

SENATE BILL 789

K3

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By: **Senators Garagiola, Brochin, Conway, Currie, Forehand, Frosh, Gladden, Harrington, Jones, Kelley, King, Klausmeier, Lenett, Madaleno, McFadden, Muse, Peters, Pinsky, Pugh, Raskin, Rosapepe, and Stone**

Introduced and read first time: February 10, 2010

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 29, 2010

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – The Healthy Retail Employee Act**

3 FOR the purpose of requiring certain retail employers to provide a certain nonworking
4 or working shift break to certain employees under certain circumstances;
5 authorizing certain employees to file a complaint with the Commissioner of
6 Labor and Industry under certain circumstances; authorizing the Commissioner
7 to investigate whether a certain provision of law has been violated under
8 certain circumstances; requiring the Commissioner to attempt to resolve a
9 certain issue informally or issue a certain order under certain circumstances;
10 ~~authorizing~~ requiring the Commissioner to assess a certain civil penalty under
11 certain circumstances; subjecting certain provisions of this Act to certain notice
12 and hearing requirements; requiring the Commissioner to consider certain
13 factors when determining whether a violation of this Act has occurred or the
14 amount of a certain civil penalty; authorizing certain civil actions under certain
15 circumstances; ~~authorizing certain remedies under certain circumstances;~~
16 ~~requiring a court to award~~ specifying that a certain employee may be entitled to
17 a certain monetary amount and certain attorney's fees and costs under certain
18 circumstances; providing for the application of this Act; defining certain terms;
19 providing for a delayed effective date; and generally relating to shift breaks for
20 employees.

21 BY repealing and reenacting, with amendments,
22 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 Section 3–103(d)
 2 Annotated Code of Maryland
 3 (2008 Replacement Volume and 2009 Supplement)

4 BY adding to
 5 Article – Labor and Employment
 6 Section 3–710
 7 Annotated Code of Maryland
 8 (2008 Replacement Volume and 2009 Supplement)

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

11 **Article – Labor and Employment**

12 3–103.

13 (d) (1) The Commissioner may investigate whether § 3–701 of this title
 14 has been violated on receipt of a written complaint of an applicant for employment.

15 (2) The Commissioner may investigate whether § 3–702 of this title
 16 has been violated on receipt of a written complaint of an applicant for employment or
 17 an employee.

18 **(3) THE COMMISSIONER MAY INVESTIGATE WHETHER § 3–710 OF**
 19 **THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A WRITTEN COMPLAINT OF AN**
 20 **EMPLOYEE AS PROVIDED IN § 3–710(D)(1) OF THIS TITLE.**

21 **3–710.**

22 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
 23 **MEANINGS INDICATED.**

24 **(2) “EMPLOYER” MEANS A PERSON:**

25 **(I) ENGAGED IN A RETAIL ESTABLISHMENT BUSINESS IN**
 26 **THE STATE THAT HAS ~~AT LEAST~~ 50 OR MORE RETAIL EMPLOYEES FOR EACH**
 27 **WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR**
 28 **PRECEDING CALENDAR YEAR; OR**

29 **(II) THAT OWNS ONE OR MORE RETAIL ESTABLISHMENT**
 30 **FRANCHISES WITH THE SAME TRADE NAME WITH ~~AT LEAST~~ 50 OR MORE RETAIL**
 31 **EMPLOYEES IN THE STATE FOR EACH WORKING DAY IN EACH OF 20 OR MORE**
 32 **CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR.**

1 (3) "FRANCHISE" HAS THE MEANING STATED IN § 14-201 OF THE
2 BUSINESS REGULATION ARTICLE.

3 (4) (I) ~~"RETAIL ESTABLISHMENT" HAS THE MEANING STATED~~
4 ~~IN § 5-401 OF THE ECONOMIC DEVELOPMENT ARTICLE~~ MEANS A PLACE OF
5 BUSINESS WITH THE PRIMARY PURPOSE OF SELLING GOODS TO A CONSUMER
6 WHO IS PRESENT AT THE PLACE OF BUSINESS AT THE TIME OF SALE.

7 (II) "RETAIL ESTABLISHMENT" DOES NOT INCLUDE:

8 1. A WHOLESALER, AS DEFINED IN § 11-401(I) OF
9 THE COMMERCIAL LAW ARTICLE; OR

10 2. A RESTAURANT.

