

SENATE BILL 912

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By: **Senator Smith**

Introduced and read first time: February 9, 2021

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Wage and Hour Law and Maryland Wage Payment and Collection**
3 **Law – Antiretaliation Provisions**

4 FOR the purpose of prohibiting certain employers from taking certain actions under the
5 Maryland Wage and Hour Law and the Maryland Wage Payment and Collection
6 Law; prohibiting certain employers from discriminating against certain employees
7 under certain circumstances; altering the conditions under which certain employers
8 are prohibited from taking adverse actions against certain employees under certain
9 circumstances; altering the list of acts that constitute adverse action under a certain
10 provision of law; prohibiting an individual, rather than an employee, from making
11 certain complaints to the Commissioner of Labor and Industry or bringing certain
12 actions or testifying in certain actions in bad faith; requiring that the burden of proof
13 as proved by clear and convincing evidence under certain actions be on the defendant
14 based on certain actions under certain circumstances; establishing that a certain
15 employer taking certain actions against an employee within a certain time period
16 creates a rebuttable presumption that the employer retaliated against the employee
17 under certain circumstances; requiring that certain names be kept confidential
18 except under certain circumstances; authorizing a certain employee to bring an
19 action against an employer for a violation of certain provisions of this Act; requiring
20 that a certain action be filed within a certain period; providing that a certain action
21 may encompass certain violations; providing that a certain limitation period does not
22 apply during a certain investigation; requiring a court to allow against a certain
23 employer reasonable counsel fees and costs in a certain action; establishing certain
24 penalties against certain employers; authorizing the Commissioner or a court to
25 order certain civil penalties or certain relief under certain circumstances; requiring
26 that certain civil penalties be paid to the General Fund of the State for certain
27 purposes; providing that certain enforcement provisions, civil penalties, and
28 remedies apply to violations of certain provisions of this Act in the same manner as
29 certain other violations; defining certain terms; altering certain definitions; making
30 clarifying and conforming changes; and generally relating to prohibited employer

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 conduct under the Maryland Wage and Hour Law and the Maryland Wage Payment
2 and Collection Law.

3 BY repealing and reenacting, with amendments,
4 Article – Labor and Employment
5 Section 3–428 and 3–508
6 Annotated Code of Maryland
7 (2016 Replacement Volume and 2020 Supplement)

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

10 Article – Labor and Employment

11 3–428.

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

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

17 [(1)] (I) the employer or a supervisor, **A manager, [or] A foreman, OR AN**
18 **INDIVIDUAL WITH APPARENT AUTHORITY TO ALTER THE TERMS OR CONDITIONS OF**
19 **EMPLOYMENT OF THE EMPLOYEE** employed by the employer whether it is made through
20 the employer’s internal grievance process or otherwise; or

21 [(2)] (II) the Commissioner or an authorized representative of the
22 Commissioner.

23 (3) **“EMPLOYEE” INCLUDES AN INDIVIDUAL WHO WAS EMPLOYED BY**
24 **THE EMPLOYER WITHIN 3 YEARS BEFORE THE DATE OF THE COMPLAINT.**

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

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

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

30 (iii) take adverse action **OR OTHERWISE DISCRIMINATE** against an
31 employee because the employee:

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

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

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

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

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

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

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

14 6. **OPPOSED ANY UNLAWFUL PRACTICE UNDER THIS**
15 **SUBTITLE;**

16 **(IV) TAKE ADVERSE ACTION OR OTHERWISE DISCRIMINATE**
17 **AGAINST AN EMPLOYEE BECAUSE THE EMPLOYER SUSPECTS OR BELIEVES THAT**
18 **THE EMPLOYEE MAY TAKE AN ACTION DESCRIBED IN ITEM (III) OF THIS PARAGRAPH;**
19 **OR**

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

21 (2) Adverse action prohibited under paragraph (1) of this subsection
22 includes:

23 (i) discharge;

24 (ii) demotion;

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

26 **(III) A REDUCTION IN WORK HOURS OR OTHER SCHEDULE**
27 **CHANGES THAT ARE LESS FAVORABLE TO THE EMPLOYEE;**

28 **(IV) REPORTING THE SUSPECTED CITIZENSHIP OR**
29 **IMMIGRATION STATUS OF AN EMPLOYEE, A FORMER EMPLOYEE, OR A FAMILY**

1 MEMBER OF AN EMPLOYEE OR FORMER EMPLOYEE TO A FEDERAL, STATE, OR LOCAL
2 AGENCY BECAUSE THE EMPLOYEE EXERCISED OR ATTEMPTED TO EXERCISE A
3 RIGHT UNDER THIS SUBTITLE;

4 (v) THREATENING ANY OF THE ACTIONS DESCRIBED IN ITEMS
5 (I) THROUGH (IV) OF THIS PARAGRAPH; AND

6 [(iv)] (VI) any other retaliatory action OR THREATS OF ACTION
7 AGAINST AN EMPLOYEE OR ANOTHER INDIVIDUAL FOR EXERCISING OR ATTEMPTING
8 TO EXERCISE ANY RIGHT UNDER THIS SUBTITLE that [results in a change to the terms
9 or conditions of employment that] would dissuade a reasonable [employee] INDIVIDUAL
10 from making a complaint, bringing an action, or testifying in an action under this subtitle.

