

HOUSE BILL 123

K3
SB 738/19 – FIN

0lr1229
CF SB 217

By: **Delegates K. Young, Fennell, Henson, Bagnall, Boyce, Charkoudian, Dumais, Ebersole, Feldmark, Guyton, Healey, Hettleman, Kaiser, Kelly, Kerr, Lehman, R. Lewis, Lierman, Love, Luedtke, McIntosh, Moon, Palakovich Carr, Pendergrass, Qi, Queen, Shetty, Terrasa, Valderrama, and ~~C. Watson~~ C. Watson, Turner, and D.M. Davis**

Introduced and read first time: January 15, 2020

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2020

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – Wage History and Wage Range**

3 FOR the purpose of requiring an employer, on request, to provide to an applicant for
4 employment the wage range for the position for which the applicant applied;
5 prohibiting an employer from taking certain actions against an applicant for
6 employment under certain circumstances; prohibiting an employer from relying on
7 wage history, except under certain circumstances, for certain purposes, and from
8 seeking the wage history by certain methods and from certain persons; authorizing
9 an employer to seek to confirm the wage history of an applicant for employment
10 under certain circumstances; ~~authorizing an affected applicant for employment to~~
11 ~~bring a certain action against an employer if the employer's action violates certain~~
12 ~~provisions of this Act; authorizing an applicant for employment to bring a certain~~
13 ~~action against an employer with certain other employees or applicants for~~
14 ~~employment;~~ prohibiting an employer from discharging or otherwise discriminating
15 against an applicant for employment under certain circumstances; prohibiting an
16 employer from violating certain provisions of this Act; specifying that an employer is
17 not subject to a certain criminal penalty for a violation of certain provisions of this
18 Act; requiring the Commissioner of Labor and Industry to issue a certain order under
19 certain circumstances; authorizing the Commissioner to ~~bring a certain action~~
20 ~~against a person who violates a certain provision of this Act~~ issue a letter ordering
21 compliance and assess a certain penalty not exceeding a certain amount under

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.



certain circumstances; requiring the Commissioner to consider certain factors when determining the amount of a certain penalty; specifying that, if the Commissioner assesses a certain penalty, the penalty shall be subject to certain hearing and notice provisions of law; prohibiting an applicant for employment from taking certain actions related to a certain action or proceeding; providing for the construction of certain provisions of this Act; making conforming changes; and generally relating to wage ranges and wage history.

BY repealing and reenacting, without amendments,
Article – Labor and Employment
Section 3–101(a) and (b)
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

BY adding to
Article – Labor and Employment
Section 3–304.2
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section ~~3–307(a)~~ and 3–308
Annotated Code of Maryland
(2016 Replacement Volume and 2019 Supplement)

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

Article – Labor and Employment

3–101.

(a) In this title the following words have the meanings indicated.

(b) “Commissioner” means the Commissioner of Labor and Industry.

3–304.2.

(A) ON REQUEST, AN EMPLOYER SHALL PROVIDE TO AN APPLICANT FOR EMPLOYMENT THE WAGE RANGE FOR THE POSITION FOR WHICH THE APPLICANT APPLIED.

(B) (1) AN EMPLOYER MAY NOT:

1 **(I) RETALIATE AGAINST OR REFUSE TO INTERVIEW, HIRE, OR**
2 **EMPLOY AN APPLICANT FOR EMPLOYMENT BECAUSE THE APPLICANT:**

3 1. **DID NOT PROVIDE WAGE HISTORY; OR**

4 2. **REQUESTED THE WAGE RANGE IN ACCORDANCE WITH**
5 **THIS SECTION FOR THE POSITION FOR WHICH THE APPLICANT APPLIED; AND**

6 **(II) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
7 **SUBSECTION:**

8 1. **RELY ON THE WAGE HISTORY OF AN APPLICANT FOR**
9 **EMPLOYMENT IN SCREENING OR CONSIDERING THE APPLICANT FOR EMPLOYMENT**
10 **OR IN DETERMINING THE WAGES FOR THE APPLICANT; OR**

11 2. **SEEK THE WAGE HISTORY FOR AN APPLICANT FOR**
12 **EMPLOYMENT ORALLY, IN WRITING, OR THROUGH AN EMPLOYEE OR AN AGENT OR**
13 **FROM A CURRENT OR FORMER EMPLOYER.**

14 **(2) AFTER AN EMPLOYER MAKES AN INITIAL OFFER OF EMPLOYMENT**
15 **WITH AN OFFER OF COMPENSATION TO AN APPLICANT FOR EMPLOYMENT, AN**
16 **EMPLOYER MAY:**

