

HOUSE BILL 1003

K3
HB 1051/15 – ECM

6lr1017
CF SB 481

By: Delegates Valderrama, Davis, Anderson, Angel, Atterbeary, Aumann, Barkley, B. Barnes, D. Barnes, Barron, Barve, Beidle, Branch, Bromwell, Brooks, Busch, Carey, Carr, Carter, Chang, Clippinger, Conaway, Cullison, Dumais, Ebersole, Fennell, Fraser-Hidalgo, Frick, Frush, Gaines, Gilchrist, Glenn, Gutierrez, Hammen, Hayes, Haynes, Healey, Hettleman, Hill, Hixson, Holmes, C. Howard, Jackson, Jalisi, Jameson, Jones, Kaiser, Kelly, Knotts, Korman, Krimm, Lafferty, Lam, Lierman, Lisanti, Luedtke, McCray, McIntosh, A. Miller, Moon, Morales, Morhaim, Oaks, Patterson, Pena-Melnyk, Pendergrass, Platt, Proctor, Reznik, B. Robinson, S. Robinson, Rosenberg, Sample-Hughes, Sanchez, Simonaire, Smith, Sophocleus, Stein, Sydnor, Tarlau, Turner, Vallario, Vaughn, Waldstreicher, Walker, A. Washington, M. Washington, C. Wilson, and P. Young

Introduced and read first time: February 10, 2016

Assigned to: Economic Matters

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;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 requiring the Commissioner of Labor and Industry, in consultation with the
 2 Maryland Commission on Civil Rights, to develop certain educational materials and
 3 make certain training available for certain purposes; altering a certain provision of
 4 law to allow a certain employee to bring a certain action for injunctive relief and to
 5 recover the difference paid between employees of one sex or gender identity and
 6 employees of another sex or gender identity who do work of a comparable nature or
 7 the same type of work; authorizing a certain employee to bring a civil action against
 8 an employer to recover certain damages for a violation of a certain provision of this
 9 Act; authorizing the trier of fact to award certain liquidated damages under certain
 10 circumstances; authorizing the Attorney General, on a certain written request, to
 11 bring an action on behalf of an employee and consolidate certain claims against an
 12 employer; authorizing a court to award certain prejudgment interest under certain
 13 circumstances; authorizing the Attorney General to bring an action for injunctive
 14 relief and damages against a person who violates certain provisions of this Act;
 15 defining a certain term; making conforming changes; providing for the application of
 16 this Act; and generally relating to equal pay for equal work and the disclosure of
 17 certain wage information by certain employees.

18 BY repealing and reenacting, with amendments,
 19 Article – Labor and Employment
 20 Section 3–304, 3–306, 3–307, and 3–308
 21 Annotated Code of Maryland
 22 (2008 Replacement Volume and 2015 Supplement)

23 BY adding to
 24 Article – Labor and Employment
 25 Section 3–304.1
 26 Annotated Code of Maryland
 27 (2008 Replacement Volume and 2015 Supplement)

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

30 Article – Labor and Employment

31 3–304.

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

35 (2) “PROVIDING LESS FAVORABLE EMPLOYMENT OPPORTUNITIES”
 36 INCLUDES:

1 **(I) FAILING TO PROVIDE INFORMATION ABOUT PROMOTIONS**
2 **OR ADVANCEMENT IN THE FULL RANGE OF CAREER TRACKS OFFERED BY THE**
3 **EMPLOYER; OR**

4 **(II) ASSIGNING WORK LESS LIKELY TO LEAD TO PROMOTION OR**
5 **FUTURE OPPORTUNITIES.**

6 **(B) (1)** An employer may not discriminate between employees in any
7 occupation by:

