

SENATE BILL 1145

K3

7lr3286
CF HB 1615

By: **Senator Benson**

Introduced and read first time: February 24, 2017

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Fair Scheduling Act**

3 FOR the purpose of requiring a certain employer, except under certain circumstances, to
4 pay certain employees at a certain rate for certain shifts; providing that a shift trade
5 includes when the employer transmits the shift trade offer under certain
6 circumstances; providing for the application of certain provisions of this Act;
7 providing that an employee has the right to decline certain work hours that occur
8 during a certain number of hours following the end of a shift; requiring an employer
9 to pay a certain employee who agrees to work certain hours at a certain rate;
10 requiring each employer to record certain wages in a certain statement of earnings
11 and specify in the statement certain predictability pay; authorizing the
12 Commissioner of Labor and Industry, under certain circumstances, to require an
13 employer to include certain information in a certain statement and use additional
14 means to notify the employer's employees of certain information; requiring an
15 employer to give employees notice of certain rights in a certain manner; requiring
16 employers to keep certain records for a certain minimum period of time and make
17 the records available for inspection by certain individuals; providing that each day
18 an employer violates a certain provision of this Act is a separate violation;
19 prohibiting certain persons from taking certain actions; providing that certain
20 protections apply to certain employees; providing for the enforcement of this Act;
21 requiring the Commissioner to keep a certain identity confidential, except under
22 certain circumstances, and to notify a certain person before a certain disclosure is
23 made; requiring the Commissioner to post certain information on a certain Web site
24 on or before a certain date each year; authorizing the Commissioner to conduct a
25 certain investigation under certain circumstances; providing for the construction of
26 this Act; requiring the Commissioner to enforce this Act; authorizing the
27 Commissioner to adopt certain regulations; providing for a delayed effective date;
28 defining certain terms; and generally relating to fair scheduling.

29 BY repealing and reenacting, with amendments,
30 Article – Labor and Employment

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 2–106(b) and 3–102(a)
Annotated Code of Maryland
(2016 Replacement Volume)

BY adding to

Article – Labor and Employment

Section 3–103(k); and 3–1301 through 3–1311 to be under the new subtitle “Subtitle
13. Fair Scheduling”

Annotated Code of Maryland
(2016 Replacement Volume)

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

Article – Labor and Employment

2–106.

(b) Except as provided in subsection (c) of this section, and in addition to authority
to adopt regulations that is set forth elsewhere, the Commissioner may adopt regulations
that are necessary to carry out:

(1) Title 3, Subtitle 3 of this article;

(2) Title 3, Subtitle 5 of this article;

(3) **TITLE 3, SUBTITLE 13 OF THIS ARTICLE;**

(4) Title 4, Subtitle 2, Parts I through III of this article;

~~[(4)]~~ (5) Title 5 of this article;

~~[(5)]~~ (6) Title 6 of this article; and

~~[(6)]~~ (7) Title 7 of this article.

3–102.

(a) In addition to any duties set forth elsewhere, the Commissioner shall:

(1) enforce Subtitle 2 of this title;

(2) carry out Subtitle 3 of this title;

(3) enforce Subtitle 4 of this title;

(4) enforce Subtitle 9 of this title; [and]

(5) **ENFORCE SUBTITLE 13 OF THIS TITLE; AND**

(6) enforce a local minimum wage law.

3–103.

(K) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE WHETHER A PROVISION OF SUBTITLE 13 OF THIS TITLE HAS BEEN VIOLATED, ON THE COMMISSIONER’S OWN INITIATIVE OR ON RECEIPT OF A WRITTEN COMPLAINT OF AN EMPLOYEE.

SUBTITLE 13. FAIR SCHEDULING.

3–1301.

