

# SENATE BILL 78

K3  
SB 641/20 – FIN

(PRE-FILED)

2lr1182  
CF HB 72

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By: Senator Smith

Requested: October 29, 2021

Introduced and read first time: January 12, 2022

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Wage and Hour Law and Maryland Wage Payment and Collection**  
3 **Law – Revisions**  
4 **(Maryland Wage Protection Act)**

5 FOR the purpose of altering certain provisions related to the payment of wages, including  
6 the application, penalty, and enforcement provisions of the Maryland Wage and  
7 Hour Law and the Maryland Wage Payment and Collection Law, the provision of  
8 information related to the payment of wages by employers to employees, and adverse  
9 actions by an employer; and generally relating to employer requirements concerning  
10 prohibited employer conduct, wage records, wages, and paydays.

11 BY repealing and reenacting, with amendments,  
12 Article – Labor and Employment  
13 Section 3–103, 3–403(14) and (15), 3–423, 3–428, 3–504, 3–507.2(a) and (b), and  
14 3–508  
15 Annotated Code of Maryland  
16 (2016 Replacement Volume and 2021 Supplement)

17 BY adding to  
18 Article – Labor and Employment  
19 Section 3–403(16) and 3–501.1  
20 Annotated Code of Maryland  
21 (2016 Replacement Volume and 2021 Supplement)

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

24 **Article – Labor and Employment**

25 3–103.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



6 (C) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION UNDER  
7 SUBTITLE 4 OF THIS TITLE ON THE COMMISSIONER'S OWN INITIATIVE OR ON  
8 RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE.

9                   [(c)] (D)     The Commissioner may conduct an investigation to determine whether  
10 Subtitle 5 of this title has been violated **ON THE COMMISSIONER'S OWN INITIATIVE OR**  
11 on receipt of a written complaint of an employee.

12        [d] (E) The Commissioner may conduct an investigation to determine whether  
13 Subtitle 6 of this title has been violated on receipt of a written complaint of a sales  
14 representative.

15           [(e)] (F)       (1)     The Commissioner may investigate whether § 3-701 of this title  
16    has been violated on receipt of a written complaint of an applicant for employment.

(3) The Commissioner may investigate whether § 3-704 of this title has been violated on receipt of a written complaint of an employee.

22 (4) The Commissioner may investigate whether § 3-710 of this title has  
23 been violated on receipt of a written complaint of an employee as provided in § 3-710(d)(1)  
24 of this title.

25 (5) The Commissioner may investigate whether § 3-711 of this title has  
26 been violated on receipt of a written complaint of an employee as provided in § 3-711(d)(1)  
27 of this title.

(6) The Commissioner may investigate whether § 3-712 of this title has been violated on receipt of a written complaint of an employee or applicant.

30           [(f)] (G)       (1)     The Commissioner may investigate whether § 3–801 of this title  
31    has been violated on receipt of a written complaint of an employee.

32 (2) The Commissioner may investigate whether § 3-802 of this title has  
33 been violated on receipt of a written complaint of an employee.

1           **[(g)] (H)**   The Commissioner may investigate whether Subtitle 9 of this title has  
2 been violated:

3                   (1)   on the Commissioner's own initiative;

4                   (2)   on receipt of a written complaint signed by the person submitting the  
5 complaint; or

6                   (3)   on referral from another unit of State government.

7           **[(h)] (I)**   The Commissioner may conduct an investigation to determine whether  
8 Subtitle 10 of this title has been violated on receipt of a written complaint of an employee.

9           **[(i)] (J)**   The Commissioner may conduct an investigation to determine whether  
10 Subtitle 12 of this title has been violated on receipt of a written complaint of an employee.

11           **[(j)] (K)**   The Commissioner may conduct an investigation to determine whether  
12 Subtitle 14 of this title has been violated on receipt of a written complaint of an applicant  
13 or employee.

14           **[(k)] (L)**   The Commissioner, on the Commissioner's own initiative or on receipt  
15 of a written complaint, may conduct an investigation of whether a local minimum wage law  
16 has been violated.

17           **[(l)] (M)**   (1)   The Commissioner may conduct an investigation to determine whether  
18 Subtitle 13 of this title has been violated on receipt of a written complaint by an  
19 employee.