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

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

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

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

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

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

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

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

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

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

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

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

5 **(II) IS JOB RELATED WITH RESPECT TO THE POSITION AND**
6 **CONSISTENT WITH A BUSINESS NECESSITY; AND**

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

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

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

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

14 **(3) THE EMPLOYER HAS REFUSED TO ADOPT AN ALTERNATIVE**
15 **PRACTICE.**

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

18 **3-304.1.**

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

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

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

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

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

28 **(3) TAKE ANY ADVERSE EMPLOYMENT ACTION AGAINST AN**
29 **EMPLOYEE FOR:**

1 (I) INQUIRING ABOUT ANOTHER EMPLOYEE'S WAGES;

2 (II) DISCLOSING THE EMPLOYEE'S OWN WAGES;

3 (III) DISCUSSING ANOTHER EMPLOYEE'S WAGES IF THOSE
4 WAGES HAVE BEEN DISCLOSED VOLUNTARILY;

5 (IV) ASKING THE EMPLOYER TO PROVIDE A REASON FOR THE
6 EMPLOYEE'S WAGES; OR

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

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

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

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

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

28 (D) (1) A PROHIBITION ESTABLISHED IN ACCORDANCE WITH
29 SUBSECTION (B)(3) OF THIS SECTION AGAINST THE DISCUSSION OR DISCLOSURE OF
30 THE WAGES OF ANOTHER EMPLOYEE WITHOUT THAT EMPLOYEE'S PRIOR
31 PERMISSION MAY NOT APPLY TO INSTANCES IN WHICH AN EMPLOYEE WHO HAS
32 ACCESS TO THE WAGE INFORMATION OF OTHER EMPLOYEES AS A PART OF THE
33 EMPLOYEE'S ESSENTIAL JOB FUNCTIONS IF THE DISCUSSION OR DISCLOSURE IS IN

1 RESPONSE TO A COMPLAINT OR CHARGE OR IN FURTHERANCE OF AN
2 INVESTIGATION, A PROCEEDING, A HEARING, OR AN ACTION UNDER THIS SUBTITLE,
3 INCLUDING AN INVESTIGATION CONDUCTED BY THE EMPLOYER.

4 (2) IF AN EMPLOYEE WHO HAS ACCESS TO WAGE INFORMATION AS
5 PART OF THE ESSENTIAL FUNCTIONS OF THE EMPLOYEE'S JOB DISCLOSES THE
6 EMPLOYEE'S OWN WAGES OR WAGE INFORMATION ABOUT ANOTHER EMPLOYEE
7 OBTAINED OUTSIDE THE PERFORMANCE OF THE ESSENTIAL FUNCTIONS OF THE
8 EMPLOYEE'S JOB, THE EMPLOYEE SHALL BE ENTITLED TO ALL THE PROTECTIONS
9 AFFORDED UNDER THIS SUBTITLE.

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

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

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

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

16 (4) CREATE AN OBLIGATION ON ANY EMPLOYER OR EMPLOYEE TO
17 DISCLOSE WAGES;

18 (5) PERMIT AN EMPLOYEE, WITHOUT THE WRITTEN CONSENT OF AN
19 EMPLOYER, TO DISCLOSE PROPRIETARY INFORMATION, TRADE SECRET
20 INFORMATION, OR INFORMATION THAT IS OTHERWISE SUBJECT TO A LEGAL
21 PRIVILEGE OR PROTECTED BY LAW; OR

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

24 3-306.

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

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

29 (C) THE COMMISSIONER, IN CONSULTATION WITH THE MARYLAND
30 COMMISSION ON CIVIL RIGHTS, SHALL DEVELOP EDUCATIONAL MATERIALS AND
31 MAKE TRAINING AVAILABLE TO ASSIST EMPLOYERS IN ADOPTING TRAINING,

1 POLICIES, AND PROCEDURES THAT COMPLY WITH THE REQUIREMENTS OF THIS
2 SUBTITLE.

3 3-307.

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

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

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

17 [(2)] (4) An employee **OR THE ATTORNEY GENERAL** may bring an
18 action on behalf of the employee and other employees similarly affected.

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

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

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

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

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

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

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

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

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

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

7 3-308.

8 (a) An employer may not:

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

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

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

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

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

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

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

23 (b) An employee may not:

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

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

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

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

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

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

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

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