

HOUSE BILL 187

K3
HB 1204/13 – ECM

4lr0517

By: **Delegates Braveboy, B. Robinson, Glenn, Anderson, Barkley, Barnes, Bobo, Branch, Burns, Cane, Cardin, Carr, Carter, Clippinger, Conaway, Cullison, Dumais, Frick, Frush, Gaines, Gilchrist, Gutierrez, Hammen, Harper, Haynes, Healey, Hixson, Holmes, Howard, Hubbard, Huckler, Ivey, Jones, Kaiser, A. Kelly, Kramer, Lafferty, Lee, Love, Luedtke, McHale, McIntosh, A. Miller, Mitchell, Mizeur, Morhaim, Murphy, Nathan-Pulliam, Niemann, Oaks, Olszewski, Pena-Melnyk, Proctor, S. Robinson, Rosenberg, Simmons, Stein, Stukes, Summers, Swain, Tarrant, F. Turner, V. Turner, Valderrama, Valentino-Smith, Vallario, Vaughn, Waldstreicher, Walker, A. Washington, M. Washington, ~~and Zucker~~ Zucker, and Fraser-Hidalgo**

Introduced and read first time: January 15, 2014

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 9, 2014

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – Maryland Wage and Hour Law – Payment of Wages**

3 FOR the purpose of specifying ~~the amount of~~ the State minimum wage rate that is in
4 effect for certain time periods; ~~requiring the Commissioner of Labor and~~
5 ~~Industry to set the rate in a certain manner on or after a certain date or under~~
6 ~~certain circumstances; requiring that the Commissioner publish the rate in the~~
7 ~~Maryland Register on or before a certain date each year;~~ authorizing certain
8 amusement and recreational establishments to pay certain employees a certain
9 wage under certain circumstances; repealing the exemption from the Maryland
10 Wage and Hour Law for certain individuals; repealing ~~the exemption~~ certain
11 exemptions from a certain provision of law related to the payment of overtime
12 wages ~~for certain employers;~~ altering the exemption from a certain provision of
13 law related to the payment of overtime wages for certain amusement and
14 recreational establishments; ~~altering the percentage of the minimum wage rate~~
15 ~~that may be included by~~ prohibiting the tip credit amount ~~an employer as a tip~~

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 ~~credit amount~~ may include as part of an employee's wage from exceeding a
 2 certain minimum wage less a certain dollar amount, rather than a certain
 3 percentage of the minimum wage; altering the number of hours to be used by
 4 certain employers to compute overtime wages for certain employees; repealing
 5 the authorization for certain employers to use a certain number of hours to
 6 compute overtime wages for certain employees; authorizing an employee, under
 7 certain circumstances, to bring an action against the employer for certain
 8 damages, fees, and costs; requiring a court, under certain circumstances, to
 9 make a certain award to an employee; authorizing a court, under certain
 10 circumstances, to determine that liquidated damages should not be awarded or
 11 to award a lesser amount than required under a certain provision of this Act;
 12 requiring, rather than authorizing, a court, under certain circumstances, to
 13 award an employee certain fees and costs; providing for the application of a
 14 certain provision of this Act; providing for a delayed effective date; and
 15 generally relating to the payment of wages under the Maryland Wage and Hour
 16 Law.

17 BY repealing and reenacting, with amendments,
 18 Article – Labor and Employment
 19 Section 3–403, 3–413, ~~3–415~~ 3–415(b), 3–419, ~~3–420~~, and 3–427
 20 Annotated Code of Maryland
 21 (2008 Replacement Volume and 2013 Supplement)

22 BY repealing and reenacting, without amendments,
 23 Article – Labor and Employment
 24 Section 3–415(a)
 25 Annotated Code of Maryland
 26 (2008 Replacement Volume and 2013 Supplement)

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

29 **Article – Labor and Employment**

30 3–403.