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

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

14 (2) in bad faith, bring an action under this subtitle or a proceeding related
15 to the subject of this subtitle; or

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

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

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

23 (3) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION,
24 IN ANY ACTION UNDER THIS SECTION, IF IT HAS BEEN DEMONSTRATED BY A
25 PREPONDERANCE OF THE EVIDENCE THAT AN ACTIVITY PROHIBITED UNDER
26 SUBSECTION (B) OF THIS SECTION WAS A CONTRIBUTING FACTOR IN THE ALLEGED
27 RETALIATION OR ADVERSE ACTION AGAINST AN INDIVIDUAL, THE BURDEN OF
28 PROOF SHALL BE ON THE DEFENDANT TO PROVE BY CLEAR AND CONVINCING
29 EVIDENCE THAT THE ALLEGED ADVERSE EMPLOYMENT ACTION WOULD HAVE
30 OCCURRED FOR LEGITIMATE, NONDISCRIMINATORY REASONS EVEN IF THE
31 EMPLOYEE HAD NOT ENGAGED IN THE PROTECTED ACTIVITY.

32 (4) FOR AN EMPLOYER THAT TAKES AN ADVERSE ACTION OR
33 OTHERWISE DISCRIMINATES AGAINST AN EMPLOYEE WITHIN 180 DAYS AFTER AN
34 EMPLOYEE ENGAGES IN THE PROTECTED ACTIVITIES DESCRIBED IN SUBSECTION
35 (B)(1)(III) OF THIS SECTION, IT IS PRESUMED THAT THE ADVERSE ACTION WAS

1 RETALIATION IN VIOLATION OF THIS SECTION AND MAY BE REBUTTED ONLY BY
2 CLEAR AND CONVINCING EVIDENCE THAT THE ADVERSE ACTION WOULD HAVE
3 OCCURRED FOR LEGITIMATE, NONDISCRIMINATORY REASONS EVEN IF THE
4 EMPLOYEE HAD NOT ENGAGED IN THE PROTECTED ACTIVITY.

5 (E) THE NAME OF THE EMPLOYEE OR ANOTHER PERSON IDENTIFIED IN THE
6 COMPLAINT OR AN INVESTIGATION BY THE COMMISSIONER UNDER THIS SECTION
7 SHALL BE KEPT CONFIDENTIAL UNLESS THE COMMISSIONER DETERMINES THAT
8 THE EMPLOYEE'S NAME BE DISCLOSED, WITH THE EMPLOYEE'S CONSENT, TO
9 FURTHER INVESTIGATE THE COMPLAINT.

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

13 (II) AN EMPLOYEE MAY BRING AN ACTION ON BEHALF OF THE
14 EMPLOYEE AND OTHER EMPLOYEES SIMILARLY AFFECTED.

15 (2) EXCEPT AS PROVIDED UNDER PARAGRAPH (3) OF THIS
16 SUBSECTION, AN ACTION UNDER THIS SUBSECTION:

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

19 (II) MAY ENCOMPASS ALL VIOLATIONS THAT OCCURRED AS
20 PART OF A CONTINUING COURSE OF EMPLOYER CONDUCT REGARDLESS OF THE
21 DATE OF THE VIOLATION.

22 (3) THE LIMITATION PERIOD UNDER PARAGRAPH (2) OF THIS
23 SUBSECTION DOES NOT APPLY DURING AN INVESTIGATION UNDER § 3-103(C) OF
24 THIS TITLE.

25 (4) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO
26 JUDGMENT IN AN ACTION UNDER THIS SUBSECTION, THE COURT SHALL ALLOW
27 AGAINST THE EMPLOYER REASONABLE COUNSEL FEES AND OTHER COSTS OF THE
28 ACTION.

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

32 (I) ACTUAL DAMAGES PLUS LIQUIDATED DAMAGES; OR

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

2 **(2) (I) IF AN EMPLOYER WAS FOUND TO HAVE SUBSEQUENTLY**
3 **VIOLATED THE PROVISIONS OF THIS SUBTITLE WITHIN 6 YEARS AFTER A PREVIOUS**
4 **VIOLATION, THE COMMISSIONER OR COURT SHALL ASSESS AGAINST THE EMPLOYER**
5 **A CIVIL PENALTY OF NOT LESS THAN \$10,000.**

6 **(II) THE COMMISSIONER AND A COURT MAY ORDER**
7 **ADDITIONAL CIVIL PENALTIES AND ANY OTHER APPROPRIATE RELIEF FOR**
8 **VIOLATIONS OF THIS SUBTITLE.**

9 **(III) EACH CIVIL PENALTY ASSESSED UNDER THIS PARAGRAPH**
10 **SHALL BE PAID TO THE GENERAL FUND OF THE STATE TO OFFSET THE COST OF**
11 **FINANCING THE ENFORCEMENT OF THIS SUBTITLE.**

12 3-508.