20                   (2)   To the extent practicable, the Commissioner shall keep confidential the  
21 identity of an employee who has filed a written complaint alleging a violation of Subtitle 13  
22 of this title unless the employee waives confidentiality.

23           **[(m)] (N)**   The Commissioner may conduct an investigation to determine whether  
24 Subtitle 16 of this title has been violated on receipt of a written complaint by an employee.

25   3–403.

26           This subtitle does not apply to an individual who:

27                   (14)   is employed as a hand-harvest laborer and is paid on a piece-rate basis  
28 in an operation that, in the region of employment, has been and customarily and generally  
29 is recognized as having been paid on that basis, if:

30                   (i)   the individual:

1                   1. commutes daily from the permanent residence of the  
2 individual to the farm where the individual is employed; and

3                   2. during the preceding calendar year, was employed in  
4 agriculture less than 13 weeks; or

5                   (ii) the individual:

6                   1. is under the age of 17;

7                   2. is employed on the same farm as a parent of the individual  
8 or a person standing in the place of the parent; and

9                   3. is paid at the same rate that an employee who is at least  
10 17 years old is paid on the same farm; [or]

11                   (15) is a covered employee under the Secure Maryland Wage Act; OR

12                   **(16) IS AN INDEPENDENT CONTRACTOR UNDER § 8-205 OF THIS**  
13 **ARTICLE.**

14 3-423.

15                   (a) On request by an employer, the Commissioner shall provide without charge a  
16 copy of any summary or regulation to the employer.

17                   (b) Each employer shall keep posted conspicuously in each place of employment:

18                   (1) a summary of this subtitle that:

19                   (I) the Commissioner approves; and

20                   **(II) INCLUDES THE ANTIRETALIATION PROVISIONS UNDER §**  
21 **3-428(B)(1)(III) OF THIS SUBTITLE; AND**

22                   (2) a copy or summary of each regulation that is adopted to carry out this  
23 subtitle.

24 3-428.

25                   (a) **(1)** In this section[, “complaint”] THE FOLLOWING WORDS HAVE THE  
26 MEANINGS INDICATED.

27                   **(2)** “COMPLAINT” includes a written or oral complaint, claim, or assertion  
28 of right by, OR ON BEHALF OF, an employee, regarding the payment of wages under this  
29 subtitle, that is made to:

1                   [(1)] (I) the employer or a supervisor, A manager, [or] A foreman, **OR AN**  
2 **INDIVIDUAL DESIGNATED BY THE EMPLOYER, THROUGH WRITING OR SIGNAGE**  
3 **PROVIDED OR MADE AVAILABLE TO THE EMPLOYEE, TO RECEIVE COMPLAINTS**  
4 employed by the employer whether it is made through the employer's internal grievance  
5 process or otherwise; or

6                   [(2)] (II) the Commissioner or an authorized representative of the  
7 Commissioner.

8                   **(3) "EMPLOYEE" INCLUDES A FORMER EMPLOYEE OF THE**  
9 **EMPLOYER.**

10                  (b) (1) An employer may not:

11                   (i) pay or agree to pay less than the wage required under this  
12 subtitle;

13                   (ii) hinder or delay the Commissioner or an authorized  
14 representative of the Commissioner in the enforcement of this subtitle;

15                   (iii) take adverse action against an employee because the employee:

16                   1. makes, **HAS MADE, OR IS THE SUBJECT OF** a complaint:

17                   **A.** that the employee has not been paid in accordance with  
18 this subtitle; **OR**

19                   **B. IN GOOD FAITH, THAT THE EMPLOYER ENGAGED IN**  
20 **CONDUCT THAT VIOLATES ANY PROVISION OF THIS SUBTITLE;**

21                   2. brings an action under this subtitle or a proceeding that  
22 relates to the subject of this subtitle; [or]

23                   3. has **PARTICIPATED, testified, OR IS PREPARING TO**  
24 **TESTIFY** in an **INVESTIGATION OR** action under this subtitle or a proceeding related to  
25 the subject of this subtitle; [or]

26                   4. **ASSISTED ANOTHER EMPLOYEE IN MAKING A**  
27 **COMPLAINT RELATED TO THE ALLEGED VIOLATIONS OF THIS SUBTITLE;**

