

SENATE BILL 377

K3
SB 404/17 – FIN

8lr1633
CF HB 512

By: **Senators Lee, Conway, DeGrange, Guzzone, Kagan, King, Madaleno, Manno,
Nathan–Pulliam, Peters, Pinsky, Robinson, Smith, Young, and Zucker**

Introduced and read first time: January 25, 2018

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Pay Scales and Wage History Information**

3 FOR the purpose of requiring an employer to provide the pay scale for a position to an
4 applicant for employment on request; prohibiting employers from relying on wage
5 history information, except under certain circumstances, for certain purposes and
6 from seeking the wage history information by certain methods and from certain
7 persons; prohibiting an employer from refusing to take certain action or otherwise
8 retaliating against an applicant for employment or an employee because the
9 applicant or employee did not provide wage history information and from violating
10 certain provisions of this Act; specifying that an affected employee or applicant for
11 employment may bring a certain action against an employer if an employer knew or
12 should have known that the employer's action violates certain provisions of this Act;
13 specifying that an employer is not subject to a certain criminal penalty for a violation
14 of certain provisions of this Act; requiring the Commissioner of Labor and Industry
15 to issue a certain order under certain circumstances; authorizing the Commissioner
16 to assess a certain penalty not exceeding a certain amount under certain
17 circumstances; requiring the Commissioner to consider certain factors when
18 determining the amount of a certain penalty; specifying that, if the Commissioner
19 assesses a certain penalty, the penalty shall be subject to certain hearing and notice
20 provisions of law; providing for the construction of certain provisions of this Act;
21 providing for a delayed effective date; making a conforming change; and generally
22 relating to pay scales and wage history information.

23 BY adding to

24 Article – Labor and Employment

25 Section 3–304.2

26 Annotated Code of Maryland

27 (2016 Replacement Volume and 2017 Supplement)

28 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Labor and Employment
2 Section 3–307(a)(2) and 3–308
3 Annotated Code of Maryland
4 (2016 Replacement Volume and 2017 Supplement)

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

7 **Article – Labor and Employment**

8 **3–304.2.**

9 (A) AN EMPLOYER SHALL PROVIDE THE PAY SCALE FOR A POSITION TO AN
10 APPLICANT FOR EMPLOYMENT ON REQUEST.

11 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
12 AN EMPLOYER MAY NOT:

13 (I) RELY ON THE WAGE HISTORY OF AN APPLICANT FOR
14 EMPLOYMENT IN SCREENING OR CONSIDERING THE APPLICANT FOR EMPLOYMENT
15 OR IN DETERMINING THE WAGES FOR THE APPLICANT;

16 (II) RELY ON THE WAGE HISTORY OF AN EMPLOYEE IN
17 CONSIDERING THE EMPLOYEE FOR A NEW POSITION WITH THE EMPLOYER,
18 INCLUDING PROMOTION, OR IN DETERMINING THE WAGES FOR THE EMPLOYEE; OR

19 (III) SEEK THE WAGE HISTORY INFORMATION:

20 1. FOR AN APPLICANT FOR EMPLOYMENT ORALLY, IN
21 WRITING, OR THROUGH AN EMPLOYEE OR AN AGENT OR FROM A CURRENT OR
22 FORMER EMPLOYER; OR

23 2. FOR ANY EMPLOYEE FROM A FORMER EMPLOYER.

