

HOUSE BILL 17

K3
HB 258/22 – ECM

(PRE-FILED)

3lr0401

By: **Delegate Stewart**

Requested: September 15, 2022

Introduced and read first time: January 11, 2023

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Employment Standards – Retail Establishments – Seating for Employees**

3 FOR the purpose of establishing requirements related to the provision of seating for
4 employees employed at retail establishments; establishing enforcement
5 mechanisms, including by creating a private right of action; and generally relating
6 to the provision of seating for employees employed at retail establishments.

7 BY repealing and reenacting, without amendments,

8 Article – Labor and Employment

9 Section 3–103(a)

10 Annotated Code of Maryland

11 (2016 Replacement Volume and 2022 Supplement)

12 BY adding to

13 Article – Labor and Employment

14 Section 3–710.1

15 Annotated Code of Maryland

16 (2016 Replacement Volume and 2022 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

18 That the Laws of Maryland read as follows:

19 **Article – Labor and Employment**

20 3–103.

21 (a) Except as otherwise provided in this section, the Commissioner may conduct
22 an investigation to determine whether a provision of this title has been violated on the
23 Commissioner’s own initiative or may require a written complaint.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



3-710.1.

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

(2) "EMPLOYER" MEANS A PERSON ENGAGED IN A RETAIL ESTABLISHMENT BUSINESS IN THE STATE THAT HAS 20 OR MORE RETAIL EMPLOYEES FOR EACH WORKING DAY IN EACH OF 20 OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING YEAR.

(3) (I) "RETAIL ESTABLISHMENT" MEANS A PLACE OF BUSINESS WITH THE PRIMARY PURPOSE OF SELLING GOODS TO A CONSUMER WHO IS PRESENT AT THE PLACE OF BUSINESS AT THE TIME OF SALE.

(II) "RETAIL ESTABLISHMENT" DOES NOT INCLUDE:

1. A WHOLESALER, AS DEFINED UNDER § 11-401 OF THE COMMERCIAL LAW ARTICLE; OR

2. A RESTAURANT.

(4) "SUITABLE SEAT" MEANS A CHAIR, STOOL, BENCH, OR OTHER FLAT SURFACE, WITH SUPPORT FOR THE BACK, ON WHICH AN INDIVIDUAL CAN SIT.

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

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

(2) WHO WORKS FOR A UNIT OF THE STATE, A COUNTY, OR A MUNICIPALITY; OR

(3) WHO WORKS IN A CORPORATE OFFICE OR OTHER OFFICE LOCATION.

(C) AN EMPLOYER:

(1) SHALL PROVIDE A SUITABLE SEAT FOR AN EMPLOYEE EMPLOYED AT A RETAIL ESTABLISHMENT IF THE NATURE OF THE WORK THAT THE EMPLOYEE PERFORMS CAN REASONABLY BE PERFORMED WHILE SEATED; AND

(2) FOR A NEWLY CONSTRUCTED FACILITY OR AS PART OF A MAJOR

1 RENOVATION, MAY NOT DESIGN A WORKSPACE THAT REQUIRES AN EMPLOYEE
2 EMPLOYED AT A RETAIL ESTABLISHMENT TO STAND WHILE PERFORMING WORK IF
3 THE WORKSPACE COULD REASONABLY BE DESIGNED TO ALLOW THE WORK TO BE
4 PERFORMED WHILE SEATED.

5 (D) (1) THE COMMISSIONER SHALL ADOPT REGULATIONS TO ESTABLISH
6 CRITERIA FOR DETERMINING WHETHER THE NATURE OF THE WORK OF AN
7 EMPLOYEE EMPLOYED AT A RETAIL ESTABLISHMENT REASONABLY ALLOWS THE
8 EMPLOYEE TO PERFORM THE WORK WHILE SEATED.

9 (2) THE CRITERIA SHALL INCLUDE:

10 (I) WHETHER THE EMPLOYEE'S TASKS CAN BE PERFORMED
11 WHILE SEATED;

12 (II) WHETHER ALLOWING AN EMPLOYEE TO SIT WOULD
13 INTERFERE WITH JOB PERFORMANCE;

14 (III) WHETHER THE PHYSICAL LAYOUT OF THE WORKSPACE IS
15 CONDUCTIVE TO SEATING; AND

16 (IV) ANY OTHER CRITERIA THAT THE COMMISSIONER
17 DETERMINES IS APPROPRIATE.

18 (E) (1) IF AN EMPLOYER DOES NOT PROVIDE AN EMPLOYEE EMPLOYED
19 AT A RETAIL ESTABLISHMENT WITH SEATING AS REQUIRED UNDER THIS SECTION,
20 THE EMPLOYEE MAY BRING AN ACTION AGAINST THE EMPLOYER TO RECOVER
21 DAMAGES IN AN AMOUNT NOT TO EXCEED:

22 (I) FOR AN INITIAL VIOLATION, \$100 PER PAY PERIOD; AND

23 (II) FOR A SUBSEQUENT VIOLATION, \$200 PER PAY PERIOD.

24 (2) ON WRITTEN REQUEST OF AN EMPLOYEE WHO IS ENTITLED TO
25 BRING AN ACTION UNDER THIS SECTION, THE COMMISSIONER MAY:

26 (I) TAKE AN ASSIGNMENT OF THE CLAIM IN TRUST FOR THE
27 EMPLOYEE;

28 (II) ASK THE ATTORNEY GENERAL TO BRING AN ACTION IN
29 ACCORDANCE WITH THIS SECTION ON BEHALF OF THE EMPLOYEE; AND

30 (III) CONSOLIDATE TWO OR MORE CLAIMS AGAINST AN

1 **EMPLOYER.**

2 **(3) IF A COURT DETERMINES THAT AN EMPLOYEE IS ENTITLED TO**
3 **RECOVERY IN AN ACTION UNDER THIS SECTION, THE COURT SHALL AWARD TO THE**
4 **EMPLOYEE THE AMOUNT OF DAMAGES UNDER PARAGRAPH (1) OF THIS**
5 **SUBSECTION.**

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2023.