

# HOUSE BILL 401

K3, P4

6lr0831

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By: **Delegates K. Young, Lam, Morales, Barve, Carr, Cullison, Ebersole, Gilchrist, Hixson, Jalisi, Kelly, Krimm, Lierman, Lisanti, Luedtke, McIntosh, A. Miller, Moon, Pena–Melnyk, Pendergrass, Platt, Reznik, S. Robinson, Smith, and Tarlau**

Introduced and read first time: January 28, 2016

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Equal Pay for Equal Work – Revisions**

3 FOR the purpose of authorizing the Commissioner of Labor and Industry to enter the place  
4 of employment of an employer for certain purposes, examine a witness under oath,  
5 and subpoena the attendance and testimony of certain witnesses and the production  
6 of certain documents; requiring the Commissioner to maintain a certain hotline  
7 number; establishing the Equal Pay Commission; providing for the composition,  
8 terms, chair, and staffing of the Commission; prohibiting a member of the  
9 Commission from receiving certain compensation, but authorizing the  
10 reimbursement of certain expenses; requiring the Commission to study and promote  
11 certain research, sponsor and coordinate certain information and education  
12 programs, and recommend certain legislation; requiring the Commission to submit  
13 a certain report to the Governor, President of the Senate, and the Speaker of the  
14 House of Delegates on or before a certain date each year; requiring an employer to  
15 include certain information in a job advertisement to recruit an employee or  
16 individual contractor to fill a position within the employer's organization; prohibiting  
17 an employer from paying less than the minimum rate of pay included in a certain job  
18 advertisement to a certain employee; prohibiting an employer from seeking salary  
19 history information by certain methods and providing salary history information to  
20 a prospective employer without a certain written authorization; authorizing, under  
21 certain circumstances, an employee to bring an action against an employer to recover  
22 certain punitive damages; altering a certain statute of limitations; providing that an  
23 officer or agent of an employer is deemed to be the employer for certain purposes  
24 under certain circumstances; establishing certain civil penalties; requiring the  
25 Commissioner to consider certain factors in determining the amount of certain civil  
26 penalties; requiring the Commissioner to assess a certain civil penalty for each  
27 employee with respect to whom the employer violated this Act; altering a certain

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 penalty; defining a certain term; specifying the terms of the initial members of the  
2 Commission; and generally relating to equal pay for equal work.

3 BY repealing and reenacting, with amendments,  
4 Article – Labor and Employment  
5 Section 3–303, 3–307, and 3–308  
6 Annotated Code of Maryland  
7 (2008 Replacement Volume and 2015 Supplement)

8 BY adding to  
9 Article – Labor and Employment  
10 Section 3–303.1, 3–304.1, and 3–307.1  
11 Annotated Code of Maryland  
12 (2008 Replacement Volume and 2015 Supplement)

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

15 **Article – Labor and Employment**

16 3–303.

17 **(A)** In addition to any powers set forth elsewhere, the Commissioner may:

18 (1) use informal methods of conference, conciliation, and persuasion to  
19 eliminate pay practices that are unlawful under this subtitle; [and]

20 (2) supervise the payment of a wage owing to an employee under this  
21 subtitle;

22 **(3) ENTER THE PLACE OF EMPLOYMENT OF AN EMPLOYER TO**  
23 **INSPECT AND COPY PAYROLL AND OTHER RECORDS TO COMPARE THE CHARACTER**  
24 **OF WORK IN WHICH INDIVIDUALS EMPLOYED BY THE EMPLOYER ARE ENGAGED, TO**  
25 **QUESTION THE INDIVIDUALS, AND TO OBTAIN ANY OTHER INFORMATION AS IS**  
26 **REASONABLY NECESSARY FOR THE ADMINISTRATION AND ENFORCEMENT OF THIS**  
27 **SUBTITLE; AND**

28 **(4) EXAMINE A WITNESS UNDER OATH AND SUBPOENA THE**  
29 **ATTENDANCE AND TESTIMONY OF A WITNESS OR THE PRODUCTION OF DOCUMENTS**  
30 **RELATING TO AN INVESTIGATION INTO AN ALLEGED VIOLATION OF THIS SUBTITLE.**

31 **(B) THE COMMISSIONER SHALL MAINTAIN A HOTLINE NUMBER THROUGH**  
32 **WHICH AN EMPLOYEE MAY MAKE A COMPLAINT OR PROVIDE INFORMATION**  
33 **REGARDING A VIOLATION OF THIS SUBTITLE.**

1 **3-303.1.**

2 (A) IN THIS SECTION, "COMMISSION" MEANS THE EQUAL PAY  
3 COMMISSION.