11 (B) THIS SECTION DOES NOT APPLY TO AN EMPLOYEE:

12 (1) COVERED BY A COLLECTIVE BARGAINING AGREEMENT OR
13 EMPLOYMENT POLICY THAT INCLUDES SHIFT BREAKS EQUAL TO OR GREATER
14 THAN THOSE PROVIDED UNDER THIS SECTION;

15 (2) EXEMPT FROM OVERTIME PAY REQUIREMENTS UNDER THE
16 FAIR LABOR STANDARDS ACT; ~~OR~~

17 (3) WHO WORKS FOR A UNIT OF THE STATE, A COUNTY, OR A
18 MUNICIPALITY;

19 (4) WHO WORKS IN A CORPORATE OFFICE OR OTHER OFFICE
20 LOCATION; OR

21 (5) WHO WORKS FOR AT LEAST 4 CONSECUTIVE HOURS FOR AN
22 EMPLOYER AT A SINGLE LOCATION WITH 5 OR FEWER EMPLOYEES.

23 (C) (1) (I) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS
24 SUBSECTION OR SUBPARAGRAPH (II) OF THIS PARAGRAPH, AN EMPLOYER MAY
25 NOT EMPLOY AN EMPLOYEE AT A RETAIL ESTABLISHMENT FOR:

26 ~~1.~~ 4 TO 6 CONSECUTIVE HOURS WITHOUT
27 PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 15 MINUTES; ~~OR.~~

28 (II) AN EMPLOYEE IS NOT ENTITLED TO A 15 MINUTE SHIFT
29 BREAK UNDER THIS PARAGRAPH IF THE EMPLOYEE IS ENTITLED TO A 30
30 MINUTE SHIFT BREAK UNDER PARAGRAPH (2) OF THIS SUBSECTION.

1 ~~2.~~ **(2) AN EMPLOYER MAY NOT EMPLOY AN EMPLOYEE**
 2 **AT A RETAIL ESTABLISHMENT FOR MORE THAN 6 CONSECUTIVE HOURS**
 3 **WITHOUT PROVIDING A NONWORKING SHIFT BREAK OF AT LEAST 30 MINUTES.**

4 **(3) IF AN EMPLOYEE WORKS 8 CONSECUTIVE HOURS IN A SINGLE**
 5 **SHIFT, THE EMPLOYER SHALL PROVIDE AN ADDITIONAL NONWORKING SHIFT**
 6 **BREAK OF AT LEAST 15 MINUTES FOR EVERY ADDITIONAL 4 CONSECUTIVE**
 7 **HOURS THE EMPLOYER EMPLOYS THE EMPLOYEE IN THE SHIFT.**

8 ~~(H)~~ **(4) IF AN EMPLOYEE'S WORK HOURS DO NOT EXCEED**
 9 **6 CONSECUTIVE HOURS, THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS**
 10 **~~PARAGRAPH~~ PARAGRAPH (1) OF THIS SUBSECTION MAY BE WAIVED BY WRITTEN**
 11 **AGREEMENT BETWEEN THE EMPLOYER AND EMPLOYEE.**

12 ~~(2)~~ **(5) THE A SHIFT BREAK REQUIRED UNDER PARAGRAPH (1)**
 13 **~~OF~~ THIS SUBSECTION MAY BE CONSIDERED A WORKING SHIFT BREAK IF:**

14 **(I) 1. THE TYPE OF WORK PREVENTS AN EMPLOYEE**
 15 **FROM BEING RELIEVED OF WORK DURING THE NONWORKING SHIFT BREAK; OR**

16 **2. THE EMPLOYEE IS ALLOWED TO CONSUME A MEAL**
 17 **WHILE WORKING AND THE WORKING SHIFT BREAK IS COUNTED TOWARDS THE**
 18 **EMPLOYEE'S WORK HOURS; AND**

19 **(II) THE EMPLOYER AND EMPLOYEE MUTUALLY AGREE IN**
 20 **WRITING TO THE WORKING SHIFT BREAK AND DOCUMENT THE AGREEMENT.**

21 **(D) (1) IF AN EMPLOYER VIOLATES SUBSECTION (C) OF THIS**
 22 **SECTION, AN EMPLOYEE OF THE EMPLOYER MAY FILE A COMPLAINT WITH THE**
 23 **COMMISSIONER.**

24 **(2) IF THE COMMISSIONER ~~DETERMINES THAT THE EMPLOYER~~**
 25 **~~HAS VIOLATED THIS SECTION~~ RECEIVES A COMPLAINT UNDER PARAGRAPH (1)**
 26 **OF THIS SUBSECTION, THE COMMISSIONER SHALL:**

27 **(I) TRY TO RESOLVE THE ISSUE INFORMALLY; OR**

28 **(II) DETERMINE WHETHER THE EMPLOYER HAS VIOLATED**
 29 **THIS SECTION.**

30 **(3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER**
 31 **HAS VIOLATED THIS SECTION, THE COMMISSIONER SHALL:**

1 (I) ISSUE AN ORDER COMPELLING COMPLIANCE WITH THIS
 2 SECTION CONSISTENT WITH THE NOTICE AND HEARING REQUIREMENTS OF
 3 TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE; AND

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

6 1. UP TO \$300 FOR EACH EMPLOYEE FOR WHOM THE
 7 EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION; OR

8 2. UP TO \$600 FOR EACH EMPLOYEE FOR WHOM THE
 9 EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION IF THE VIOLATION
 10 OCCURRED WITHIN 3 YEARS AFTER AN EMPLOYEE FILED A PREVIOUS
 11 COMPLAINT THAT LED TO A DETERMINATION THAT A VIOLATION HAD
 12 OCCURRED.