31 ~~(a)~~ This subtitle does not apply to an individual who:

32 (1) is employed in a capacity that the Commissioner defines, by
 33 regulation, to be administrative, executive, or professional;

34 (2) is employed in a nonadministrative capacity at an organized camp,
 35 including a resident or day camp;

36 (3) is under the age of 16 years and is employed no more than 20
 37 hours in a week;

1 (4) is employed as an outside salesman;

2 (5) is compensated on a commission basis;

3 (6) [is at least 62 years old and is employed no more than 25 hours in
4 a week;

5 (7)] is a child, parent, spouse, or other member of the immediate family
6 of the employer;

7 ~~(8)~~ (7) is employed in a ~~motion picture or~~ drive-in theater;]

8 [(9)] ~~(7)~~ (8) is employed as part of the training in a special education
9 program for emotionally, mentally, or physically handicapped students under a public
10 school system; ~~OR~~

11 ~~(10)~~ (9) is employed by an employer who is engaged in canning,
12 freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables,
13 or horticultural commodities, poultry, or seafood;]

14 [(11)] ~~(8)~~ (10) engages in the activities of a charitable, educational,
15 not for profit, or religious organization if:

16 (i) the service is provided gratuitously; and

17 (ii) there is, in fact, no employer-employee relationship; ~~OR~~

18 ~~(12)~~ (11) is employed in a cafe, drive-in, drugstore, restaurant,
19 tavern, or other similar establishment that:

20 (i) sells food and drink for consumption on the premises; and

21 (ii) has an annual gross income of \$250,000 or less;]

22 ~~(b) This subtitle does not apply to an individual who:~~

23 ~~(1)~~ (12) is employed in agriculture if, during each quarter of the
24 preceding calendar year, the employer used no more than 500 agricultural-worker
25 days;

26 ~~(2)~~ (13) is engaged principally in the range production of livestock;

27 or

28 ~~(3)~~ (14) is employed as a hand-harvest laborer and is paid on a
29 piece-rate basis in an operation that, in the region of employment, has been and
30 customarily and generally is recognized as having been paid on that basis, if:

1 (i) the individual:

2 1. commutes daily from the permanent residence of the
3 individual to the farm where the individual is employed; and

4 2. during the preceding calendar year, was employed in
5 agriculture less than 13 weeks; or

6 (ii) the individual:

7 1. is under the age of 17;

8 2. is employed on the same farm as a parent of the
9 individual or a person standing in the place of the parent; and

10 3. is paid at the same rate that an employee who is at
11 least 17 years old is paid on the same farm.

12 3-413.

13 (a) In this section, “employer” includes a governmental unit.

14 (b) Except as provided in SUBSECTION (D) OF THIS SECTION AND § 3-414
15 of this subtitle, each employer shall pay:

16 (1) to each employee who is subject to both the federal Act and this
17 subtitle, at least the greater of:

18 (i) the minimum wage for that employee under the federal Act;
19 or

20 (ii) [a wage that equals a rate of \$6.15 per hour] **THE STATE**
21 **MINIMUM WAGE RATE SET UNDER SUBSECTION (C) OF THIS SECTION;** and

22 (2) each other employee who is subject to this subtitle, at least:

23 (i) the greater of:

24 1. the highest minimum wage under the federal Act; or

25 2. [a wage that equals a rate of \$6.15 per hour] **THE**
26 **STATE MINIMUM WAGE RATE SET UNDER SUBSECTION (C) OF THIS SECTION;** or

27 (ii) a training wage under regulations that the Commissioner
28 adopts that include the conditions and limitations authorized under the federal Fair
29 Labor Standards Amendments of 1989.

1 (C) ~~(I)~~ THE STATE MINIMUM WAGE RATE IS:

2 ~~(H) (1)~~ FOR THE 12-MONTH PERIOD BEGINNING ~~JULY 1,~~
3 ~~2014~~ JANUARY 1, 2015, \$8.20 PER HOUR;

4 ~~(H) (2)~~ FOR THE 12-MONTH PERIOD BEGINNING ~~JULY 1,~~
5 ~~2015~~ JULY 1, 2016;

6 1. ~~\$9.15 PER HOUR; OR~~

7 2. ~~IF THE COMMISSIONER IS REQUIRED TO SET THE~~
8 ~~RATE UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE RATE SET AND~~
9 ~~PUBLISHED BY THE COMMISSIONER UNDER PARAGRAPH (3) OF THIS~~
10 ~~SUBSECTION; AND~~

11 ~~(H) (3)~~ ~~FOR THE 12-MONTH PERIOD BEGINNING JULY 1,~~
12 ~~2016~~ JANUARY 1, 2017;

13 1. ~~\$10.10 PER HOUR; OR~~

14 2. ~~IF THE COMMISSIONER IS REQUIRED TO SET THE~~
15 ~~RATE UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE RATE SET AND~~
16 ~~PUBLISHED BY THE COMMISSIONER UNDER PARAGRAPH (3) OF THIS~~
17 ~~SUBSECTION; AND~~