4 (B) THERE IS AN EQUAL PAY COMMISSION.

5 (C) THE COMMISSION CONSISTS OF THE FOLLOWING MEMBERS,  
6 APPOINTED BY THE GOVERNOR:

7 (1) TWO REPRESENTATIVES OF BUSINESSES IN THE STATE WHO HAVE  
8 BEEN NOMINATED BY STATE BUSINESS ORGANIZATIONS AND BUSINESS TRADE  
9 ASSOCIATIONS;

10 (2) TWO REPRESENTATIVES OF LABOR ORGANIZATIONS WHO HAVE  
11 BEEN NOMINATED BY LABOR FEDERATIONS;

12 (3) TWO REPRESENTATIVES OF ORGANIZATIONS WHOSE OBJECTIVES  
13 INCLUDE THE ELIMINATION OF PAY DISPARITIES BETWEEN MEN AND WOMEN AND  
14 MINORITIES AND NONMINORITIES AND WHO HAVE UNDERTAKEN ADVOCACY,  
15 EDUCATIONAL, OR LEGISLATIVE INITIATIVES IN PURSUIT OF THAT OBJECTIVE; AND

16 (4) THREE REPRESENTATIVES OF HIGHER EDUCATION OR RESEARCH  
17 INSTITUTIONS WHO HAVE EXPERIENCE AND EXPERTISE IN THE COLLECTION AND  
18 ANALYSIS OF DATA CONCERNING PAY DISPARITIES AND WHOSE RESEARCH HAS  
19 BEEN USED IN EFFORTS TO PROMOTE THE ELIMINATION OF THOSE DISPARITIES.

20 (D) (1) THE TERM OF A MEMBER IS 4 YEARS.

21 (2) THE TERMS OF THE MEMBERS ARE STAGGERED AS REQUIRED BY  
22 THE TERMS PROVIDED FOR THE MEMBERS OF THE COMMISSION ON OCTOBER 1,  
23 2016.

24 (3) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL  
25 A SUCCESSOR IS APPOINTED AND QUALIFIES.

26 (4) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES  
27 ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED AND  
28 QUALIFIES.

29 (E) THE GOVERNOR SHALL DESIGNATE THE CHAIR OF THE COMMISSION.

1           **(F) THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION SHALL**  
2 **PROVIDE STAFF FOR THE COMMISSION.**

3           **(G) A MEMBER OF THE COMMISSION:**

4                   **(1) MAY NOT RECEIVE COMPENSATION; BUT**

5                   **(2) IS ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER THE**  
6 **STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.**

7           **(H) THE COMMISSION SHALL:**

8                   **(1) STUDY AND PROMOTE RESEARCH REGARDING:**

9                           **(I) THE EXTENT OF WAGE DISPARITIES, BOTH IN THE PUBLIC**  
10 **AND PRIVATE SECTORS, BETWEEN MEN AND WOMEN AND BETWEEN MINORITIES AND**  
11 **NONMINORITIES;**

12                           **(II) THE FACTORS WHICH CAUSE, OR WHICH TEND TO CAUSE,**  
13 **WAGE DISPARITIES, INCLUDING:**

14                                   **1. SEGREGATION BETWEEN MEN AND WOMEN AND**  
15 **BETWEEN MINORITIES AND NONMINORITIES ACROSS AND WITHIN OCCUPATIONS;**

16                                   **2. PAYMENT OF LOWER WAGES FOR WORK IN**  
17 **FEMALE-DOMINATED OCCUPATIONS;**

18                                   **3. CHILD-REARING RESPONSIBILITIES;**

19                                   **4. THE NUMBER OF WOMEN WHO ARE HEADS OF**  
20 **HOUSEHOLDS;**

21                                   **5. EDUCATION;**

22                                   **6. HOURS WORKED; AND**

23                                   **7. YEARS ON THE JOB;**

24                           **(III) THE CONSEQUENCES OF WAGE DISPARITIES ON THE**  
25 **ECONOMY AND FAMILIES AFFECTED; AND**

26                           **(IV) ACTIONS THAT ARE LIKELY TO LEAD TO THE ELIMINATION**  
27 **AND PREVENTION OF WAGE DISPARITIES;**

1           **(2) PROMOTE, IN COOPERATION WITH THE FEDERAL GOVERNMENT**  
2 **AND STATE, LOCAL, AND PRIVATE ENTITIES, PROGRAMS TO ELIMINATE WAGE**  
3 **DISPARITIES BETWEEN MEN AND WOMEN AND BETWEEN MINORITIES AND**  
4 **NONMINORITIES;**