28                   5. **HAS BEEN INFORMED OR HAS INFORMED ANOTHER**  
29 **EMPLOYEE OF THE RIGHTS PROVIDED UNDER THIS SUBTITLE; OR**

30                   6. **OPPOSED OR REFUSED TO COMMIT ANY UNLAWFUL**

## 1 PRACTICE UNDER THIS SUBTITLE;

2 (IV) TAKE ADVERSE ACTION AGAINST AN EMPLOYEE TO  
3 PREVENT THE EMPLOYEE FROM TAKING ANY ACTION PROTECTED UNDER THIS  
4 SUBTITLE; OR

5 [(iv)] (V) violate any other provision of this subtitle.

6 (2) Adverse action prohibited under paragraph (1) of this subsection  
7 includes:

8 (i) discharge;

9 (ii) demotion;

10 [(iii) threatening the employee with discharge or demotion; and]

## 11 (III) DISCIPLINE;

12 (IV) A REDUCTION IN WORK HOURS OR OTHER SCHEDULE  
13 CHANGES, NOT IN THE ORDINARY COURSE OF BUSINESS, THAT ARE LESS FAVORABLE  
14 TO THE EMPLOYEE;15 (V) REPORTING THE SUSPECTED CITIZENSHIP OR  
16 IMMIGRATION STATUS OF AN EMPLOYEE, A FORMER EMPLOYEE, OR A FAMILY  
17 MEMBER OF AN EMPLOYEE OR FORMER EMPLOYEE TO A FEDERAL, STATE, OR LOCAL  
18 AGENCY BECAUSE THE EMPLOYEE EXERCISED OR ATTEMPTED TO EXERCISE A  
19 RIGHT UNDER THIS SUBTITLE;20 (VI) THREATENING ANY OF THE ACTIONS DESCRIBED IN ITEMS  
21 (I) THROUGH (IV) OF THIS PARAGRAPH; AND22 [(iv)] (VII) any other retaliatory action OR THREATS OF ACTION  
23 AGAINST AN EMPLOYEE OR ANOTHER INDIVIDUAL FOR EXERCISING OR ATTEMPTING  
24 TO EXERCISE ANY RIGHT UNDER THIS SUBTITLE that [results in a change to the terms  
25 or conditions of employment that] would dissuade a reasonable [employee] INDIVIDUAL  
26 from making a complaint, bringing an action, or testifying in an action under this subtitle.

27 (c) An [employee] INDIVIDUAL may not:

28 (1) make a groundless or malicious complaint to the Commissioner or an  
29 authorized representative of the Commissioner;30 (2) in bad faith, bring an action under this subtitle or a proceeding related  
31 to the subject of this subtitle; or

(3) in bad faith, testify in an action under this subtitle or a proceeding related to the subject of this subtitle.

3 (d) (1) A person who violates any provision of this section is guilty of a  
4 misdemeanor and on conviction is subject to a fine not exceeding \$1,000.

5        [(e)] (2) An employer may not be convicted under this section unless the  
6 evidence demonstrates that the employer had knowledge of the relevant complaint,  
7 testimony, or action for which the prosecution for retaliation is sought.

14 (E) THE NAME OF THE EMPLOYEE OR ANOTHER PERSON IDENTIFIED IN THE  
15 COMPLAINT OR AN INVESTIGATION BY THE COMMISSIONER UNDER THIS SECTION  
16 SHALL BE KEPT CONFIDENTIAL UNLESS THE COMMISSIONER DETERMINES THAT  
17 THE EMPLOYEE'S NAME MUST BE DISCLOSED, WITH THE EMPLOYEE'S CONSENT, TO  
18 FURTHER INVESTIGATE THE COMPLAINT.

19 (F) (1) (I) NOTWITHSTANDING § 3-103(C) OF THIS TITLE, IF AN  
20 EMPLOYER'S ACTION VIOLATES SUBSECTION (B) OF THIS SECTION, AN AFFECTED  
21 EMPLOYEE MAY BRING AN ACTION AGAINST AN EMPLOYER

22 (II) AN EMPLOYEE MAY BRING AN ACTION ON BEHALF OF THE  
23 EMPLOYEE AND OTHER EMPLOYEES SIMILARLY AFFECTED

26 (I) SHALL BE FILED WITHIN 3 YEARS AFTER THE EMPLOYEE  
27 KNEW OR SHOULD HAVE KNOWN OF THE EMPLOYER'S ACTION; AND

28 (II) MAY ENCOMPASS ALL VIOLATIONS THAT OCCURRED AS  
29 PART OF A CONTINUING COURSE OF EMPLOYER CONDUCT REGARDLESS OF THE  
30 DATE OF THE VIOLATION.