18 ~~(IV) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2017,~~
19 ~~AND EACH SUBSEQUENT 12-MONTH PERIOD, THE RATE SET AND PUBLISHED BY~~
20 ~~THE COMMISSIONER UNDER PARAGRAPH (3) OF THIS SUBSECTION.~~

21 ~~(2) IF, DURING THE 12-MONTH PERIOD SPECIFIED IN~~
22 ~~PARAGRAPH (1)(I) OR (II) OF THIS SUBSECTION, THE HIGHEST MINIMUM WAGE~~
23 ~~UNDER THE FEDERAL ACT IS INCREASED TO A RATE THAT IS HIGHER THAN THE~~
24 ~~STATE MINIMUM WAGE, THE COMMISSIONER SHALL SET AND PUBLISH THE~~
25 ~~STATE MINIMUM WAGE RATE FOR THE FOLLOWING 12-MONTH PERIOD IN~~
26 ~~ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION.~~

27 ~~(3) (I) THIS PARAGRAPH APPLIES:~~

28 1. ~~TO THE SETTING OF THE STATE MINIMUM WAGE~~
29 ~~RATE FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2017, AND EACH~~
30 ~~SUBSEQUENT 12-MONTH PERIOD; AND~~

1 ~~2. IF THE COMMISSIONER IS REQUIRED TO SET THE~~
2 ~~STATE MINIMUM WAGE RATE UNDER PARAGRAPH (2) OF THIS SUBSECTION.~~

3 ~~(H) SUBJECT TO SUBPARAGRAPH (H) OF THIS PARAGRAPH,~~
4 ~~THE COMMISSIONER SHALL SET THE STATE MINIMUM WAGE RATE BY:~~

5 ~~1. CALCULATING THE PERCENTAGE INCREASE, IF~~
6 ~~ANY, IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE~~
7 ~~WASHINGTON BALTIMORE METROPOLITAN AREA OR A SUCCESSOR INDEX~~
8 ~~PUBLISHED BY THE FEDERAL BUREAU OF LABOR STATISTICS, BASED ON THE~~
9 ~~MOST RECENT 12 MONTH PERIOD FOR WHICH DATA IS AVAILABLE; AND~~

10 ~~2. INCREASING, BY THE PERCENTAGE CALCULATED~~
11 ~~UNDER ITEM 1 OF THIS SUBPARAGRAPH:~~

12 ~~A. THE STATE MINIMUM WAGE RATE THAT IS IN~~
13 ~~EFFECT FOR THE CURRENT 12 MONTH PERIOD; OR~~

14 ~~B. IF THE HIGHEST MINIMUM WAGE UNDER THE~~
15 ~~FEDERAL ACT HAS INCREASED TO A RATE THAT IS HIGHER THAN THE STATE~~
16 ~~MINIMUM WAGE RATE, THE HIGHEST MINIMUM WAGE UNDER THE FEDERAL ACT~~
17 ~~THAT IS IN EFFECT ON MARCH 1.~~

18 ~~(H) THE STATE MINIMUM WAGE SHALL REMAIN THE SAME~~
19 ~~AS THE RATE THAT WAS IN EFFECT FOR THE PRECEDING 12 MONTH PERIOD IF~~
20 ~~THERE WAS NO CHANGE TO THE CONSUMER PRICE INDEX OR THE CONSUMER~~
21 ~~PRICE INDEX DECREASED, AS CALCULATED UNDER SUBPARAGRAPH (H)1 OF~~
22 ~~THIS PARAGRAPH.~~

23 ~~(IV) THE COMMISSIONER SHALL PUBLISH THE STATE~~
24 ~~MINIMUM WAGE RATE IN THE MARYLAND REGISTER ON OR BEFORE APRIL 1.~~

25 ~~(V) AN INCREASE OF THE STATE MINIMUM WAGE RATE~~
26 ~~SHALL BE ROUNDED UP TO THE NEAREST 5 CENTS.~~

27 (D) (1) THIS SUBSECTION APPLIES ONLY TO AN EMPLOYER THAT IS
28 AN AMUSEMENT OR A RECREATIONAL ESTABLISHMENT, INCLUDING A
29 SWIMMING POOL, IF THE EMPLOYER:

30 (I) OPERATES FOR NO MORE THAN 7 MONTHS IN A
31 CALENDAR YEAR; OR

1 (II) FOR ANY 6 MONTHS DURING THE PRECEDING
2 CALENDAR YEAR, HAS AVERAGE RECEIPTS THAT DO NOT EXCEED ONE-THIRD
3 OF THE AVERAGE RECEIPTS FOR THE OTHER 6 MONTHS.