5           **(3) SPONSOR AND COORDINATE INFORMATION AND EDUCATIONAL**  
6 **PROGRAMS IN THE STATE INTENDED TO REDUCE OR END WAGE DISPARITIES**  
7 **BETWEEN MEN AND WOMEN AND BETWEEN MINORITIES AND NONMINORITIES; AND**

8           **(4) RECOMMEND ANY SPECIFIC LEGISLATION THAT IS NECESSARY TO**  
9 **ELIMINATE WAGE DISPARITIES BETWEEN MEN AND WOMEN AND BETWEEN**  
10 **MINORITIES AND NONMINORITIES.**

11           **(I) (1) ON OR BEFORE SEPTEMBER 30 AND EACH YEAR THEREAFTER,**  
12 **THE COMMISSION SHALL SUBMIT A REPORT TO THE GOVERNOR AND, IN**  
13 **ACCORDANCE WITH § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE**  
14 **PRESIDENT OF THE SENATE AND THE SPEAKER OF THE HOUSE OF DELEGATES.**

15           **(2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS**  
16 **SUBSECTION SHALL INCLUDE:**

17                   **(I) THE RESULTS OF ANY STUDY OR RESEARCH PROMOTED BY**  
18 **THE COMMISSION UNDER SUBSECTION (H)(1) OF THIS SECTION;**

19                   **(II) THE ACTIVITIES OF THE COMMISSION; AND**

20                   **(III) ANY LEGISLATION RECOMMENDED UNDER SUBSECTION**  
21 **(H)(4) OF THIS SECTION.**

22 **3-304.1.**

23           **(A) AN EMPLOYER SHALL INCLUDE IN A JOB ADVERTISEMENT TO RECRUIT**  
24 **AN EMPLOYEE OR INDEPENDENT CONTRACTOR TO FILL A POSITION WITHIN THE**  
25 **EMPLOYER'S ORGANIZATION THE FOLLOWING INFORMATION:**

26                   **(1) THE MINIMUM RATE OF PAY;**

27                   **(2) WHETHER THE RATE OF PAY IS:**

28                           **(I) BY THE HOUR, SHIFT, DAY, WEEK, OR PIECE;**

29                           **(II) A SALARY;**

1 (III) A COMMISSION; OR

2 (IV) ANOTHER METHOD;

3 (3) WHETHER THE POSITION IS ELIGIBLE FOR OVERTIME AND, IF  
4 APPLICABLE, HOW OVERTIME WILL BE PAID; AND

5 (4) WHETHER ANY ALLOWANCES, INCLUDING A TIP CREDIT OR A  
6 MEAL OR LODGING ALLOWANCE, WILL BE CLAIMED BY THE EMPLOYER.

7 (B) AN EMPLOYER MAY NOT PAY LESS THAN THE MINIMUM RATE OF PAY  
8 INCLUDED IN A JOB ADVERTISEMENT UNDER SUBSECTION (A) OF THIS SECTION TO  
9 AN EMPLOYEE WHO IS HIRED TO FILL THE POSITION ADVERTISED.

10 (C) (1) AN EMPLOYER MAY NOT SEEK ORALLY, IN WRITING, OR THROUGH  
11 AN EMPLOYEE OR AN AGENT, SALARY HISTORY INFORMATION, INCLUDING  
12 COMPENSATION AND BENEFITS FOR AN EMPLOYEE OR APPLICANT FOR  
13 EMPLOYMENT, WITHOUT THE WRITTEN AUTHORIZATION OF THE EMPLOYEE OR  
14 APPLICANT.

15 (2) AN EMPLOYER MAY NOT PROVIDE THE SALARY HISTORY OF A  
16 CURRENT OR FORMER EMPLOYEE TO A PROSPECTIVE EMPLOYER WITHOUT  
17 WRITTEN AUTHORIZATION PROVIDED BY THE CURRENT OR FORMER EMPLOYEE.

18 3-307.

19 (a) (1) If an employer violates this subtitle, an affected employee may bring an  
20 action against the employer to recover:

21 (I) the difference between the wages paid to male and female  
22 employees who do the same type work [and];

23 (II) an additional equal amount as liquidated damages; AND

24 (III) AN ADDITIONAL EQUAL AMOUNT AS PUNITIVE DAMAGES.

25 (2) An employee may bring an action on behalf of the employee and other  
26 employees similarly affected.

27 (b) On the written request of an employee who is entitled to bring an action under  
28 this section, the Commissioner may:

29 (1) take an assignment of the claim in trust for the employee;

1 (2) ask the Attorney General to bring an action in accordance with this  
2 section on behalf of the employee; and

3 (3) consolidate 2 or more claims against an employer.

4 (c) An action under this section shall be filed within 3 years of the **DISCOVERY**  
5 **OF THE** act on which the action is based.