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

(B) “EMPLOYEE” DOES NOT INCLUDE:

(1) AN INDIVIDUAL WHO IS EXEMPT FROM THE MINIMUM WAGE AND OVERTIME PROVISIONS OF THE FEDERAL FAIR LABOR STANDARDS ACT; OR

(2) AN INDIVIDUAL WHO PERFORMS WORK FOR AN EMPLOYER FOR REMUNERATION IF:

(I) THE INDIVIDUAL IS FREE FROM THE EMPLOYER’S CONTROL AND DIRECTION REGARDING THE PERFORMANCE OF THE WORK;

(II) THE INDIVIDUAL CUSTOMARILY IS ENGAGED IN AN INDEPENDENT BUSINESS OR OCCUPATION OF THE SAME NATURE AS THAT INVOLVED IN THE WORK; AND

(III) THE WORK IS:

1. OUTSIDE THE USUAL COURSE OF BUSINESS OF THE EMPLOYER; OR

2. PERFORMED OUTSIDE ANY PLACE OF BUSINESS OF THE EMPLOYER.

(C) "EMPLOYER" MEANS A PERSON THAT EMPLOYS INDIVIDUALS IN A FOOD SERVICES ESTABLISHMENT OR RETAIL ESTABLISHMENT.

(D) "FOOD SERVICES ESTABLISHMENT" MEANS AN ENTITY THAT IS A FULL-SERVICE OR LIMITED-SERVICE RESTAURANT, AS DEFINED UNDER THE NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM, NAICS 7221 AND NAICS 7222, IF THE RESTAURANT IS:

(1) PART OF A CHAIN OF AT LEAST 10 RESTAURANTS NATIONWIDE; OR

(2) A FRANCHISE OF AT LEAST 10 ESTABLISHMENTS NATIONWIDE, INCLUDING:

(I) AN INTEGRATED ENTERPRISE THAT OWNS OR OPERATES AT LEAST 10 ESTABLISHMENTS IN THE AGGREGATE NATIONALLY; OR

(II) AN ESTABLISHMENT OPERATED IN ACCORDANCE WITH A FRANCHISE AGREEMENT WHERE THE FRANCHISOR AND THE FRANCHISEE OWN OR OPERATE AT LEAST 10 ESTABLISHMENTS IN THE AGGREGATE NATIONALLY.

(E) "ON-CALL SHIFT" MEANS TIME THAT AN EMPLOYER REQUIRES AN EMPLOYEE TO BE AVAILABLE TO WORK AND TO CONTACT THE EMPLOYER OR THE EMPLOYER'S DESIGNEE, OR TO WAIT TO BE CONTACTED BY THE EMPLOYER OR THE EMPLOYER'S DESIGNEE, WITHIN 24 HOURS OF THE START OF A POTENTIAL SHIFT TO DETERMINE WHETHER THE EMPLOYEE MUST REPORT TO WORK.

(F) "RETAIL ESTABLISHMENT" MEANS A BUSINESS WHERE GOODS ARE SOLD ON THE PREMISES AT RETAIL AND THAT IS A PART OF A CHAIN OF AT LEAST 10 RETAIL ESTABLISHMENTS NATIONWIDE.

(G) "SHIFT" MEANS THE CONSECUTIVE HOURS AN EMPLOYER REQUIRES AN EMPLOYEE TO WORK OR TO BE ON CALL TO WORK.

3-1302.

THIS SUBTITLE MAY NOT BE CONSTRUED TO:

(1) DISCOURAGE OR PROHIBIT AN EMPLOYER FROM THE ADOPTION OR RETENTION OF POLICIES THAT ARE MORE BENEFICIAL TO EMPLOYEES THAN THE REQUIREMENTS OF THIS SUBTITLE;

(2) DIMINISH THE OBLIGATION OF AN EMPLOYER TO COMPLY WITH A CONTRACT, A COLLECTIVE BARGAINING AGREEMENT, AN EMPLOYMENT BENEFIT

PLAN, OR ANY OTHER AGREEMENT THAT ESTABLISHES POLICIES THAT ARE MORE BENEFICIAL TO AN EMPLOYEE THAN THE REQUIREMENTS OF THIS SUBTITLE; OR

(3) PREEMPT, LIMIT, OR OTHERWISE AFFECT THE APPLICABILITY OF ANY OTHER LAW, POLICY, OR STANDARD ESTABLISHING SCHEDULING POLICIES THAT PROVIDE ADDITIONAL RIGHTS OR EXTEND OTHER PROTECTIONS TO EMPLOYEES BEYOND THOSE PROVIDED UNDER THIS SUBTITLE.

