

# SENATE BILL 481

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By: **Senators Lee, Raskin, Astle, Benson, Conway, Currie, DeGrange, Feldman, Ferguson, Gladden, Guzzone, Kagan, Kasemeyer, Kelley, King, Klausmeier, Madaleno, Manno, Mathias, McFadden, Middleton, Miller, Muse, Nathan-Pulliam, Peters, Pinsky, Pugh, Ramirez, Rosapepe, Young, and Zirkin**

Introduced and read first time: February 3, 2016

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of altering a certain provision of law concerning equal pay for equal work  
4 to prohibit discrimination on the basis of gender identity; prohibiting an employer  
5 from discriminating between employees in any occupation by providing certain less  
6 favorable employment opportunities based on sex or gender identity; providing that,  
7 for purposes of certain provisions of law concerning equal pay for equal work, an  
8 employee shall be deemed to work in the same establishment as another employee if  
9 the employees work at workplaces in the same county of the State; providing that a  
10 certain provision of law does not prohibit a certain variation based on a certain  
11 system or bona fide factor; providing that certain exceptions do not apply under  
12 certain circumstances; prohibiting an employer from taking certain actions  
13 concerning the disclosure or discussion of an employee's wages; authorizing an  
14 employer, in a certain policy, to establish certain limitations on certain inquiries  
15 about or discussions or disclosures of wages; providing that, under certain  
16 circumstances, the failure of an employee to adhere to certain limitations shall be an  
17 affirmative defense against certain claims; providing that a certain employer  
18 prohibition against the disclosure of certain wage information may not apply under  
19 certain circumstances; providing for the construction of certain provisions of this Act;  
20 requiring the Commissioner of Labor and Industry, in consultation with the  
21 Maryland Commission on Civil Rights, to develop certain educational materials and  
22 make certain training available for certain purposes; altering a certain provision of  
23 law to allow a certain employee to bring a certain action for injunctive relief and to  
24 recover the difference paid between employees of one sex or gender identity and  
25 employees of another sex or gender identity who do work of a comparable nature or  
26 the same type of work; authorizing a certain employee to bring a civil action against  
27 an employer to recover certain damages for a violation of a certain provision of this

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Act; authorizing the trier of fact to award certain liquidated damages under certain  
 2 circumstances; authorizing the Attorney General, on a certain written request, to  
 3 bring an action on behalf of an employee and consolidate certain claims against an  
 4 employer; authorizing a court to award certain prejudgment interest under certain  
 5 circumstances; authorizing the Attorney General to bring an action for injunctive  
 6 relief and damages against a person who violates certain provisions of this Act;  
 7 defining a certain term; making conforming changes; providing for the application of  
 8 this Act; and generally relating to equal pay for equal work and the disclosure of  
 9 certain wage information by certain employees.

10 BY repealing and reenacting, with amendments,  
 11 Article – Labor and Employment  
 12 Section 3–304, 3–306, 3–307, and 3–308  
 13 Annotated Code of Maryland  
 14 (2008 Replacement Volume and 2015 Supplement)

15 BY adding to  
 16 Article – Labor and Employment  
 17 Section 3–304.1  
 18 Annotated Code of Maryland  
 19 (2008 Replacement Volume and 2015 Supplement)

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

22 **Article – Labor and Employment**

23 3–304.

24 (a) (1) IN THIS SECTION, “PROVIDING LESS FAVORABLE EMPLOYMENT  
 25 OPPORTUNITIES” MEANS ASSIGNING OR DIRECTING THE EMPLOYEE INTO A LESS  
 26 FAVORABLE CAREER TRACK OR POSITION.

27 (2) “PROVIDING LESS FAVORABLE EMPLOYMENT OPPORTUNITIES”  
 28 INCLUDES:

29 (I) FAILING TO PROVIDE INFORMATION ABOUT PROMOTIONS  
 30 OR ADVANCEMENT IN THE FULL RANGE OF CAREER TRACKS OFFERED BY THE  
 31 EMPLOYER; OR

32 (II) ASSIGNING WORK LESS LIKELY TO LEAD TO PROMOTION OR  
 33 FUTURE OPPORTUNITIES.