5 (G) (1) IF A PERSON IS FOUND TO HAVE VIOLATED SUBSECTION (B) OF  
6 THIS SECTION, THE COMMISSIONER OR COURT SHALL REQUIRE THE PERSON TO PAY  
7 THE GREATER OF:

**(I) ACTUAL DAMAGES PLUS LIQUIDATED DAMAGES; OR**

9 (II) \$500 FOR EACH DAY THAT THE VIOLATION CONTINUED.

17 3-501.1.

18        THIS SUBTITLE MAY NOT BE CONSTRUED TO CREATE ANY LEGAL RIGHT FOR  
19    AN INDIVIDUAL WHO IS AN INDEPENDENT CONTRACTOR UNDER § 8-205 OF THIS  
20    ARTICLE.

21 3-504.

22 (a) An employer shall give to each employee:

23 (1) [at the time of hiring,] WITHIN 30 DAYS AFTER THE FIRST DAY OF  
24 EMPLOYMENT, WRITTEN notice of:

25 (i) the rate of pay of the employee;

26 (II) WHETHER THE EMPLOYEE IS PAID BY:

## 27 1. THE HOUR;

28 2. THE SHIFT;

- 1                   **3. THE DAY;**
- 2                   **4. THE WEEK;**
- 3                   **5. SALARY;**
- 4                   **6. THE PIECE;**
- 5                   **7. COMMISSION; OR**
- 6                   **8. ANY OTHER BASIS OF PAY;**

7                   **(III) ALLOWANCES CLAIMED AS PART OF THE EMPLOYEE'S WAGE,**

8    **INCLUDING:**

- 9                   **1. TIP ALLOWANCES;**
- 10                  **2. MEAL ALLOWANCES; AND**
- 11                  **3. LODGING ALLOWANCES;**

12                  **[(ii)] (IV) the regular paydays that the employer sets; [and**

13                  **(iii)] (V) leave benefits;**

14                  **(VI) THE NAME OF THE EMPLOYER;**

15                  **(VII) THE PHYSICAL ADDRESS OF THE EMPLOYER'S MAIN OFFICE**

16    **OR PRINCIPAL PLACE OF BUSINESS AND, IF DIFFERENT, THE MAILING ADDRESS OF**

17   **THE EMPLOYER; AND**

18                  **(VIII) THE TELEPHONE NUMBER OF THE EMPLOYER;**

19                  **(2) for each pay period[.]:**

20                  **(I) a statement of the gross earnings of the employee and deductions**

21   **from those gross earnings; [and]**

22                  **(II) THE DATES OF THE WORK COVERED BY THE PAYMENT OF**

23   **WAGES FOR THE PAY PERIOD;**

24                  **(III) THE NAME OF THE EMPLOYEE;**

25                  **(IV) THE NAME OF THE EMPLOYER;**

1 (v) THE ADDRESS AND TELEPHONE NUMBER OF THE  
2 EMPLOYER;

3 (VI) THE RATE OR RATES OF PAY, INCLUDING WHETHER THE  
4 RATE OF PAY IS BY:

## 6 2. THE SHIFT;

8 4. THE WEEK;

## 10 6. THE PIECE;

**(VII) A STATEMENT OF THE NET EARNINGS OF THE EMPLOYEE;**

14 (VIII) ALLOWANCES CLAIMED AS PART OF THE EMPLOYEE'S WAGE,  
15 INCLUDING:

## 1. TIP ALLOWANCES;

### 3. LODGING ALLOWANCES;

19 (IX) THE NUMBER OF HOURS WORKED PER WORKWEEK IN THE  
20 PAY PERIOD; AND

21 (X) FOR EACH EMPLOYEE PAID AT A PIECE RATE, THE  
22 APPLICABLE PIECE RATES OR PIECE RATES OF PAY AND THE NUMBER OF PIECES  
23 COMPLETED AT EACH PIECE RATE; AND

(3) at least 1 pay period in advance, notice of any change in a payday or wage.