3-1303.

(A) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (E) OF THIS SECTION AND PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYER SHALL PAY AN EMPLOYEE FOR AT LEAST 4 HOURS AT THE EMPLOYEE'S REGULAR RATE OF PAY FOR EACH SHIFT OR ON-CALL SHIFT FOR WHICH THE EMPLOYEE REPORTS TO WORK, AS REQUIRED BY THE EMPLOYER, BUT IS REQUIRED TO WORK LESS THAN 4 HOURS.

(2) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (E) OF THIS SECTION, IF THE EMPLOYEE'S SCHEDULED HOURS ARE LESS THAN 4 HOURS, THE EMPLOYER SHALL PAY THE EMPLOYEE FOR THE SCHEDULED HOURS OF THE EMPLOYEE FOR THAT DAY IF THE EMPLOYEE REPORTS TO WORK, AS REQUIRED BY THE EMPLOYER, BUT IS GIVEN LESS THAN THE SCHEDULED HOURS OF WORK.

(B) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (E) OF THIS SECTION, IF AN EMPLOYER REQUIRES AN EMPLOYEE TO BE AVAILABLE FOR AN ON-CALL SHIFT BUT DOES NOT REQUIRE THE EMPLOYEE TO REPORT TO WORK, THE EMPLOYER SHALL PAY THE EMPLOYEE:

(1) 2 HOURS OF PAY AT THE EMPLOYEE'S REGULAR HOURLY RATE FOR EACH ON-CALL SHIFT OF 4 HOURS OR LESS; AND

(2) 4 HOURS OF PAY AT THE EMPLOYEE'S REGULAR HOURLY RATE FOR EACH ON-CALL SHIFT EXCEEDING 4 HOURS.

(C) AN EMPLOYER IS NOT REQUIRED TO PAY THE WAGES REQUIRED UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION IF THE CHANGE TO AN EMPLOYEE'S WORK SHIFT:

(1) WAS MADE AT THE REQUEST OF THE EMPLOYEE, INCLUDING A REQUEST TO:

(I) WORK SPECIFIC HOURS OTHER THAN THOSE SCHEDULED BY THE EMPLOYER; OR

(II) USE SICK LEAVE, VACATION LEAVE, PERSONAL DAYS, OR OTHER LEAVE OFFERED BY THE EMPLOYER;

(2) SUBJECT TO SUBSECTION (D) OF THIS SECTION, IS THE RESULT OF A VOLUNTARY, MUTUALLY AGREED ON SHIFT TRADE AMONG EMPLOYEES; OR

(3) IS NECESSARY TO AVOID A THREAT TO THE HEALTH OR SAFETY OF EMPLOYEES OR THE PUBLIC.

(D) (1) FOR THE PURPOSES OF SUBSECTION (C) OF THIS SECTION, A SHIFT TRADE INCLUDES AN INSTANCE IN WHICH THE EMPLOYER TRANSMITS THE SHIFT TRADE OFFER TO ALL ELIGIBLE EMPLOYEES AT THE PREVIOUSLY SCHEDULED EMPLOYEE'S REQUEST, IF THE EMPLOYER'S TRANSMITTAL IS:

(I) ACCESSIBLE TO ALL ELIGIBLE EMPLOYEES IN THE FORM OF A MASS COMMUNICATION;

(II) TRANSMITTED ELECTRONICALLY OR IN WRITING AT THE WORK SITE; AND

(III) NOT COERCIVE IN ANY WAY.