34 (B) (1) An employer may not discriminate between employees in any  
 35 occupation by:

1           **(I)**     paying a wage to employees of one sex **OR GENDER IDENTITY** at  
2 a rate less than the rate paid to employees of [the opposite] **ANOTHER sex OR GENDER**  
3 **IDENTITY** if both employees work in the same establishment and perform work of  
4 comparable character or work on the same operation, in the same business, or of the same  
5 type; **OR**

6           **(II) PROVIDING LESS FAVORABLE EMPLOYMENT**  
7 **OPPORTUNITIES BASED ON SEX OR GENDER IDENTITY.**

8           **(2) FOR PURPOSES OF PARAGRAPH (1)(I) OF THIS SUBSECTION, AN**  
9 **EMPLOYEE SHALL BE DEEMED TO WORK AT THE SAME ESTABLISHMENT AS ANOTHER**  
10 **EMPLOYEE IF THE EMPLOYEES WORK FOR THE SAME EMPLOYER AT WORKPLACES**  
11 **LOCATED IN THE SAME COUNTY OF THE STATE.**

12           **[(b)] (C)**     [Subsection (a)] **EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**  
13 **SECTION, SUBSECTION (B)** of this section does not prohibit a variation in a wage that is  
14 based on:

15           (1)     a seniority system that does not discriminate on the basis of sex **OR**  
16 **GENDER IDENTITY;**

17           (2)     a merit increase system that does not discriminate on the basis of sex  
18 **OR GENDER IDENTITY;**

19           (3)     jobs that require different abilities or skills;

20           (4)     jobs that require the regular performance of different duties or services;  
21 **[or]**

22           (5)     work that is performed on different shifts or at different times of day;

23           **(6) A SYSTEM THAT MEASURES PERFORMANCE BASED ON A QUALITY**  
24 **OR QUANTITY OF PRODUCTION; OR**

25           **(7) A BONA FIDE FACTOR OTHER THAN SEX OR GENDER IDENTITY,**  
26 **INCLUDING EDUCATION, TRAINING, OR EXPERIENCE, IN WHICH THE FACTOR:**

27           **(I) IS NOT BASED ON OR DERIVED FROM A GENDER-BASED**  
28 **DIFFERENTIAL IN COMPENSATION;**

29           **(II) IS JOB-RELATED WITH RESPECT TO THE POSITION AND**  
30 **CONSISTENT WITH A BUSINESS NECESSITY; AND**

31           **(III) ACCOUNTS FOR THE ENTIRE DIFFERENTIAL.**

1           **(D) AN EXCEPTION LISTED IN SUBSECTION (C) OF THIS SECTION DOES NOT**  
2 **APPLY IF THE EMPLOYEE DEMONSTRATES THAT:**

3           **(1) THE EMPLOYER USES A PARTICULAR EMPLOYMENT PRACTICE**  
4 **THAT CAUSES A DISPARATE IMPACT ON THE BASIS OF SEX OR GENDER IDENTITY;**

5           **(2) ALTERNATIVE EMPLOYMENT PRACTICES EXIST THAT WOULD**  
6 **SERVE THE SAME BUSINESS AND NOT PRODUCE THE DISPARATE IMPACT; AND**

7           **(3) THE EMPLOYER HAS REFUSED TO ADOPT AN ALTERNATIVE**  
8 **PRACTICE.**

9           **[(c)] (E)** An employer who is paying a wage in violation of this subtitle may not  
10 reduce another wage to comply with this subtitle.