17 **(I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, RELY ON**
18 **THE WAGE HISTORY VOLUNTARILY PROVIDED BY THE APPLICANT FOR**
19 **EMPLOYMENT ~~WITHOUT PROMPTING FROM THE EMPLOYER~~ TO SUPPORT A WAGE**
20 **OFFER HIGHER THAN THE INITIAL WAGE OFFERED BY THE EMPLOYER; OR**

21 **(II) SEEK TO CONFIRM THE WAGE HISTORY VOLUNTARILY**
22 **PROVIDED BY THE APPLICANT FOR EMPLOYMENT TO SUPPORT A WAGE OFFER**
23 **HIGHER THAN THE INITIAL WAGE OFFERED BY THE EMPLOYER.**

24 **(3) AN EMPLOYER MAY RELY ON WAGE HISTORY UNDER PARAGRAPH**
25 **(2) OF THIS SUBSECTION ONLY IF THE HIGHER WAGE DOES NOT CREATE AN**
26 **UNLAWFUL PAY DIFFERENTIAL BASED ON PROTECTED CHARACTERISTICS UNDER §**
27 **3-304 OF THIS SUBTITLE.**

28 **(C) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN APPLICANT**
29 **FOR EMPLOYMENT FROM SHARING WAGE HISTORY WITH AN EMPLOYER**
30 **VOLUNTARILY ~~AND WITHOUT PROMPTING FROM THE EMPLOYER.~~**

31 ~~3-307.~~

~~(a) (1) If an employer knew or reasonably should have known that the employer's action violates § 3-304 of this subtitle, an affected employee may bring an action against the employer for injunctive relief and to recover the difference between the wages paid to employees of one sex or gender identity and the wages paid to employees of another sex or gender identity who do the same type work and an additional equal amount as liquidated damages.~~

~~(2) If an employer knew or reasonably should have known that the employer's action violates § 3-304.1 of this subtitle, an affected employee may bring an action against the employer for injunctive relief and to recover actual damages and an additional equal amount as liquidated damages.~~

~~(3) IF AN EMPLOYER VIOLATES § 3-304.2(A) OR (B)(1)(I) OF THIS SUBTITLE, AN AFFECTED APPLICANT FOR EMPLOYMENT MAY BRING AN ACTION AGAINST THE EMPLOYER FOR INJUNCTIVE RELIEF AND TO RECOVER ACTUAL DAMAGES.~~

~~(4) IF AN EMPLOYER VIOLATES § 3-304.2(B)(1)(II) OF THIS SUBTITLE, AN AFFECTED APPLICANT FOR EMPLOYMENT MAY BRING AN ACTION AGAINST THE EMPLOYER:~~

~~(I) FOR INJUNCTIVE RELIEF; AND~~

~~(II) TO RECOVER, WHICHEVER IS GREATER:~~

~~1. ACTUAL DAMAGES; OR~~

~~2. STATUTORY DAMAGES, NOT TO EXCEED \$10,000.~~

~~[(3)] (5) An employee OR APPLICANT FOR EMPLOYMENT may bring an action on behalf of the employee OR APPLICANT FOR EMPLOYMENT and other employees OR APPLICANTS FOR EMPLOYMENT similarly affected.~~

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 **OR APPLICANT FOR EMPLOYMENT** because the employee **OR APPLICANT FOR EMPLOYMENT**:

(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 **OR AN APPLICANT FOR EMPLOYMENT** 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.

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

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

(2) (i) **THIS PARAGRAPH DOES NOT APPLY TO A VIOLATION OF § 3-304.2.**

(II) If an employer is found to have violated this subtitle two or more times within a 3-year period, the Commissioner or a court may require the employee to pay a civil penalty equal to 10% of the amount of damages owed by the employer.

[(ii)] (III) Each civil penalty assessed under this paragraph shall be paid to the General Fund of the State to offset the cost of enforcing this subtitle.

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

(I) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND

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

1. FOR A FIRST VIOLATION, ~~UP TO \$500 FOR EACH APPLICANT FOR EMPLOYMENT FOR WHOM THE EMPLOYER IS NOT IN~~ ISSUE A LETTER TO THE EMPLOYER COMPELLING COMPLIANCE;

2. FOR A SECOND VIOLATION, ASSESS A CIVIL PENALTY OF UP TO \$1,000 \$300 FOR EACH APPLICANT FOR EMPLOYMENT FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE; OR

3. FOR EACH SUBSEQUENT VIOLATION, ASSESS A CIVIL PENALTY OF UP TO \$5,000 \$600 FOR EACH APPLICANT FOR EMPLOYMENT FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE IF THE VIOLATION OCCURRED WITHIN 3 YEARS AFTER A PREVIOUS DETERMINATION THAT A VIOLATION HAD OCCURRED.

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

(I) THE GRAVITY OF THE VIOLATION;

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

(III) THE EMPLOYER'S GOOD FAITH; AND

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2020.