

# HOUSE BILL 398

K3

7lr0653  
CF SB 404

---

By: Delegates K. Young, Fennell, Barron, Barve, Carr, Chang, Cullison, Ebersole, Gutierrez, Hayes, Healey, Hixson, Kelly, Korman, Krimm, Luedtke, A. Miller, Moon, Morales, Pena-Melnyk, Platt, Queen, Robinson, Stein, Tarlau, Turner, and M. Washington

Introduced and read first time: January 26, 2017

Assigned to: Economic Matters

---

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 11, 2017

---

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Labor and Employment – ~~Equal Pay – Job Announcement and~~ Salary History**  
3 **Information Disclosures**

4 FOR the purpose of ~~requiring certain employers to include certain information in a job~~  
5 ~~announcement to recruit an employee or independent contractor to fill a position~~  
6 ~~within the employer's organization; prohibiting certain employers from paying less~~  
7 ~~than the minimum rate of pay included in a certain job announcement to a certain~~  
8 ~~employee; prohibiting certain employers from seeking salary history information by~~  
9 ~~certain methods for an employee; and screening an applicant for employment based~~  
10 ~~on the applicant's salary history by taking certain actions; and providing, except~~  
11 ~~under certain circumstances, salary history information to a prospective employer;~~  
12 ~~authorizing certain employers to seek the salary history of an applicant for~~  
13 ~~employment for a certain purpose under certain circumstances; prohibiting an~~  
14 ~~employer from violating a certain provision of law; specifying that an employer is not~~  
15 ~~subject to a certain criminal penalty for a violation of certain provisions of this Act;~~  
16 ~~requiring the Commissioner of Labor and Industry to issue a certain order under~~  
17 ~~certain circumstances; authorizing the Commissioner to assess a certain penalty not~~  
18 ~~exceeding a certain amount under certain circumstances; requiring the~~  
19 ~~Commissioner to consider certain factors when determining the amount of a certain~~  
20 ~~penalty; specifying that, if the Commissioner assesses a certain penalty, the penalty~~  
21 ~~shall be subject to certain hearing and notice provisions of law; providing for the~~  
22 ~~application of certain provisions of this Act; providing for the construction of certain~~

---

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 provisions of this Act; providing for a delayed effective date; making a conforming  
2 change; and generally relating to job announcements and salary history information  
3 disclosures.

4 BY repealing and reenacting, with amendments,

5 Article – Labor and Employment

6 Section 3–304.1 and 3–308

7 Annotated Code of Maryland

8 (2016 Replacement Volume)

9 BY adding to

10 Article – Labor and Employment

11 Section 3–304.2

12 Annotated Code of Maryland

13 (2016 Replacement Volume)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

15 That the Laws of Maryland read as follows:

16 **Article – Labor and Employment**

17 3–304.1.

18 (a) An employer may not:

19 (1) prohibit an employee from:

20 (i) inquiring about, discussing, or disclosing the wages of the  
21 employee or another employee; or

22 (ii) requesting that the employer provide a reason for why the  
23 employee’s wages are a condition of employment;

24 (2) require an employee to sign a waiver or any other document that  
25 purports to deny the employee the right to disclose or discuss the employee’s wages; or

26 (3) take any adverse employment action against an employee for:

27 (i) inquiring about another employee’s wages;

28 (ii) disclosing the employee’s own wages;

29 (iii) discussing another employee’s wages if those wages have been  
30 disclosed voluntarily;

31 (iv) asking the employer to provide a reason for the employee’s  
32 wages; or

1 (v) aiding or encouraging another employee's exercise of rights  
2 under this section.

3 (b) (1) Subject to paragraph (2) of this subsection, an employer may, in a  
4 written policy provided to each employee, establish reasonable workday limitations on the  
5 time, place, and manner for inquiries about or the discussion or disclosure of employee  
6 wages.

7 (2) A limitation established under paragraph (1) of this subsection shall be  
8 consistent with standards adopted by the Commissioner and all other State and federal  
9 laws.

10 (3) Subject to subsection (d) of this section, limitations established under  
11 paragraph (1) of this subsection may include prohibiting an employee from discussing or  
12 disclosing the wages of another employee without that employee's prior permission.

13 (c) Except as provided in subsection (d) of this section, the failure of an employee  
14 to adhere to a reasonable limitation included in a written policy under subsection (b) of this  
15 section shall be an affirmative defense to a claim made against an employer by the  
16 employee under this section if the adverse employment action taken by the employer was  
17 for a failure to adhere to the reasonable limitation and not for an inquiry, a discussion, or  
18 a disclosure of wages in accordance with the limitation.