24 (2) AN EMPLOYER MAY RELY ON WAGE HISTORY IF:

25 (I) THE EMPLOYER MAKES AN OFFER OF EMPLOYMENT, WITH
26 AN OFFER OF COMPENSATION, TO THE APPLICANT AND THE APPLICANT
27 THEREAFTER VOLUNTARILY PROVIDES THE APPLICANT'S WAGE HISTORY TO
28 SUPPORT A WAGE HIGHER THAN THE WAGE OFFERED BY THE EMPLOYER;

29 (II) THE EMPLOYER MAKES AN OFFER OF A NEW POSITION, WITH
30 AN OFFER OF COMPENSATION, TO AN EMPLOYEE, AND THE EMPLOYEE THEREAFTER
31 VOLUNTARILY PROVIDES THE EMPLOYEE'S WAGE HISTORY TO SUPPORT A WAGE

1 HIGHER THAN THE WAGE OFFERED BY THE EMPLOYER; OR

2 (III) THE EMPLOYER IS USING THE EMPLOYEE'S WAGE HISTORY
3 WITH THE EMPLOYER TO SUPPORT PAYING A HIGHER WAGE TO THE EMPLOYEE
4 THAN THE EMPLOYER WOULD OTHERWISE PAY THE EMPLOYEE FOR THE POSITION.

5 (C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN APPLICANT
6 FOR EMPLOYMENT OR AN EMPLOYEE FROM SHARING WAGE HISTORY INFORMATION
7 WITH AN EMPLOYER VOLUNTARILY AND WITHOUT PROMPTING.

8 3-307.

9 (a) (2) If an employer knew or reasonably should have known that the
10 employer's action violates § 3-304.1 OR § 3-304.2 of this subtitle, an affected employee OR
11 APPLICANT FOR EMPLOYMENT may bring an action against the employer for injunctive
12 relief and to recover actual damages [and], an additional equal amount as liquidated
13 damages, AND SPECIAL DAMAGES NOT TO EXCEED \$10,000.

14 3-308.

15 (a) An employer may not:

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

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

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

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

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

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

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

30 (5) REFUSE TO INTERVIEW, HIRE, PROMOTE, OR OTHERWISE EMPLOY,
31 OR OTHERWISE RETALIATE AGAINST, AN APPLICANT FOR EMPLOYMENT OR AN

1 EMPLOYEE BECAUSE THE APPLICANT OR EMPLOYEE DID NOT PROVIDE WAGE
2 HISTORY; OR

3 (6) VIOLATE § 3-304.2(A) OR (B) OF THIS SUBTITLE.

4 (b) An employee may not:

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

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

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

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

12 (c) The Commissioner may bring an action for injunctive relief and damages
13 against a person who violates subsection (a)(1) [or], (4), (5), OR (6) or subsection (b)(1), (3),
14 or (4) of this section.

15 (d) (1) [An] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
16 SUBSECTION, AN employer who violates any provision of subsection (a)(2) or (3) of this
17 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$300.

18 (2) AN EMPLOYER IS NOT SUBJECT TO THE PENALTY UNDER
19 PARAGRAPH (1) OF THIS SUBSECTION FOR A VIOLATION OF § 3-304.2(B) OF THIS
20 SUBTITLE.

21 (E) (1) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS
22 VIOLATED § 3-304.2(A) OR (B) OF THIS SUBTITLE, THE COMMISSIONER:

23 (I) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND

24 (II) MAY, IN THE COMMISSIONER'S DISCRETION, ASSESS A CIVIL
25 PENALTY OF:

26 1. UP TO \$1,000 FOR EACH APPLICANT FOR
27 EMPLOYMENT OR EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE; OR

28 2. UP TO \$5,000 FOR EACH APPLICANT FOR
29 EMPLOYMENT OR EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE IF
30 THE VIOLATION OCCURRED WITHIN 3 YEARS AFTER AN APPLICANT FOR
31 EMPLOYMENT OR EMPLOYEE FILED A PREVIOUS COMPLAINT THAT LED TO A

1 DETERMINATION THAT A VIOLATION HAD OCCURRED.

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

4 (I) THE GRAVITY OF THE VIOLATION;

5 (II) THE SIZE OF THE EMPLOYER'S BUSINESS;

6 (III) THE EMPLOYER'S GOOD FAITH; AND

7 (IV) THE EMPLOYER'S HISTORY OF VIOLATIONS UNDER THIS
8 SUBTITLE.

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

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 January 1, 2019.