY VIOLATE ANY PROVISION OF THIS SUBTITLE;**

17           **(2) HINDER, DELAY, OR OTHERWISE INTERFERE WITH THE**  
18 **COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER IN**  
19 **THE ENFORCEMENT OF THIS SUBTITLE;**

20           **(3) REFUSE ENTRY TO THE COMMISSIONER OR AN AUTHORIZED**  
21 **REPRESENTATIVE OF THE COMMISSIONER INTO A PLACE OF EMPLOYMENT THAT**  
22 **THE COMMISSIONER IS AUTHORIZED UNDER THIS SUBTITLE TO INSPECT; OR**

23           **(4) DISCHARGE OR OTHERWISE DISCRIMINATE AGAINST AN**  
24 **EMPLOYEE BECAUSE THE EMPLOYEE:**

25           **(I) MAKES A COMPLAINT TO THE EMPLOYER, THE**  
26 **COMMISSIONER, OR ANOTHER PERSON;**

27           **(II) BRINGS AN ACTION UNDER THIS SUBTITLE OR A**  
28 **PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE OR CAUSES THE**  
29 **ACTION OR PROCEEDING TO BE BROUGHT; OR**

1                   **(III) HAS TESTIFIED OR WILL TESTIFY IN AN ACTION UNDER THIS**  
2 **SUBTITLE OR A PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE.**

3           **(B) AN EMPLOYEE MAY NOT:**

4                   **(1) MAKE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE**  
5 **COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER;**

6                   **(2) IN BAD FAITH, BRING AN ACTION UNDER THIS SUBTITLE;**

7                   **(3) IN BAD FAITH, BRING A PROCEEDING THAT RELATES TO THE**  
8 **SUBJECT OF THIS SUBTITLE; OR**

9                   **(4) IN BAD FAITH, TESTIFY IN AN ACTION UNDER THIS SUBTITLE OR A**  
10 **PROCEEDING THAT RELATES TO THE SUBJECT OF THIS SUBTITLE.**

11           **(C) THE COMMISSIONER MAY BRING AN ACTION FOR INJUNCTIVE RELIEF**  
12 **AND DAMAGES AGAINST A PERSON WHO VIOLATES SUBSECTION (A)(1) OR (4) OR**  
13 **(B)(1), (3), OR (4) OF THIS SECTION.**

14           **(D) AN EMPLOYER WHO VIOLATES ANY PROVISION OF SUBSECTION (A)(2)**  
15 **OR (3) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS**  
16 **SUBJECT TO A FINE NOT EXCEEDING \$300.**

17           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
18 apply only prospectively and may not be applied or interpreted to have any effect on or  
19 application to any cause of action arising before the effective date of this Act.

20           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2015.