(2) THERE IS A REBUTTABLE PRESUMPTION THAT THE PAY REQUIRED UNDER SUBSECTION (A) OR (B) OF THIS SECTION IS OWED IF THE EMPLOYER FAILS TO DOCUMENT CONSENT TO THE SHIFT TRADE.

(E) THE REQUIREMENTS UNDER SUBSECTIONS (A) AND (B) OF THIS SECTION DO NOT APPLY DURING PERIODS WHEN OPERATIONS OF THE EMPLOYER ARE SUSPENDED DUE TO AN EVENT BEYOND THE EMPLOYER'S CONTROL.

3-1304.

(A) AN EMPLOYEE HAS THE RIGHT TO DECLINE TO WORK HOURS THAT OCCUR DURING THE 11 HOURS FOLLOWING THE END OF A SHIFT.

(B) AN EMPLOYER SHALL PAY AN EMPLOYEE ONE-AND-A-HALF TIMES THE EMPLOYEE'S REGULAR RATE OF PAY FOR ANY HOURS WORKED DURING THE 11 HOURS FOLLOWING THE END OF A PREVIOUS SHIFT IF THE EMPLOYEE AGREED IN WRITING TO WORK THE HOURS.

3-1305.

(A) EACH EMPLOYER SHALL:

1 (1) RECORD THE WAGES PAID TO AN EMPLOYEE UNDER §§ 3-1303
2 AND 3-1304 OF THIS SUBTITLE IN THE STATEMENT OF EARNINGS REQUIRED BY §
3 3-504(A)(2) OF THIS TITLE; AND

4 (2) SPECIFY IN THE STATEMENT OF EARNINGS THE TOTAL AMOUNT
5 OF PAY PAID UNDER §§ 3-1303 AND 3-1304 OF THIS SUBTITLE.

6 (B) IF NECESSARY TO CARRY OUT THIS SUBTITLE, THE COMMISSIONER MAY
7 REQUIRE AN EMPLOYER TO:

8 (1) INCLUDE ADDITIONAL INFORMATION IN THE STATEMENT OF
9 EARNINGS; AND

10 (2) USE ADDITIONAL MEANS TO NOTIFY THE EMPLOYER'S
11 EMPLOYEES OF THE INFORMATION REQUIRED TO BE INCLUDED IN THE STATEMENT
12 OF EARNINGS UNDER SUBSECTION (A) OF THIS SECTION.

13 3-1306.

14 (A) AN EMPLOYER SHALL GIVE EMPLOYEES NOTICE OF THEIR RIGHTS
15 UNDER THIS SUBTITLE BY CONSPICUOUSLY POSTING NOTICES IN ENGLISH AND
16 SPANISH AT A LOCATION AT THE WORK SITE THAT IS READILY ACCESSIBLE TO ALL
17 EMPLOYEES.

18 (B) THE NOTICES REQUIRED UNDER SUBSECTION (A) OF THIS SECTION
19 SHALL INCLUDE:

20 (1) THE RIGHT TO RECEIVE PAY UNDER §§ 3-1303 AND 3-1304 OF
21 THIS SUBTITLE;

22 (2) A STATEMENT THAT RETALIATION AGAINST EMPLOYEES WHO
23 EXERCISE THEIR RIGHTS UNDER THIS SUBTITLE IS PROHIBITED; AND

24 (3) A STATEMENT THAT EACH EMPLOYEE HAS THE RIGHT TO FILE A
25 COMPLAINT OR BRING A CIVIL ACTION TO ENFORCE THE EMPLOYEE'S RIGHTS
26 UNDER THIS SUBTITLE.

27 3-1307.