13 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**
14 **INDICATED.**

15 **(2) "COMPLAINT" HAS THE MEANING STATED IN § 3-428 OF THIS**
16 **TITLE.**

17 **(3) "EMPLOYEE" INCLUDES AN INDIVIDUAL WHO WAS EMPLOYED BY**
18 **THE EMPLOYER WITHIN 3 YEARS BEFORE THE DATE OF THE COMPLAINT.**

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

20 **(I) willfully violate this subtitle;**

21 **(II) PAY OR AGREE TO PAY AN EMPLOYEE IN A MANNER THAT**
22 **VIOLATES THIS SUBTITLE;**

23 **(III) HINDER OR DELAY THE COMMISSIONER OR AN AUTHORIZED**
24 **REPRESENTATIVE OF THE COMMISSIONER IN THE ENFORCEMENT OF THIS**
25 **SUBTITLE;**

26 **(IV) TAKE ADVERSE ACTION OR OTHERWISE DISCRIMINATE**
27 **AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE:**

28 **1. MAKES, HAS MADE, OR IS THE SUBJECT OF A**
29 **COMPLAINT:**

30 **A. THAT THE EMPLOYEE HAS NOT BEEN PAID IN**

1 ACCORDANCE WITH THIS SUBTITLE; OR

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

4 **2. HAS PARTICIPATED OR TESTIFIED OR IS PREPARING**
5 **TO TESTIFY IN AN INVESTIGATION OR ACTION UNDER THIS SUBTITLE OR A**
6 **PROCEEDING RELATED TO THE SUBJECT OF THIS SUBTITLE;**

7 **3. ASSISTED ANOTHER EMPLOYEE IN MAKING A**
8 **COMPLAINT RELATED TO VIOLATIONS OF THIS SUBTITLE;**

9 **4. HAS BEEN INFORMED OR INFORMED ANOTHER**
10 **EMPLOYEE OF THE RIGHTS PROVIDED UNDER THIS SUBTITLE; OR**

11 **5. OPPOSED ANY UNLAWFUL PRACTICE UNDER THIS**
12 **SUBTITLE; OR**

13 **(V) TAKE ADVERSE ACTION OR OTHERWISE DISCRIMINATE**
14 **AGAINST AN EMPLOYEE BECAUSE THE EMPLOYER SUSPECTS OR BELIEVES THAT**
15 **THE EMPLOYEE MAY TAKE AN ACTION DESCRIBED IN ITEM (IV) OF THIS PARAGRAPH.**

16 **(2) ADVERSE ACTION PROHIBITED UNDER PARAGRAPH (1) OF THIS**
17 **SUBSECTION INCLUDES:**

18 **(I) DISCHARGE;**

19 **(II) DEMOTION;**

20 **(III) A REDUCTION IN WORK HOURS OR OTHER SCHEDULE**
21 **CHANGES THAT ARE LESS FAVORABLE TO THE EMPLOYEE;**

22 **(IV) REPORTING THE SUSPECTED CITIZENSHIP OR**
23 **IMMIGRATION STATUS OF AN EMPLOYEE, A FORMER EMPLOYEE, OR A FAMILY**
24 **MEMBER OF AN EMPLOYEE OR FORMER EMPLOYEE TO A FEDERAL, STATE, OR LOCAL**
25 **AGENCY BECAUSE THE EMPLOYEE EXERCISED OR ATTEMPTED TO EXERCISE A**
26 **RIGHT UNDER THIS SUBTITLE;**

27 **(V) THREATENING ANY OF THE ACTIONS DESCRIBED IN ITEMS**
28 **(I) THROUGH (IV) OF THIS PARAGRAPH; AND**

29 **(VI) ANY OTHER RETALIATORY ACTION OR THREAT OF ACTION**
30 **AGAINST AN EMPLOYEE OR ANOTHER INDIVIDUAL FOR EXERCISING OR ATTEMPTING**

1 TO EXERCISE ANY RIGHT UNDER THIS SUBTITLE THAT WOULD DISSUADE A
2 REASONABLE INDIVIDUAL FROM MAKING A COMPLAINT, BRINGING AN ACTION, OR
3 TESTIFYING IN AN ACTION UNDER THIS SUBTITLE.

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

8 **[(c)] (D)** (1) **(I)** An employer who violates subsection **[(a)] (B)** of this
9 section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding
10 \$1,000.

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

15 **(III)** EACH CIVIL PENALTY ASSESSED UNDER THIS PARAGRAPH
16 SHALL BE PAID TO THE GENERAL FUND OF THE STATE TO OFFSET THE COST OF
17 FINANCING THE ENFORCEMENT OF THIS SUBTITLE.

18 (2) An employee who violates subsection **[(b)] (C)** of this section is guilty of
19 a misdemeanor and on conviction is subject to a fine not exceeding \$500.

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 October 1, 2021.