4 (2) AN EMPLOYER MAY PAY AN EMPLOYEE A WAGE THAT EQUALS
5 A RATE OF:

6 (I) IF THE EMPLOYEE IS NOT SUBJECT TO THE FEDERAL
7 ACT, \$7.25 PER HOUR; OR

8 (II) IF THE EMPLOYEE IS SUBJECT TO THE FEDERAL ACT,
9 THE MINIMUM WAGE FOR THAT EMPLOYEE UNDER THE FEDERAL ACT.

10 3-415.

11 (a) Except as otherwise provided in this section, each employer shall pay an
12 overtime wage of at least 1.5 times the usual hourly wage, computed in accordance
13 with § 3-420 of this subtitle.

14 (b) This section does not apply to an employer that is:

15 (1) subject to 49 U.S.C. § 10501;

16 [(2) an establishment that is a hotel or motel;

17 (3) an establishment that is a restaurant;

18 (4) considered a gasoline service station because the employer is
19 engaged primarily in selling gasoline and lubricating oil, even if the employer sells
20 other merchandise or performs minor repair work;

21 (5) a bona fide private country club;

22 (6) a not for profit entity and is engaged primarily in providing
23 temporary at-home care services, such as companionship or delivery of prepared
24 meals, to aged or sick individuals, individuals with disabilities, or individuals with a
25 mental disorder;]

26 [(7) (2) a not for profit concert promoter, legitimate theater, music
27 festival, music pavilion, or theatrical show; or

28 [(8) (3) an amusement or recreational establishment, including a
29 swimming pool, if the establishment:

30 (i) operates for no more than 7 months in a calendar year; or

1 (ii) for any 6 months during the preceding calendar year, has
 2 average receipts ~~in excess of~~ **THAT DO NOT EXCEED** one-third of the average receipts
 3 for the other 6 months.

4 ~~(e) This section does not apply to an employer with respect to:~~

5 ~~(1) an employee for whom the United States Secretary of~~
 6 ~~Transportation may set qualifications and maximum hours of service under 49 U.S.C.~~
 7 ~~§ 31502;~~

8 ~~(2) a mechanic, partsperson, or salesperson who primarily sells or~~
 9 ~~services automobiles, farm equipment, trailers, or trucks, if the employer is engaged~~
 10 ~~primarily in selling those vehicles to ultimate buyers and is not a manufacturer; OR~~

11 ~~[(3) a driver if the employer is engaged in the business of operating~~
 12 ~~taxicabs; or]~~

13 ~~[(4)] (3) unless a collective bargaining agreement between an~~
 14 ~~employer and a labor organization provides otherwise, an employee of the employer if:~~

15 ~~(i) the employer is subject to Title II of the federal Railway~~
 16 ~~Labor Act;~~

17 ~~(ii) the employer does not require the employee to work more~~
 18 ~~than 40 hours during 1 workweek; and~~

19 ~~(iii) the employee voluntarily enters into an agreement with~~
 20 ~~another employee to trade scheduled work hours and as a result the employee works~~
 21 ~~more than 40 hours during a single workweek.~~

22 3-419.

23 (a) (1) This section applies to each employee who:

24 (i) is engaged in an occupation in which the employee
 25 customarily and regularly receives more than \$30 each month in tips;

26 (ii) has been informed by the employer about the provisions of
 27 this section; and

28 (iii) has kept all of the tips that the employee received.

29 (2) Notwithstanding paragraph (1)(iii) of this subsection, this section
 30 does not prohibit the pooling of tips.

31 (b) Subject to the limitations in this section, an employer may include, as
 32 part of the wage of an employee to whom this section applies:

1 (1) an amount that the employer sets to represent the tips of the
2 employee; or

3 (2) if the employee or representative of the employee satisfies the
4 Commissioner that the employee received a lesser amount in tips, the lesser amount.

5 (c) The tip credit amount that the employer may include under subsection
6 (b) of this section may not exceed [50%] ~~30%~~ of the minimum wage established under
7 § 3-413 of this subtitle for the employee LESS \$3.63.