13 (4) THE PROVISIONS OF PARAGRAPHS (2)(II) AND (3) OF THIS
 14 SUBSECTION ARE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF
 15 TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

16 (5) (I) IN DETERMINING WHETHER THERE IS A VIOLATION OF
 17 THIS SECTION, THE COMMISSIONER SHALL CONSIDER IF THERE WAS A THREAT
 18 TO PUBLIC HEALTH OR SAFETY AT THE TIME THE VIOLATION IS ALLEGED TO
 19 HAVE OCCURRED.

20 (II) IN DETERMINING THE AMOUNT OF ANY CIVIL PENALTY
 21 TO BE IMPOSED, THE COMMISSIONER SHALL CONSIDER THE:

22 1. SERIOUSNESS OF THE VIOLATION;
 23 2. SIZE OF THE EMPLOYER'S BUSINESS;
 24 3. EMPLOYER'S GOOD FAITH IN COMPLYING WITH
 25 THIS SECTION; AND
 26 4. EMPLOYER'S HISTORY OF VIOLATIONS UNDER
 27 THIS SECTION.

28 ~~(3)~~ (6) (I) IF THE EMPLOYER FAILS TO COMPLY WITH AN
 29 ORDER ISSUED FOR A FIRST VIOLATION UNDER PARAGRAPH ~~(2)(II)~~ (3) OF THIS
 30 SUBSECTION, THE COMMISSIONER MAY:

31 ~~1.~~ BRING AN ACTION TO ENFORCE THE ORDER AND
 32 CIVIL PENALTY IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER
 33 IS LOCATED; OR

~~2. ASSESS A CIVIL PENALTY OF UP TO \$500 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION.~~

~~(4) (i) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A SUBSEQUENT VIOLATION UNDER PARAGRAPH (2)(H) OF THIS SUBSECTION:~~

~~1. THE COMMISSIONER MAY:~~

~~A. BRING AN ACTION TO ENFORCE THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED; AND~~

~~B. ASSESS A CIVIL PENALTY OF UP TO \$500 FOR EACH EMPLOYEE FOR WHOM THE EMPLOYER IS NOT IN COMPLIANCE WITH THIS SECTION; AND~~

~~2.~~

(7) IF THE EMPLOYER FAILS TO COMPLY WITH AN ORDER ISSUED FOR A SUBSEQUENT VIOLATION AGAINST THE SAME EMPLOYEE UNDER PARAGRAPH (3) OF THIS SUBSECTION WITHIN 3 YEARS AFTER THE EMPLOYEE FILED A COMPLAINT THAT IS DETERMINED TO BE A VIOLATION UNDER SUBSECTION (D) OF THIS SECTION, THE EMPLOYEE MAY BRING AN ACTION TO ENFORCE THE ORDER IN THE CIRCUIT COURT IN THE COUNTY WHERE THE EMPLOYER IS LOCATED.

~~(5) THE EMPLOYEE SHALL BE ENTITLED TO ANY REMEDIES AVAILABLE AT LAW OR IN EQUITY APPROPRIATE TO REMEDY ANY VIOLATION OF THIS SECTION, INCLUDING BACK PAY OR INJUNCTIVE RELIEF.~~

~~(6) THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES AND COSTS TO AN EMPLOYEE WHO PREVAILS IN AN ENFORCEMENT ACTION UNDER THIS SECTION.~~

(8) IF AN EMPLOYEE PREVAILS IN AN ACTION BROUGHT UNDER PARAGRAPH (7) OF THIS SUBSECTION, THE EMPLOYEE MAY BE ENTITLED TO:

(i) THREE TIMES THE VALUE OF THE EMPLOYEE'S HOURLY WAGE FOR EACH SHIFT BREAK VIOLATION OF THIS SECTION OCCURRING AFTER THE MOST RECENT VIOLATION AGAINST THE SAME EMPLOYEE; AND

(ii) REASONABLE ATTORNEY'S FEES AND OTHER COSTS OF THE EMPLOYEE.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 ~~October 1, 2010~~ March 1, 2011.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.