28 (A) EACH EMPLOYER SHALL KEEP FOR AT LEAST 3 YEARS AN ACCURATE
29 RECORD OF:

(1) THE NAME, ADDRESS, AND OCCUPATION OF EACH EMPLOYEE;

(2) THE AMOUNT PAID EACH PAY PERIOD TO EACH EMPLOYEE;

(3) THE HOURS WORKED EACH DAY BY EACH EMPLOYEE;

(4) THE INITIAL WORK SCHEDULE OF EACH EMPLOYEE;

(5) THE PAY PAID TO EACH EMPLOYEE UNDER §§ 3-1303 AND 3-1304
OF THIS SUBTITLE; AND

(6) ANY SUBSEQUENT REVISIONS TO THE INITIAL WORK SCHEDULE
OF EACH EMPLOYEE.

(B) THE EMPLOYER SHALL:

(1) MAKE THE RECORDS KEPT UNDER SUBSECTION (A) OF THIS
SECTION AVAILABLE FOR INSPECTION BY THE COMMISSIONER TO THE SAME
EXTENT AND FOR THE SAME PURPOSES AS RECORDS ARE MADE AVAILABLE TO THE
COMMISSIONER UNDER § 3-425 OF THIS TITLE; AND

(2) ALLOW AN EMPLOYEE TO INSPECT AT ANY REASONABLE TIME AND
PLACE ANY RECORD KEPT UNDER SUBSECTION (A) OF THIS SECTION PERTAINING TO
THE EMPLOYEE.

(C) EACH DAY THAT AN EMPLOYER FAILS TO KEEP A RECORD, FALSIFIES A
RECORD, OR OTHERWISE VIOLATES THIS SECTION SHALL CONSTITUTE A SEPARATE
VIOLATION.

3-1308.

(A) IN THIS SECTION, "RETALIATE" MEANS TO ENGAGE IN ANY FORM OF
INTIMIDATION, THREAT, REPRISAL, HARASSMENT, DISCRIMINATION, OR ADVERSE
EMPLOYMENT ACTION, INCLUDING:

(1) DISCIPLINE;

(2) DISCHARGE;

(3) SUSPENSION;

(4) TRANSFER OR ASSIGNMENT TO A LOWER POSITION IN TERMS OF
JOB CLASSIFICATION, JOB SECURITY, OR ANY OTHER CONDITION OF EMPLOYMENT;

1 **(5) REDUCTION IN PAY OR HOURS ASSIGNED;**

2 **(6) DENIAL OF ADDITIONAL HOURS;**

3 **(7) INFORMING ANOTHER EMPLOYER THAT THE EMPLOYEE HAS**
4 **ENGAGED IN ACTIVITIES PROTECTED BY THIS SUBTITLE; OR**

5 **(8) REPORTING OR THREATENING TO REPORT THE ACTUAL OR**
6 **SUSPECTED CITIZENSHIP OR IMMIGRATION STATUS OF AN EMPLOYEE, A FORMER**
7 **EMPLOYEE, OR A FAMILY MEMBER OF AN EMPLOYEE OR A FORMER EMPLOYEE TO A**
8 **FEDERAL, STATE, OR LOCAL AGENCY.**

9 **(B) A PERSON MAY NOT INTERFERE WITH, RESTRAIN, OR DENY THE**
10 **EXERCISE OF, OR THE ATTEMPT TO EXERCISE, ANY RIGHT PROTECTED UNDER THIS**
11 **SUBTITLE.**

12 **(C) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE BECAUSE**
13 **THE EMPLOYEE HAS:**

14 **(1) DECLINED TO WORK HOURS NOT INCLUDED IN AN INITIAL WORK**
15 **SCHEDULE; OR**

16 **(2) EXERCISED RIGHTS PROTECTED UNDER THIS SUBTITLE,**
17 **INCLUDING THE RIGHT TO:**

18 **(I) FILE A COMPLAINT UNDER § 3-1309 OF THIS SUBTITLE;**

19 **(II) INFORM ANY PERSON ABOUT THE EMPLOYER'S ALLEGED**
20 **VIOLATION OF THIS SUBTITLE;**

21 **(III) COOPERATE WITH THE COMMISSIONER OR ATTORNEY**
22 **GENERAL IN AN INVESTIGATION OF AN ALLEGED VIOLATION OF THIS SUBTITLE; AND**