6 (d) The agreement of an employee to work for less than the wage to which the  
7 employee is entitled under this subtitle is not a defense to an action under this section.

8 (e) If a court determines that an employee is entitled to judgment in an action  
9 under this section, the court shall allow against the employer reasonable counsel fees and  
10 other costs of the action.

11 **(F) IF AN OFFICER OR AGENT OF AN EMPLOYER WILLFULLY AND**  
12 **KNOWINGLY PERMITS THE EMPLOYER TO EVADE A JUDGMENT IN AN ACTION UNDER**  
13 **THIS SECTION, THE OFFICER OR AGENT SHALL BE DEEMED TO BE THE EMPLOYER**  
14 **FOR THE PURPOSE OF ENFORCING A JUDGMENT IN AN ACTION UNDER THIS**  
15 **SECTION.**

16 **3-307.1.**

17 **(A) IF AN EMPLOYER WHO EMPLOYS FEWER THAN FOUR EMPLOYEES**  
18 **VIOLATES THIS SUBTITLE, THE COMMISSIONER MAY ASSESS A CIVIL PENALTY OF:**

19 **(1) FOR A FIRST VIOLATION, NOT MORE THAN \$500;**

20 **(2) FOR A SECOND VIOLATION, NOT MORE THAN \$2,500; AND**

21 **(3) FOR A THIRD OR SUBSEQUENT VIOLATION, NOT MORE THAN**  
22 **\$5,000.**

23 **(B) IF AN EMPLOYER THAT EMPLOYS FOUR OR MORE EMPLOYEES VIOLATES**  
24 **THIS SUBTITLE, THE COMMISSION MAY ASSESS A CIVIL PENALTY OF:**

25 **(1) FOR A FIRST VIOLATION, NOT MORE THAN \$2,500;**

26 **(2) FOR A SECOND VIOLATION, NOT MORE THAN \$3,000; AND**

27 **(3) FOR A THIRD OR SUBSEQUENT VIOLATION, NOT MORE THAN**  
28 **\$5,000.**

1           **(C) IN DETERMINING THE AMOUNT OF A CIVIL PENALTY TO BE ASSESSED**  
2 **UNDER SUBSECTION (A) OR (B) OF THIS SECTION, THE COMMISSIONER SHALL**  
3 **CONSIDER THE SIZE OF THE EMPLOYER AND THE GRAVITY OF THE VIOLATION.**

4           **(D) IF THE COMMISSIONER ASSESSES A CIVIL PENALTY UNDER SUBSECTION**  
5 **(A) OR (B) OF THIS SECTION, THE COMMISSION SHALL ASSESS THE PENALTY FOR**  
6 **EACH EMPLOYEE WITH RESPECT TO WHOM THE EMPLOYER VIOLATED THIS**  
7 **SUBTITLE.**

8 3-308.

9           (a) An employer may not:

10               (1) willfully violate any provision of this subtitle;

11               (2) hinder, delay, or otherwise interfere with the Commissioner or an  
12 authorized representative of the Commissioner in the enforcement of this subtitle;

13               (3) refuse entry to the Commissioner or an authorized representative of the  
14 Commissioner into a place of employment that the Commissioner is authorized under this  
15 subtitle to inspect; or

16               (4) discharge or otherwise discriminate against an employee because the  
17 employee:

18                       (i) makes a complaint to the employer, the Commissioner, or  
19 another person;

20                       (ii) brings an action under this subtitle or a proceeding that relates  
21 to the subject of this subtitle or causes the action or proceeding to be brought; or

22                       (iii) has testified or will testify in an action under this subtitle or a  
23 proceeding that relates to the subject of this subtitle.

24           (b) An employee may not:

25               (1) make a groundless or malicious complaint to the Commissioner or an  
26 authorized representative of the Commissioner;

27               (2) in bad faith, bring an action under this subtitle;

28               (3) in bad faith, bring a proceeding that relates to the subject of this  
29 subtitle; or

30               (4) in bad faith, testify in an action under this subtitle or a proceeding that  
31 relates to the subject of this subtitle.



1 (c) The Commissioner may bring an action for injunctive relief and damages  
2 against a person who violates subsection (a)(1) or (4) or subsection (b)(1), (3), or (4) of this  
3 section.

4 (d) An employer who violates any provision of subsection (a)(2) or (3) of this  
5 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding **[\$300]**  
6 **\$5,000**.

7 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the initial  
8 members of the Equal Pay Commission shall expire as follows:

9 (1) two members in 2017;

10 (2) two members in 2018;

11 (3) two members in 2019; and

12 (4) three members in 2020.

13 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2016.