8 ~~§ 420.~~

9 ~~(a) Except as otherwise provided in this section, an employer shall compute~~
10 ~~the wage for overtime under § 3-415 of this subtitle on the basis of each hour over 40~~
11 ~~hours that an employee works during 1 workweek.~~

12 ~~(b) Notwithstanding § 3-415(b)(8) of this subtitle, an employer that is not a~~
13 ~~not for profit organization and is a concert promoter, legitimate theater, music festival,~~
14 ~~music pavilion, or theatrical show shall pay overtime for a craft or trade employee as~~
15 ~~required in subsection (a) of this section.~~

16 ~~(c) The wage for overtime may be computed on the basis of each hour over~~
17 ~~[60] 48 hours that an employee works during 1 workweek.~~

18 ~~(1) for an employee who:~~

19 ~~[(1)] (I) is engaged in agriculture; and~~

20 ~~[(2)] (II) is exempt from the overtime provisions of the federal Act[.];~~

21 **AND**

22 ~~[(d) The wage for overtime may be computed on the basis of each hour over 48~~
23 ~~hours that an employee works during 1 workweek.]~~

24 ~~[(1)] (2) for an employee of a bowling establishment[; and~~

25 ~~(2) for an employee of an institution that:~~

26 ~~(i) is not a hospital; but~~

27 ~~(ii) is engaged primarily in the care of individuals who:~~

28 ~~1. are aged, intellectually disabled, or sick or have a~~
29 ~~mental disorder; and~~

1 ~~2~~ ~~reside at the institution]~~

2 3-427.

3 (a) If an employer pays an employee less than the wage required under this
4 subtitle, the employee may bring an action against the employer to recover:

5 (1) the difference between the wage paid to the employee and the wage
6 required under this subtitle;

7 (2) AN ADDITIONAL AMOUNT EQUAL TO ~~TWO-TIMES~~ THE
8 DIFFERENCE BETWEEN THE WAGE PAID TO THE EMPLOYEE AND THE WAGE
9 REQUIRED UNDER THIS SUBTITLE AS LIQUIDATED DAMAGES; AND

10 (3) COUNSEL FEES AND OTHER COSTS.

11 (b) On the written request of an employee who is entitled to bring an action
12 under this section, the Commissioner may:

13 (1) take an assignment of the claim in trust for the employee;

14 (2) ask the Attorney General to bring an action in accordance with this
15 section on behalf of the employee; and

16 (3) consolidate 2 or more claims against an employer.

17 (c) The agreement of an employee to work for less than the wage to which
18 the employee is entitled under this subtitle is not a defense to an action under this
19 section.

20 (d) **(1)** If a court determines that an employee is entitled to recovery in an
21 action under this section, the court [may allow against the employer] **SHALL AWARD**
22 **TO THE EMPLOYEE:**

23 ~~(1)~~ **(I)** THE DIFFERENCE BETWEEN THE WAGE PAID TO THE
24 EMPLOYEE AND THE WAGE REQUIRED UNDER THIS SUBTITLE;

25 ~~(2)~~ **(II)** EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
26 SUBSECTION, AN ADDITIONAL AMOUNT EQUAL TO ~~TWO-TIMES~~ THE DIFFERENCE
27 BETWEEN THE WAGE PAID TO THE EMPLOYEE AND THE WAGE REQUIRED UNDER
28 THIS SUBTITLE AS LIQUIDATED DAMAGES; AND

29 ~~(3)~~ **(III)** reasonable counsel fees and other costs.

1 **(2) IF AN EMPLOYER SHOWS TO THE SATISFACTION OF THE**
 2 **COURT THAT THE EMPLOYER ACTED IN GOOD FAITH AND REASONABLY**
 3 **BELIEVED THAT THE WAGES PAID TO THE EMPLOYEE WERE NOT LESS THAN THE**
 4 **WAGE REQUIRED UNDER THIS SUBTITLE, THE COURT MAY:**

5 **(I) DETERMINE THAT LIQUIDATED DAMAGES SHOULD NOT**
 6 **BE AWARDED; OR**

7 **(II) AWARD, AS LIQUIDATED DAMAGES, ANY AMOUNT LESS**
 8 **THAN THE AMOUNT SPECIFIED IN PARAGRAPH (1)(II) OF THIS SUBSECTION.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 10 ~~June 1, 2014~~ January 1, 2015.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.