23 **(IV) INFORM AN INDIVIDUAL REGARDING THE INDIVIDUAL'S**
24 **RIGHTS UNDER THIS SUBTITLE.**

25 **(D) THERE IS A REBUTTABLE PRESUMPTION THAT AN EMPLOYER HAS**
26 **VIOLATED THIS SECTION IF THE EMPLOYER TAKES AN ACTION LISTED IN**
27 **SUBSECTION (A) OF THIS SECTION AGAINST AN EMPLOYEE WITHIN 90 DAYS AFTER**
28 **THE EMPLOYEE:**

1 **(1) FILES A COMPLAINT WITH THE COMMISSIONER UNDER § 3-1309**
2 **OF THIS SUBTITLE ALLEGING A VIOLATION OF THIS SUBTITLE OR BRINGS A CIVIL**
3 **ACTION UNDER § 3-1310 OF THIS SUBTITLE;**

4 **(2) INFORMS A PERSON ABOUT AN ALLEGED VIOLATION OF THIS**
5 **SUBTITLE BY THE EMPLOYER WITH THE EMPLOYER'S KNOWLEDGE;**

6 **(3) COOPERATES WITH THE COMMISSIONER OR ANOTHER PERSON IN**
7 **THE INVESTIGATION OR PROSECUTION OF AN ALLEGED VIOLATION OF THIS**
8 **SUBTITLE BY THE EMPLOYER;**

9 **(4) OPPOSES ANY POLICY, PRACTICE, OR ACT THAT IS UNLAWFUL**
10 **UNDER THIS SUBTITLE; OR**

11 **(5) INFORMS AN INDIVIDUAL OF THE INDIVIDUAL'S RIGHTS UNDER**
12 **THIS SUBTITLE WITH THE EMPLOYER'S KNOWLEDGE.**

13 **(E) THE PROTECTIONS AFFORDED UNDER THIS SECTION SHALL APPLY TO**
14 **AN EMPLOYEE WHO MISTAKENLY, BUT IN GOOD FAITH, ALLEGES A VIOLATION OF**
15 **THIS SUBTITLE.**

16 **3-1309.**

17 **(A) (1) A PERSON MAY FILE A COMPLAINT ALLEGING A VIOLATION OF**
18 **THIS SUBTITLE WITH THE COMMISSIONER.**

19 **(2) THE COMMISSIONER SHALL KEEP CONFIDENTIAL THE IDENTITY**
20 **OF A PERSON THAT FILES A COMPLAINT UNLESS DISCLOSURE IS NECESSARY FOR**
21 **THE RESOLUTION OF ANY INVESTIGATION OR IS OTHERWISE REQUIRED BY LAW.**

22 **(3) IF THE COMMISSIONER NEEDS TO DISCLOSE THE IDENTITY OF A**
23 **PERSON THAT FILES A COMPLAINT, THE COMMISSIONER SHALL, TO THE EXTENT**
24 **PRACTICABLE, NOTIFY THE PERSON BEFORE THE DISCLOSURE IS MADE.**

25 **(B) (1) ON RECEIPT OF A COMPLAINT FILED UNDER SUBSECTION (A)(1)**
26 **OF THIS SECTION, THE COMMISSIONER SHALL SEND A LETTER TO THE EMPLOYER.**

27 **(2) THE LETTER SHALL:**

28 **(I) STATE THAT THERE IS A COMPLAINT ALLEGING A**
29 **VIOLATION OF THIS SUBTITLE FILED AGAINST THE EMPLOYER;**

1 (II) STATE THE REQUIREMENTS OF SUBSECTION (C) OF THIS
2 SECTION;

3 (III) STATE THAT FAILURE TO COMPLY MAY RESULT IN A CIVIL
4 ACTION SEEKING DAMAGES, COUNSEL FEES, AND OTHER LEGAL REMEDIES; AND

5 (IV) INFORM THE EMPLOYER THAT RETALIATION AGAINST AN
6 EMPLOYEE FOR EXERCISING RIGHTS UNDER THIS SECTION IS A BASIS FOR A
7 PRIVATE RIGHT OF ACTION SEEKING ADDITIONAL MONETARY DAMAGES TO BE
8 DETERMINED BY A COURT.