19 (d) (1) A prohibition established in accordance with subsection (b)(3) of this  
20 section against the discussion or disclosure of the wages of another employee without that  
21 employee's prior permission may not apply to instances in which an employee who has  
22 access to the wage information of other employees as a part of the employee's essential job  
23 functions if the discussion or disclosure is in response to a complaint or charge or in  
24 furtherance of an investigation, a proceeding, a hearing, or an action under this subtitle,  
25 including an investigation conducted by the employer.

26 (2) If an employee who has access to wage information as part of the  
27 essential functions of the employee's job discloses the employee's own wages or wage  
28 information about another employee obtained outside the performance of the essential  
29 functions of the employee's job, the employee shall be entitled to all the protections afforded  
30 under this subtitle.

31 (e) Nothing in this section shall be construed to:

32 (1) require an employee to disclose the employee's wages;

33 (2) diminish employees' rights to negotiate the terms and conditions of  
34 employment under federal, State, or local law;

35 (3) limit the rights of an employee provided under any other provision of  
36 law or collective bargaining agreement;

1 (4) create an obligation on any employer or employee to disclose wages;

2 (5) permit an employee, without the written consent of an employer, to  
3 disclose proprietary information, trade secret information, or information that is otherwise  
4 subject to a legal privilege or protected by law; or

5 (6) permit an employee to disclose wage information:

6 (I) to a competitor of the employer; OR

7 (II) IN VIOLATION OF ~~§ 3-304.2(D)~~ § 3-304.2(B) OF THIS  
8 SUBTITLE.

9 **3-304.2.**

10 (A) THIS SECTION APPLIES ONLY TO AN EMPLOYER THAT EMPLOYS 15 OR  
11 MORE EMPLOYEES.

12 (B) ~~AN EMPLOYER SHALL INCLUDE IN A JOB ANNOUNCEMENT TO RECRUIT~~  
13 ~~AN EMPLOYEE OR INDEPENDENT CONTRACTOR TO FILL A POSITION WITHIN THE~~  
14 ~~EMPLOYER'S ORGANIZATION THE FOLLOWING INFORMATION:~~

15 ~~(1) THE MINIMUM RATE OF PAY;~~

16 ~~(2) WHETHER THE PAY IS CALCULATED:~~

17 ~~(I) BY THE HOUR, SHIFT, DAY, WEEK, OR PIECE;~~

18 ~~(II) AS A SALARY;~~

19 ~~(III) AS A COMMISSION; OR~~

20 ~~(IV) BY ANOTHER METHOD;~~

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

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

25 (C) ~~AN EMPLOYER MAY NOT PAY LESS THAN THE MINIMUM RATE OF PAY~~  
26 ~~INCLUDED IN A JOB ANNOUNCEMENT UNDER SUBSECTION (B) OF THIS SECTION TO~~  
27 ~~AN EMPLOYEE WHO IS HIRED TO FILL THE POSITION ANNOUNCED.~~

1           ~~(D)~~ ~~(1)~~ AN EMPLOYER MAY NOT:

2                           ~~(H)~~ ~~(1)~~ SEEK ORALLY, IN WRITING, OR THROUGH AN  
3 EMPLOYEE OR AN AGENT SALARY HISTORY INFORMATION, INCLUDING  
4 COMPENSATION AND BENEFITS, FOR AN EMPLOYEE; OR

5                           ~~(H)~~ ~~(2)~~ SCREEN AN APPLICANT FOR EMPLOYMENT BASED ON  
6 THE APPLICANT'S SALARY HISTORY BY:

7                           ~~1.~~ ~~(I)~~ REQUIRING THAT THE APPLICANT'S SALARY  
8 HISTORY, INCLUDING COMPENSATION AND BENEFITS, SATISFY MINIMUM OR  
9 MAXIMUM CRITERIA; OR

10                           ~~2.~~ ~~(II)~~ ~~EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS~~  
11 ~~SUBSECTION,~~ SEEKING ORALLY, IN WRITING, OR THROUGH AN EMPLOYEE OR AN  
12 AGENT SALARY HISTORY INFORMATION, INCLUDING COMPENSATION AND  
13 BENEFITS, FOR THE APPLICANT, INCLUDING BY REQUESTING OR REQUIRING THAT  
14 THE APPLICANT PROVIDE SALARY HISTORY INFORMATION AS A CONDITION OF:

15                           ~~A.~~ ~~1.~~ BEING INTERVIEWED;

16                           ~~B.~~ ~~2.~~ CONTINUING TO BE CONSIDERED FOR AN OFFER OF  
17 EMPLOYMENT;

18                           ~~C.~~ ~~3.~~ AN OFFER OF EMPLOYMENT; OR

19                           ~~D.~~ ~~4.~~ AN OFFER OF COMPENSATION.