3 3-507.2.

17 (1) **REASONABLE ATTORNEY'S FEES AND OTHER COSTS; AND**

21 3-508.

22 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
23 INDICATED.

24 (2) "COMPLAINT" HAS THE MEANING STATED IN § 3-428 OF THIS  
25 TITLE.

26 (3) "EMPLOYEE" INCLUDES A FORMER EMPLOYEE OF THE  
27 EMPLOYER.

28 [ (a) ] (B) (1) An employer may not:

29 (I) willfully violate this subtitle;

30 (II) PAY OR AGREE TO PAY AN EMPLOYEE IN A MANNER THAT  
31 VIOLATES THIS SUBTITLE;

4 (IV) TAKE ADVERSE ACTION AGAINST AN EMPLOYEE BECAUSE  
5 THE EMPLOYEE:

21 (v) TAKE ADVERSE ACTION AGAINST AN EMPLOYEE TO  
22 PREVENT THE EMPLOYEE FROM TAKING ANY ACTION PROTECTED UNDER THIS  
23 SUBTITLE.

26 (I) DISCHARGE;

27 (II) DEMOTION;

### 28 (III) DISCIPLINE;

**(IV) A REDUCTION IN WORK HOURS OR OTHER SCHEDULE**

1 CHANGES, NOT IN THE ORDINARY COURSE OF BUSINESS, THAT ARE LESS FAVORABLE  
2 TO THE EMPLOYEE;

3 (V) REPORTING THE SUSPECTED CITIZENSHIP OR  
4 IMMIGRATION STATUS OF AN EMPLOYEE, A FORMER EMPLOYEE, OR A FAMILY  
5 MEMBER OF AN EMPLOYEE OR FORMER EMPLOYEE TO A FEDERAL, STATE, OR LOCAL  
6 AGENCY BECAUSE THE EMPLOYEE EXERCISED OR ATTEMPTED TO EXERCISE A  
7 RIGHT UNDER THIS SUBTITLE;

8 (VI) THREATENING ANY OF THE ACTIONS DESCRIBED IN ITEMS  
9 (I) THROUGH (IV) OF THIS PARAGRAPH; AND

10 (VII) ANY OTHER RETALIATORY ACTION OR THREAT OF ACTION  
11 AGAINST AN EMPLOYEE OR ANOTHER INDIVIDUAL FOR EXERCISING OR ATTEMPTING  
12 TO EXERCISE ANY RIGHT UNDER THIS SUBTITLE THAT WOULD DISSUADE A  
13 REASONABLE INDIVIDUAL FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR  
14 TESTIFYING IN AN ACTION UNDER THIS SUBTITLE.

15 [(b)] (C) An employee may not knowingly make to a governmental unit or official  
16 of a governmental unit a false statement with respect to any investigation or proceeding  
17 under this subtitle, with the intent that the governmental unit or official consider or  
18 otherwise act in connection with the statement.

19 [(c)] (D) (1) (I) An employer who violates subsection [(a)] (B) of this  
20 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding  
21 \$1,000.

22 (II) IN ADDITION TO SUBPARAGRAPH (I) OF THIS PARAGRAPH,  
23 THE ENFORCEMENT PROVISIONS, CIVIL PENALTIES, AND REMEDIES PROVIDED  
24 UNDER § 3-428 OF THIS TITLE APPLY TO VIOLATIONS OF SUBSECTION (B)(1) OF THIS  
25 SECTION IN THE SAME MANNER AS VIOLATIONS OF § 3-428(B) OF THIS TITLE.

26 (III) EACH CIVIL PENALTY ASSESSED UNDER THIS PARAGRAPH  
27 SHALL BE PAID TO THE GENERAL FUND OF THE STATE TO OFFSET THE COST OF  
28 FINANCING THE ENFORCEMENT OF THIS SUBTITLE.

29 (2) An employee who violates subsection [(b)] (C) of this section is guilty of  
30 a misdemeanor and on conviction is subject to a fine not exceeding [\$500] \$1,000.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2022.