9 (C) IF AN EMPLOYER RECEIVES A LETTER SENT UNDER SUBSECTION (B) OF
10 THIS SECTION, WITHIN 10 DAYS AFTER THE DATE OF THE LETTER, THE EMPLOYER
11 SHALL SUBMIT TO THE COMMISSIONER:

12 (1) PROOF OF COMPLIANCE WITH THIS SUBTITLE; OR

13 (2) AN ACTION PLAN THE EMPLOYER WILL IMPLEMENT TO CORRECT
14 ANY VIOLATION OF THIS SUBTITLE.

15 (D) IF THE COMMISSIONER DETERMINES THAT THIS SUBTITLE HAS BEEN
16 VIOLATED, THE COMMISSIONER MAY ISSUE AN ORDER:

17 (1) REQUIRING THE EMPLOYER TO:

18 (I) COMPLY WITH THIS SUBTITLE; AND

19 (II) PAY ANY PAY UNDER §§ 3-1303 AND 3-1304 OR OTHER
20 WAGES OWED TO EMPLOYEES UNDER THIS SUBTITLE;

21 (2) IMPOSING A CIVIL PENALTY NOT TO EXCEED \$500 FOR EACH
22 VIOLATION OF THIS SUBTITLE; AND

23 (3) GRANTING ANY OTHER APPROPRIATE RELIEF, INCLUDING:

24 (I) REINSTATEMENT OF EMPLOYMENT;

25 (II) INJUNCTIVE RELIEF;

26 (III) ACTUAL DAMAGES; AND

(IV) AN ADDITIONAL AMOUNT EQUAL TO TWICE ANY PAY UNDER §§ 3-1303 AND 3-1304 OR OTHER WAGES OWED TO EMPLOYEES UNDER THIS SUBTITLE.

(E) (1) WITHIN 30 DAYS AFTER RECEIVING AN ORDER ISSUED UNDER SUBSECTION (D) OF THIS SECTION, AN EMPLOYER MAY REQUEST A DE NOVO ADMINISTRATIVE HEARING.

(2) AN ADMINISTRATIVE HEARING REQUESTED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONDUCTED IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

(3) IF AN EMPLOYER DOES NOT REQUEST A HEARING UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE ORDER ISSUED BY THE COMMISSIONER BECOMES FINAL.

(4) (I) A FINAL ORDER OF THE COMMISSIONER MAY BE APPEALED IN ACCORDANCE WITH § 10-222 OF THE STATE GOVERNMENT ARTICLE.

(II) IF AN EMPLOYER DOES NOT REQUEST JUDICIAL REVIEW OF A FINAL ORDER WITHIN 30 DAYS AFTER THE ORDER BECOMES FINAL, THE COMMISSIONER MAY FILE AN ACTION TO ENFORCE THE ORDER IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE EMPLOYER RESIDES OR HAS A PLACE OF BUSINESS.

(F) ON OR BEFORE FEBRUARY 1 EACH YEAR, THE COMMISSIONER SHALL POST ON THE WEB SITE OF THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION:

(1) THE NUMBER AND NATURE OF COMPLAINTS FILED UNDER THIS SECTION;

(2) THE RESULTS OF ANY INVESTIGATIONS RELATED TO A COMPLAINT;

(3) THE NUMBER OF ORDERS ISSUED AND PENALTIES IMPOSED UNDER THIS SECTION; AND

(4) THE AVERAGE TIME TAKEN FOR A COMPLAINT TO BE RESOLVED.

