

HB0136/713324/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 136
(First Reading File Bill)

AMENDMENT NO.1

On page 1, in line 3, strike “– **Prohibition**” and substitute “**and Enforcement**”; in line 7, after “law;” insert “prohibiting an employer from hindering or delaying certain persons in the enforcement of certain provisions of law;”; in line 9, after “complaint;” insert “prohibiting a person from making or causing to be made a groundless or malicious complaint or bringing, in bad faith, an action under or a proceeding related to the subject of certain provisions of law;”; in the same line, after “actions” insert “related to and enforcement of employment standards and conditions”; and after line 14, insert:

“BY repealing and reenacting, with amendments,

Article - Labor and Employment

Section 3-308 and 3-428

Annotated Code of Maryland

(2016 Replacement Volume and 2023 Supplement)

BY repealing

Article - Labor and Employment

Section 3-912 and 3-916

Annotated Code of Maryland

(2016 Replacement Volume and 2023 Supplement)”.

AMENDMENT NO.2

On page 1, after line 19, insert:

“(1) SUBTITLE 2 OF THIS TITLE;”;

in lines 20 and 21, strike “(1)” and “(2)”, respectively, and substitute “(2)” and “(3)”, respectively; and after line 21, insert:

“(4) SUBTITLE 5 OF THIS TITLE;”.

On page 2, in lines 1 and 2, strike “(3)” and “(4)”, respectively, and substitute “(5)” and “(6)”, respectively; in line 1, after “TITLE;” insert “OR”; strike beginning with “TITLE” in line 2 down through “(5)” in line 4; in line 5, after “NOT” insert “:

(1);

in lines 8, 11, and 15, strike “(1)”, “(2)”, and “(3)”, respectively, and substitute “(I)”, “(II)”, and “(III)”, respectively; in line 17, after “SECTION” insert “; OR

(2) HINDER OR DELAY THE COMMISSIONER OR AN AUTHORIZED REPRESENTATIVE OF THE COMMISSIONER IN THE ENFORCEMENT OF THIS SECTION OR A PROVISION OF LAW LISTED IN SUBSECTION (A) OF THIS SECTION”;

and in line 18, strike “NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE” and substitute “THE”.

On page 4, after line 9, insert:

“(F) (1) A PERSON MAY NOT:

(I) MAKE OR CAUSE TO BE MADE A GROUNDLESS OR MALICIOUS COMPLAINT TO THE COMMISSIONER; OR

(II) IN BAD FAITH, BRING AN ACTION UNDER A PROVISION OF LAW LISTED IN SUBSECTION (A) OF THIS SECTION OR A PROCEEDING RELATED TO THE SUBJECT OF A PROVISION OF LAW LISTED IN SUBSECTION (A) OF THIS SECTION.

(2) THE COMMISSIONER SHALL INVESTIGATE ANY ALLEGATION THAT A PERSON VIOLATED PARAGRAPH (1) OF THIS SUBSECTION.

(3) (I) IF THE COMMISSIONER DETERMINES THAT A PERSON HAS VIOLATED PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER MAY ASSESS THE PERSON AN ADMINISTRATIVE PENALTY OF UP TO \$1,000.

(II) AN ADMINISTRATIVE PENALTY ASSESSED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(III) A PERSON WHO MUST DEFEND AN ACTION TAKEN AS A RESULT OF A GROUNDLESS OR MALICIOUS COMPLAINT MAY BE ENTITLED TO RECOVER ATTORNEYS' FEES.

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;

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(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)~~ **(3)** 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) [or (4) or subsection (b)(1), (3), or (4)] of this section.

~~[(d)] (C)~~ (1) 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 of this subtitle.

(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

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employee to pay a civil penalty equal to 10% of the amount of damages owed by the employer.

(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)] (D) (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. for a first violation, issue a letter to the employer compelling compliance;

2. for a second violation, assess a civil penalty of up to \$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 \$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.

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3-428.

(a) [In this section, “complaint” includes a written or oral complaint, claim, or assertion of right by an employee, regarding the payment of wages under this subtitle, that is made to:

(1) the employer or a supervisor, manager, or foreman employed by the employer whether it is made through the employer’s internal grievance process or otherwise; or

(2) the Commissioner or an authorized representative of the Commissioner.

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

(i) pay or agree to pay less than the wage required under this subtitle[:

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

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

1. makes a complaint that the employee has not been paid in accordance with this subtitle;

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

3. has testified in an action under this subtitle or a proceeding related to the subject of this subtitle; or

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

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

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(i) discharge;

(ii) demotion;

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

(iv) any other retaliatory action that results in a change to the terms or conditions of employment that would dissuade a reasonable employee from making a complaint, bringing an action, or testifying in an action under this subtitle.

(c) An employee 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 or a proceeding related 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.]

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

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

[3-912.

(a) An employer may not discriminate in any manner or take adverse action against an individual because the individual:

(1) files a complaint with the employer or the Commissioner alleging that the employer violated any provision of this subtitle or any regulation adopted under this subtitle;

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(2) brings an action under this subtitle or a proceeding involving a violation of this subtitle; or

(3) testifies in an action authorized under this subtitle or a proceeding involving a violation of this subtitle.

(b) (1) An individual who believes that an employer has discriminated in any manner or taken adverse action against the individual in violation of subsection (a) of this section may submit to the Commissioner a written complaint that alleges the discrimination and that includes the signature of the individual.

(2) An individual shall file a complaint under this subsection within 180 days after the alleged discrimination occurs.

(c) (1) On receipt of a complaint under subsection (b) of this section, the Commissioner may investigate.

(2) The Commissioner shall provide the employer with an opportunity to respond to the allegations in the complaint.

(3) If, after investigation and consideration of any response from the employer, the Commissioner determines that an employer or other person has violated subsection (a) of this section, the Commissioner shall file a complaint to enjoin the violation, to reinstate the employee to the former position with back pay, and to award any other appropriate damages or other relief in the circuit court for:

(i) the county in which the alleged violation occurred;

(ii) the county in which the employer has its principal office; or

(iii) Baltimore City.

(4) Within 120 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection.]

[3-916.

(a) A person may not:

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(1) make or cause to be made 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 or a proceeding related 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.

(b) The Commissioner shall investigate any allegations that a person has violated any provision of this section.

(c) (1) If the Commissioner determines that a person has violated any provision of this section, that person may be subject to an administrative penalty of up to \$1,000, assessed by the Commissioner.

(2) A sanction under paragraph (1) of this subsection shall be subject to the notice and hearing requirements of § 3-906 of this subtitle.

(3) If the person found in violation of this section is a person alleged to be employed by the respondent, the Commissioner shall disclose the identity of the complainant.

(d) Any person who must defend an action taken as a result of a groundless or malicious complaint may be entitled to recover attorneys' fees.】”.