

SENATE BILL 525

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4lr1754
CF HB 649

By: **Senators Kelly and Gile**

Introduced and read first time: January 24, 2024

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 25, 2024

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – Equal Pay for Equal Work – Wage Range**
3 **Transparency**

4 FOR the purpose of altering the requirement that an employer disclose certain wage
5 information to an applicant for employment; requiring an employer to disclose
6 certain wage information in certain postings and to certain employees at certain
7 times; requiring an employer to set the wage range disclosed in good faith; requiring
8 the Commissioner of Labor and Industry to develop and make available to employers
9 a form that an employer may use to comply with certain wage disclosure
10 requirements; prohibiting an employer from taking a certain retaliatory action;
11 requiring each employer to keep a record of compliance with certain provisions of
12 this Act for at least a certain time period; and generally relating to equal pay for
13 equal work.

14 BY repealing and reenacting, with amendments,
15 Article – Labor and Employment
16 Section 3–301, 3–304.2, 3–305, ~~3–307~~, and 3–308(e)
17 Annotated Code of Maryland
18 (2016 Replacement Volume and 2023 Supplement)

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

21 **Article – Labor and Employment**

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 3–301.

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

3 (b) (1) “Employer” means:

4 (i) a person engaged in a business, industry, profession, trade, or
5 other enterprise in the State;

6 (ii) the State and its units;

7 (iii) a county and its units; and

8 (iv) a municipal government in the State.

9 (2) “Employer” includes a person who acts directly or indirectly in the
10 interest of another employer with an employee.

11 (c) “Gender identity” has the meaning stated in § 20–101 of the State Government
12 Article.

13 (d) **“POSTING” MEANS A SOLICITATION INTENDED TO RECRUIT**
14 **APPLICANTS FOR A SPECIFIC AVAILABLE POSITION, INCLUDING RECRUITMENT**
15 **DONE DIRECTLY BY AN EMPLOYER OR INDIRECTLY THROUGH A THIRD PARTY.**

16 (E) (1) “Wage” means all compensation for employment.

17 (2) “Wage” includes board, lodging, or other advantage provided to an
18 employee for the convenience of the employer.

19 (F) **“WAGE RANGE” MEANS THE MINIMUM AND MAXIMUM HOURLY ~~OR RATE~~**
20 **OR MINIMUM AND MAXIMUM SALARY WAGE FOR A POSITION, SET IN GOOD FAITH BY**
21 **REFERENCE, AS APPLICABLE, TO:**

22 (1) **ANY APPLICABLE PAY SCALE;**

23 (2) **ANY PREVIOUSLY DETERMINED MINIMUM AND MAXIMUM HOURLY**
24 **~~OR RATE OR MINIMUM AND MAXIMUM SALARY WAGE~~ FOR THE POSITION;**

25 (3) **THE MINIMUM AND MAXIMUM HOURLY ~~OR RATE OR MINIMUM AND~~**
26 **MAXIMUM SALARY WAGE OF AN INDIVIDUAL HOLDING ~~AN EQUIVALENT A~~**
27 **COMPARABLE POSITION AT THE TIME OF THE POSTING; OR**

28 (4) **THE BUDGETED AMOUNT FOR THE POSITION.**

29 3–304.2.

1 [(a) On request, an employer shall provide to an applicant for employment the
2 wage range for the position for which the applicant applied.]

3 (A) (1) ~~THIS SUBSECTION APPLIES ONLY WITH RESPECT TO A JOB OR~~
4 ~~POSITION FOR WORK PROMOTION, TRANSFER, OR OTHER EMPLOYMENT~~
5 ~~OPPORTUNITY THAT WILL BE PHYSICALLY PERFORMED,:~~

6 ~~(I) AT LEAST IN PART, IN THE STATE; OR STATE.~~

7 ~~(II) OUTSIDE THE STATE, IF THE EMPLOYEE REPORTS TO:~~

8 ~~1. A SUPERVISOR WHO IS PHYSICALLY LOCATED IN THE~~
9 ~~STATE; OR~~

10 ~~2. AN OFFICE OR ANOTHER WORK SITE THAT IS~~
11 ~~PHYSICALLY LOCATED IN THE STATE.~~

12 (2) AN EMPLOYER SHALL:

13 (I) DISCLOSE IN EACH PUBLIC OR INTERNAL POSTING FOR
14 ~~EACH JOB, PROMOTION, TRANSFER, OR OTHER EMPLOYMENT OPPORTUNITY THE~~
15 ~~HOURLY OR SALARY WAGE OR POSITION THE WAGE RANGE AND A GENERAL~~
16 ~~DESCRIPTION OF BENEFITS AND ANY OTHER COMPENSATION OFFERED FOR THE~~
17 ~~POSITION; AND~~

18 (II) IF A PUBLIC OR INTERNAL POSTING FOR A ~~JOB, PROMOTION,~~
19 ~~TRANSFER, OR OTHER EMPLOYMENT OPPORTUNITY POSITION~~ WAS NOT MADE
20 AVAILABLE TO AN APPLICANT FOR ~~EMPLOYMENT THE POSITION~~, DISCLOSE TO THE
21 APPLICANT THE INFORMATION REQUIRED TO BE DISCLOSED IN A PUBLIC OR
22 INTERNAL POSTING UNDER ITEM (I) OF THIS PARAGRAPH:

23 1. BEFORE A DISCUSSION OF COMPENSATION IS HELD
24 WITH THE APPLICANT; AND

25 2. AT ANY OTHER TIME ON REQUEST OF THE APPLICANT.

26 (B) AN EMPLOYER SHALL SET THE WAGE RANGE DISCLOSED UNDER
27 SUBSECTION (A)(2) OF THIS SECTION IN GOOD FAITH.

28 (C) (1) THE COMMISSIONER SHALL DEVELOP AND MAKE AVAILABLE TO
29 EMPLOYERS A FORM THAT AN EMPLOYER MAY USE TO COMPLY WITH SUBSECTION
30 (A) OF THIS SECTION.

1 **(2) AN EMPLOYER MAY COMPLY WITH SUBSECTION (A) OF THIS**
 2 **SECTION BY:**

3 **(I) COMPLETING THE FORM DEVELOPED UNDER PARAGRAPH**
 4 **(1) OF THIS SUBSECTION;**

5 **(II) INCLUDING THE COMPLETED FORM IN EACH PUBLIC OR**
 6 **INTERNAL POSTING FOR A POSITION; AND**

7 **(III) OTHERWISE MAKING THE COMPLETED FORM AVAILABLE TO**
 8 **APPLICANTS AS REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.**

9 **[(b)] ~~(C)~~ (D)** (1) An employer may not:

10 (i) retaliate against or refuse to interview, hire, or employ an
 11 applicant for employment **OR PROMOTE OR TRANSFER AN EMPLOYEE** because the
 12 applicant **OR EMPLOYEE:**

13 1. did not provide wage history; [or]

14 2. requested the wage range in accordance with this section
 15 [for the position for which the applicant applied]; [and] **OR**

16 **3. EXERCISED ANY RIGHTS UNDER THIS SECTION; AND**

17 (ii) except as provided in paragraph (2) of this subsection:

18 1. rely on the wage history of an applicant for employment in
 19 screening or considering the applicant for employment or in determining the wages for the
 20 applicant; or

21 2. seek the wage history for an applicant for employment
 22 orally, in writing, or through an employee or an agent or from a current or former employer.

23 (2) After an employer makes an initial offer of employment with an offer of
 24 compensation to an applicant for employment, an employer may:

25 (i) subject to paragraph (3) of this subsection, rely on the wage
 26 history voluntarily provided by the applicant for employment to support a wage offer higher
 27 than the initial wage offered by the employer; or

28 (ii) seek to confirm the wage history voluntarily provided by the
 29 applicant for employment to support a wage offer higher than the initial wage offered by
 30 the employer.