3-1310.

1 **(A) (1) ANY PERSON ALLEGING A VIOLATION OF THIS SUBTITLE MAY**
2 **BRING AN ACTION IN A COURT OF COMPETENT JURISDICTION.**

3 **(2) AN ACTION MAY BE BROUGHT WHETHER OR NOT A COMPLAINT**
4 **WAS FIRST FILED WITH THE COMMISSIONER.**

5 **(3) AN ACTION BROUGHT UNDER THIS SUBSECTION:**

6 **(I) SHALL BE FILED WITHIN 3 YEARS AFTER THE PERSON KNEW**
7 **OR SHOULD HAVE KNOWN OF THE ALLEGED VIOLATION; AND**

8 **(II) MAY BE BROUGHT AS A CLASS ACTION IN ACCORDANCE**
9 **WITH STATE LAW.**

10 **(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IN AN ACTION**
11 **UNDER SUBSECTION (A) OF THIS SECTION, IF A COURT FINDS THAT AN EMPLOYER**
12 **HAS VIOLATED THIS SUBTITLE, THE COURT MAY AWARD:**

13 **(I) DAMAGES NOT TO EXCEED \$500 FOR EACH VIOLATION OF**
14 **THIS SUBTITLE;**

15 **(II) REINSTATEMENT OF EMPLOYMENT;**

16 **(III) INJUNCTIVE RELIEF;**

17 **(IV) ACTUAL DAMAGES;**

18 **(V) ANY PAY UNDER §§ 3-1303 AND 3-1304 OR OTHER WAGES**
19 **OWED TO EMPLOYEES UNDER THIS SUBTITLE PLUS INTEREST;**

20 **(VI) AN ADDITIONAL AMOUNT EQUAL TO TWICE ANY PAY UNDER**
21 **§§ 3-1303 AND 3-1304 OR OTHER WAGES OWED TO EMPLOYEES UNDER THIS**
22 **SUBTITLE; AND**

23 **(VII) REASONABLE ATTORNEY'S FEES AND OTHER COSTS.**

24 **(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
25 **PARAGRAPH, IF A COURT FINDS THAT AN EMPLOYER HAS VIOLATED § 3-1308(B) OF**
26 **THIS SUBTITLE OR OTHERWISE DISCRIMINATED AGAINST AN EMPLOYEE, THE**
27 **COURT SHALL AWARD ACTUAL DAMAGES AND REINSTATEMENT OF EMPLOYMENT.**

28 **(II) A COURT IS NOT REQUIRED TO AWARD REINSTATEMENT OF**
29 **EMPLOYMENT IF THE EMPLOYEE WAIVES THE RIGHT TO REINSTATEMENT.**

1 (III) IF THE COURT FINDS THAT THE EMPLOYEE HAS BEEN
2 DISCHARGED IN RETALIATION FOR EXERCISING RIGHTS UNDER THIS SUBTITLE, FOR
3 THE PURPOSE OF CALCULATING ACTUAL DAMAGES REQUIRED TO BE AWARDED
4 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE PERIOD OF VIOLATION
5 BEGINS THE DAY THE EMPLOYEE WAS DISCHARGED AND ENDS THE DAY BEFORE THE
6 EMPLOYEE IS REINSTATED OR THE DAY THE EMPLOYEE AGREES TO WAIVE
7 REINSTATEMENT.

8 (C) IN AN ACTION BROUGHT BY A PERSON OTHER THAN AN EMPLOYEE, ANY
9 PAY UNDER §§ 3-1303 AND 3-1304, WAGES, OR ACTUAL DAMAGES AWARDED BY THE
10 COURT SHALL BE PAID TO THE EMPLOYEES TO WHOM THE VIOLATION RELATES.

11 3-1311.

12 THIS SUBTITLE MAY BE CITED AS THE FAIR SCHEDULING ACT.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2018.