20           (C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN APPLICANT  
21 FOR EMPLOYMENT OR AN EMPLOYEE FROM VOLUNTARILY SHARING SALARY  
22 HISTORY INFORMATION WITH AN EMPLOYER.

23                           ~~(2) AN EMPLOYER MAY SEEK THE SALARY HISTORY OF AN APPLICANT~~  
24 ~~FOR EMPLOYMENT FOR THE SOLE PURPOSE OF CONFIRMING THE APPLICANT'S~~  
25 ~~SALARY HISTORY IF:~~

26                           ~~(I) THE EMPLOYER HAS MADE AN OFFER OF EMPLOYMENT~~  
27 ~~THAT INCLUDES AN OFFER OF SPECIFIC COMPENSATION TO THE APPLICANT FOR~~  
28 ~~EMPLOYMENT; AND~~

29                           ~~(H) THE APPLICANT FOR EMPLOYMENT AUTHORIZES THE~~  
30 ~~EMPLOYER TO SEEK THE SALARY HISTORY INFORMATION.~~

~~(3) AN EMPLOYER MAY NOT PROVIDE THE SALARY HISTORY OF A CURRENT OR FORMER EMPLOYEE TO A PROSPECTIVE EMPLOYER, UNLESS THE PROSPECTIVE EMPLOYER IS SEEKING THE SALARY HISTORY UNDER PARAGRAPH (2) OF THIS SUBSECTION.~~

3-308.

(a) An employer may not:

(1) willfully violate any provision of this subtitle;

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

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

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

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

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

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

**(5) VIOLATE § 3-304.2 OF THIS SUBTITLE.**

(b) An employee may not:

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

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

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

(4) in bad faith, testify in an action under this subtitle or a proceeding that 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) **(1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
5 **SUBSECTION, AN employer who violates any provision of subsection (a)(2) or (3) of this**  
6 **section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$300.**

7           **(2) AN EMPLOYER IS NOT SUBJECT TO THE PENALTY UNDER**  
8 **PARAGRAPH (1) OF THIS SUBSECTION FOR A VIOLATION OF § 3-304.2 OF THIS**  
9 **SUBTITLE.**

10           **(E) (1) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS**  
11 **VIOLATED § 3-304.2 OF THIS SUBTITLE, THE COMMISSIONER:**

12                           **(I) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND**

13                           **(II) MAY, IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL**  
14 **PENALTY OF:**

15                                   **1. UP TO \$300 FOR EACH APPLICANT FOR EMPLOYMENT**  
16 **OR EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE; OR**

17                                   **2. UP TO \$600 FOR EACH APPLICANT FOR EMPLOYMENT**  
18 **OR EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE IF THE VIOLATION**  
19 **OCCURRED WITHIN 3 YEARS AFTER AN APPLICANT FOR EMPLOYMENT OR AN**  
20 **EMPLOYEE FILED A PREVIOUS COMPLAINT THAT LED TO A DETERMINATION THAT A**  
21 **VIOLATION HAD OCCURRED.**

22                           **(2) IN DETERMINING THE AMOUNT OF THE PENALTY, IF ASSESSED,**  
23 **THE COMMISSIONER SHALL CONSIDER:**

24                                   **(I) THE GRAVITY OF THE VIOLATION;**

25                                   **(II) THE SIZE OF THE EMPLOYER'S BUSINESS;**

26                                   **(III) THE EMPLOYER'S GOOD FAITH; AND**

27                                   **(IV) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS**  
28 **SUBTITLE.**

29                           **(3) IF THE COMMISSIONER ASSESSES A PENALTY UNDER PARAGRAPH**  
30 **(1)(II) OF THIS SUBSECTION, THE PENALTY SHALL BE SUBJECT TO THE NOTICE AND**  
31 **HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT**  
32 **ARTICLE.**

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 ~~October 1, 2017~~ January 1, 2018.

Approved:

---

Governor.

---

Speaker of the House of Delegates.

---

President of the Senate.