1 (3) An employer may rely on wage history under paragraph (2) of this
 2 subsection only if the higher wage does not create an unlawful pay differential based on
 3 protected characteristics under § 3–304 of this subtitle.

4 [(c)] ~~(D)~~ (E) This section may not be construed to prohibit an applicant for
 5 employment from sharing wage history with an employer voluntarily.

6 3–305.

7 (a) (1) Each employer shall keep each record that the Commissioner requires
 8 on:

- 9 (i) wages of employees;
- 10 (ii) job classifications of employees; and
- 11 (iii) other conditions of employment.

12 (2) EACH EMPLOYER SHALL KEEP A RECORD OF COMPLIANCE WITH §
 13 3–304.2 OF THIS SUBTITLE FOR EACH ~~POSTING FOR A JOB, PROMOTION, TRANSFER,~~
 14 ~~OR OTHER EMPLOYMENT OPPORTUNITY~~ POSITION FOR AT LEAST 3 YEARS AFTER:

15 (I) THE POSITION IS FILLED; OR

16 (II) IF THE POSITION IS NOT FILLED, THE POSITION WAS
 17 INITIALLY POSTED.

18 [(2)] (3) An employer shall keep the records required under this
 19 subsection for the period of time that the Commissioner requires.

20 (b) On the basis of the records required under this section, an employer shall
 21 make each report that the Commissioner requires.

22 ~~3–307.~~

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

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

~~(3) AN AFFECTED EMPLOYEE OR APPLICANT FOR EMPLOYMENT MAY BRING AN ACTION AGAINST THE EMPLOYER WHO VIOLATES § 3-304.2 OF THIS SUBTITLE FOR INJUNCTIVE RELIEF AND TO RECOVER DAMAGES UP TO \$10,000 OR ACTUAL DAMAGES, WHICHEVER IS GREATER, PLUS REASONABLE ATTORNEY'S FEES.~~

~~(4) An employee OR APPLICANT FOR EMPLOYMENT may bring an action on behalf of the employee OR APPLICANT and other employees OR APPLICANTS similarly affected.~~

~~(b) On the written request of an employee OR APPLICANT FOR EMPLOYMENT who is entitled to bring an action under this section, the Commissioner may:~~

~~(1) take an assignment of the claim in trust for the employee OR APPLICANT;~~

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

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

~~(e) An action under this section shall be filed within 3 years after:~~

~~(1) the employee receives from the employer the wages paid on the termination of employment under § 3-505(a) of this title; OR~~

~~(2) THE DATE THE APPLICANT FOR EMPLOYMENT LEARNED OF THE VIOLATION UNDER § 3-304.2 OF THIS SUBTITLE.~~

~~(d) The agreement of an employee to work for less than the wage to which the employee is entitled under this subtitle is not a defense to an action under this section.~~

~~(e) If a court determines that an employee OR APPLICANT FOR EMPLOYMENT is entitled to judgment in an action under this section, the court shall allow against the employer reasonable counsel fees and other costs of the action, as well as prejudgment interest in accordance with the Maryland Rules.~~

3-308.

(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:

1 1. for a first violation, issue a letter to the employer
2 compelling compliance;

3 2. for a second violation, assess a civil penalty of up to \$300
4 for each **EMPLOYEE OR** applicant for employment for whom the employer is not in
5 compliance; or

6 3. for each subsequent violation, assess a civil penalty of up
7 to \$600 for each **EMPLOYEE OR** applicant for employment for whom the employer is not in
8 compliance if the violation occurred within 3 years after a previous determination that a
9 violation had occurred.

10 (2) In determining the amount of the penalty, if assessed, the
11 Commissioner shall consider:

12 (i) the gravity of the violation;

13 (ii) the size of the employer’s business;

14 (iii) the employer’s good faith; and

15 (iv) the employer’s history of violations under this subtitle.

16 (3) If the Commissioner assesses a penalty under paragraph (1)(ii) of this
17 subsection, the penalty shall be subject to the notice and hearing requirements of Title 10,
18 Subtitle 2 of the State Government Article.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 2024.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.