11 **3-304.1.**

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

13           **(1) PROHIBIT AN EMPLOYEE FROM:**

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

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

18           **(2) REQUIRE AN EMPLOYEE TO SIGN A WAIVER OR ANY OTHER**  
19 **DOCUMENT THAT PURPORTS TO DENY THE EMPLOYEE THE RIGHT TO DISCLOSE OR**  
20 **DISCUSS THE EMPLOYEE'S WAGES; OR**

21           **(3) TAKE ANY ADVERSE EMPLOYMENT ACTION AGAINST AN**  
22 **EMPLOYEE FOR:**

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

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

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

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

1 (V) AIDING OR ENCOURAGING ANOTHER EMPLOYEE'S  
2 EXERCISE OF RIGHTS UNDER THIS SECTION.

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

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

10 (3) SUBJECT TO SUBSECTION (D) OF THIS SECTION, LIMITATIONS  
11 ESTABLISHED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY INCLUDE  
12 PROHIBITING AN EMPLOYEE FROM DISCUSSING OR DISCLOSING THE WAGES OF  
13 ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR PERMISSION.

14 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, THE  
15 FAILURE OF AN EMPLOYEE TO ADHERE TO A REASONABLE LIMITATION INCLUDED  
16 IN A WRITTEN POLICY UNDER SUBSECTION (B) OF THIS SECTION SHALL BE AN  
17 AFFIRMATIVE DEFENSE TO A CLAIM MADE AGAINST AN EMPLOYER BY THE  
18 EMPLOYEE UNDER THIS SECTION IF THE ADVERSE EMPLOYMENT ACTION TAKEN BY  
19 THE EMPLOYER WAS FOR A FAILURE TO ADHERE TO THE REASONABLE LIMITATION  
20 AND NOT FOR AN INQUIRY, A DISCUSSION, OR A DISCLOSURE OF WAGES IN  
21 ACCORDANCE WITH THE LIMITATION.

22 (D) (1) A PROHIBITION ESTABLISHED IN ACCORDANCE WITH  
23 SUBSECTION (B)(3) OF THIS SECTION AGAINST THE DISCUSSION OR DISCLOSURE OF  
24 THE WAGES OF ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR  
25 PERMISSION MAY NOT APPLY TO INSTANCES IN WHICH AN EMPLOYEE WHO HAS  
26 ACCESS TO THE WAGE INFORMATION OF OTHER EMPLOYEES AS A PART OF THE  
27 EMPLOYEE'S ESSENTIAL JOB FUNCTIONS IF THE DISCUSSION OR DISCLOSURE IS IN  
28 RESPONSE TO A COMPLAINT OR CHARGE OR IN FURTHERANCE OF AN  
29 INVESTIGATION, A PROCEEDING, A HEARING, OR AN ACTION UNDER THIS SUBTITLE,  
30 INCLUDING AN INVESTIGATION CONDUCTED BY THE EMPLOYER.

31 (2) IF AN EMPLOYEE WHO HAS ACCESS TO WAGE INFORMATION AS  
32 PART OF THE ESSENTIAL FUNCTIONS OF THE EMPLOYEE'S JOB DISCLOSES THE  
33 EMPLOYEE'S OWN WAGES OR WAGE INFORMATION ABOUT ANOTHER EMPLOYEE  
34 OBTAINED OUTSIDE THE PERFORMANCE OF THE ESSENTIAL FUNCTIONS OF THE  
35 EMPLOYEE'S JOB, THE EMPLOYEE SHALL BE ENTITLED TO ALL THE PROTECTIONS  
36 AFFORDED UNDER THIS SUBTITLE.

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

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

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

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

7 (4) CREATE AN OBLIGATION ON ANY EMPLOYER OR EMPLOYEE TO  
8 DISCLOSE WAGES;

9 (5) PERMIT AN EMPLOYEE, WITHOUT THE WRITTEN CONSENT OF AN  
10 EMPLOYER, TO DISCLOSE PROPRIETARY INFORMATION, TRADE SECRET  
11 INFORMATION, OR INFORMATION THAT IS OTHERWISE SUBJECT TO A LEGAL  
12 PRIVILEGE OR PROTECTED BY LAW; OR

13 (6) PERMIT AN EMPLOYEE TO DISCLOSE WAGE INFORMATION TO A  
14 COMPETITOR OF THE EMPLOYER.

15 3-306.

16 (a) On request of an employer, the Commissioner shall provide without charge a  
17 copy of this subtitle to the employer.

18 (b) Each employer shall keep posted conspicuously in each place of employment a  
19 copy of this subtitle.

20 (C) THE COMMISSIONER, IN CONSULTATION WITH THE MARYLAND  
21 COMMISSION ON CIVIL RIGHTS, SHALL DEVELOP EDUCATIONAL MATERIALS AND  
22 MAKE TRAINING AVAILABLE TO ASSIST EMPLOYERS IN ADOPTING TRAINING,  
23 POLICIES, AND PROCEDURES THAT COMPLY WITH THE REQUIREMENTS OF THIS  
24 SUBTITLE.

25 3-307.

26 (a) (1) If an employer violates **§ 3-304** OF this subtitle, an affected employee  
27 may bring an action against the employer **FOR INJUNCTIVE RELIEF AND** to recover the  
28 difference between the wages paid to [male and female] employees **OF ONE SEX OR**  
29 **GENDER IDENTITY AND THE WAGES PAID TO EMPLOYEES OF ANOTHER SEX OR**  
30 **GENDER IDENTITY** who do **WORK OF COMPARABLE NATURE OR** the same type work and  
31 an additional equal amount as liquidated damages.

1           **(2) IF AN EMPLOYER VIOLATES § 3-304.1 OF THIS SUBTITLE, AN**  
2 **AFFECTED EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER FOR**  
3 **INJUNCTIVE RELIEF AND TO RECOVER BOTH ACTUAL AND LIQUIDATED DAMAGES.**

4           **(3) IN AWARDING LIQUIDATED DAMAGES UNDER PARAGRAPHS (1)**  
5 **AND (2) OF THIS SUBSECTION, A TRIER OF FACT MAY AWARD, IN THE CASE OF A**  
6 **WILLFUL VIOLATION OF THIS SUBTITLE, AN AMOUNT UP TO THREE TIMES THE TOTAL**  
7 **AMOUNT OF THE WAGES FOUND TO BE DUE.**

8           **[(2)] (4) An employee OR THE ATTORNEY GENERAL may bring an**  
9 **action on behalf of the employee and other employees similarly affected.**

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

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

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

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

16           (c) **ON THE WRITTEN REQUEST OF AN EMPLOYEE WHO IS ENTITLED TO**  
17 **BRING AN ACTION UNDER THIS SECTION, THE ATTORNEY GENERAL MAY:**

18           **(1) BRING AN ACTION IN ACCORDANCE WITH THIS SECTION ON**  
19 **BEHALF OF THE EMPLOYEE; AND**

20           **(2) CONSOLIDATE 2 OR MORE CLAIMS AGAINST AN EMPLOYER.**

21           **(D) An action under this section shall be filed within 3 years of the act on which**  
22 **the action is based.**

23           **[(d)] (E) The agreement of an employee to work for less than the wage to which**  
24 **the employee is entitled under this subtitle is not a defense to an action under this section.**

25           **[(e)] (F) If a court determines that an employee is entitled to judgment in an**  
26 **action under this section, the court shall allow against the employer reasonable counsel**  
27 **fees and other costs of the action, AS WELL AS PREJUDGMENT INTEREST IN**  
28 **ACCORDANCE WITH THE MARYLAND RULES.**

29 3-308.

30           (a) An employer may not:

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

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

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

7 (4) discharge or otherwise discriminate against an employee because the  
8 employee:

9 (i) makes a complaint to the employer, the Commissioner, or  
10 another person;

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

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

15 (b) An employee may not:

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

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

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

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

23 (c) The Commissioner **OR THE ATTORNEY GENERAL** may bring an action for  
24 injunctive relief and damages against a person who violates subsection (a)(1) or (4) or  
25 subsection (b)(1), (3), or (4) of this section.

26 (d) An employer who violates any provision of subsection (a)(2) or (3) of this  
27 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$300.

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



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