

SENATE BILL 331

K3, P4

4r0135
CF HB 295

By: **The President (By Request – Administration) and Senators Benson, Conway, Currie, Feldman, Ferguson, Forehand, Frosh, Gladden, King, Madaleno, Manno, Montgomery, Muse, Peters, Pinsky, Pugh, Ramirez, Raskin, Rosapepe, Stone, and Young**

Introduced and read first time: January 17, 2014

Assigned to: Finance and Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Minimum Wage Act of 2014**

3 FOR the purpose of specifying the State minimum wage rate that is in effect for
4 certain time periods; increasing, except under certain circumstances, the State
5 minimum wage rate in effect for certain periods of time based on the annual
6 growth in the Consumer Price Index; requiring the Commissioner of Labor and
7 Industry, beginning on a certain date and each subsequent year, to determine
8 and announce the growth in the Consumer Price Index, if any, and the new
9 State minimum wage rate; repealing the exemption from the Maryland Wage
10 and Hour Law for certain individuals; altering the exemptions from a certain
11 provision of law related to the payment of overtime wages; altering the
12 percentage of the minimum wage rate that may be included by an employer as a
13 tip credit amount as part of an employee's wage; altering the number of hours to
14 be used by certain employers to compute overtime wages for certain employees;
15 repealing the authorization for certain employers to use a certain number of
16 hours to compute overtime wages for certain employees; requiring a court,
17 under certain circumstances, to make a certain award to an employee;
18 authorizing a court, under certain circumstances, to determine that liquidated
19 damages should not be awarded or to award a lesser amount than required
20 under a certain provision of this Act; requiring, rather than authorizing, a court,
21 under certain circumstances, to award an employee certain fees and costs;
22 defining a certain term; and generally relating to the payment of wages under
23 the Maryland Wage and Hour Law.

24 BY repealing and reenacting, with amendments,
25 Article – Labor and Employment
26 Section 3–403, 3–413, 3–415(b), 3–419, 3–420, and 3–427
27 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Replacement Volume and 2013 Supplement)

2 BY repealing and reenacting, without amendments,
3 Article – Labor and Employment
4 Section 3–415(a)
5 Annotated Code of Maryland
6 (2008 Replacement Volume and 2013 Supplement)

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

9 **Article – Labor and Employment**

10 3–403.

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

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

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

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

18 (4) is employed as an outside salesman;

19 (5) is compensated on a commission basis;

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

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

24 [(8) is employed in a motion picture or drive-in theater;]

25 [(9)] (7) is employed as part of the training in a special education
26 program for emotionally, mentally, or physically handicapped students under a public
27 school system;

28 [(10)] (8) is employed by an employer who is engaged in canning,
29 freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables,
30 or horticultural commodities, poultry, or seafood; **OR**

1 ~~[(11)]~~ **(9)** engages in the activities of a charitable, educational, not for
2 profit, or religious organization if:

3 (i) the service is provided gratuitously; and

4 (ii) there is, in fact, no employer–employee relationship]; or

5 (12) is employed in a cafe, drive–in, drugstore, restaurant, tavern, or
6 other similar establishment that:

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

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

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

10 (1) is employed in agriculture if, during each quarter of the preceding
11 calendar year, the employer used no more than 500 agricultural–worker days;

12 (2) is engaged principally in the range production of livestock; or

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

16 (i) the individual:

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

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

21 (ii) the individual:

22 1. is under the age of 17;

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

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

27 3–413.

28 (a) **(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
29 **MEANINGS INDICATED.**

1 **(2) “CONSUMER PRICE INDEX” MEANS THE CONSUMER PRICE**
 2 **INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON–BALTIMORE**
 3 **METROPOLITAN AREA OR A SUCCESSOR INDEX PUBLISHED BY THE FEDERAL**
 4 **BUREAU OF LABOR STATISTICS.**

5 **(3) [In this section, “employer”] “EMPLOYER” includes a**
 6 **governmental unit.**

7 (b) Except as provided in § 3–414 of this subtitle, each employer shall pay:

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

10 (i) the minimum wage for that employee under the federal Act;
 11 or

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

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

15 (i) the greater of:

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

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

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

22 **(C) (1) The STATE MINIMUM WAGE RATE IS:**

23 **(I) FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2014,**
 24 **\$8.20 PER HOUR;**

25 **(II) FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2015,**
 26 **\$9.15 PER HOUR;**

27 **(III) FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2016,**
 28 **\$10.10 PER HOUR; AND**

1 **(IV) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2017,**
2 **AND EACH SUBSEQUENT 12-MONTH PERIOD, THE RATE DETERMINED AND**
3 **ANNOUNCED BY THE COMMISSIONER UNDER PARAGRAPH (2)(II) OF THIS**
4 **SUBSECTION.**

5 **(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS**
6 **PARAGRAPH, FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2017, AND EACH**
7 **SUBSEQUENT 12-MONTH PERIOD, THE STATE MINIMUM WAGE RATE SHALL BE**
8 **INCREASED BY THE AMOUNT, ROUNDED TO THE NEAREST CENT, THAT EQUALS**
9 **THE PRODUCT OF:**

10 **1. THE STATE MINIMUM WAGE RATE IN EFFECT FOR**
11 **THE PRECEDING 12-MONTH PERIOD; AND**

12 **2. THE ANNUAL PERCENTAGE GROWTH IN THE**
13 **CONSUMER PRICE INDEX, AS DETERMINED BY THE COMMISSIONER UNDER**
14 **SUBPARAGRAPH (II)1 OF THIS PARAGRAPH.**

15 **(II) BEGINNING ON MARCH 1, 2017, AND EACH**
16 **SUBSEQUENT MARCH 1, THE COMMISSIONER SHALL DETERMINE AND**
17 **ANNOUNCE:**

18 **1. THE ANNUAL PERCENTAGE GROWTH, IF ANY, IN**
19 **THE CONSUMER PRICE INDEX BASED ON THE MOST RECENT 12-MONTH PERIOD**
20 **FOR WHICH DATA IS AVAILABLE ON MARCH 1; AND**

21 **2. THE STATE MINIMUM WAGE RATE EFFECTIVE FOR**
22 **THE 12-MONTH PERIOD BEGINNING ON THE FOLLOWING JULY 1.**

23 **(III) IF THERE IS A DECLINE OR NO GROWTH IN THE**
24 **CONSUMER PRICE INDEX, THE STATE MINIMUM WAGE RATE SHALL REMAIN**
25 **THE SAME AS THE RATE THAT WAS IN EFFECT FOR THE PRECEDING 12-MONTH**
26 **PERIOD.**

27 3-415.

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

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

32 (1) subject to 49 U.S.C. § 10501;

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

2 (3) an establishment that is a restaurant;

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

6 (5) a bona fide private country club;

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

11 **(2) A MOTION PICTURE OR DRIVE-IN THEATER;**

12 [(7) (3) a not for profit concert promoter, legitimate theater, music
13 festival, music pavilion, or theatrical show; or

14 [(8) (4) an amusement or recreational establishment, including a
15 swimming pool, if the establishment:

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

17 (ii) for any 6 months during the preceding calendar year, has
18 average receipts in excess of one-third of the average receipts for the other 6 months.

19 3-419.

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

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

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

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

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

28 (b) Subject to the limitations in this section, an employer may include, as
29 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.

8 3–420.

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)] § 3–415(B)(3)** of this subtitle, an
13 employer that is not a not for profit organization and is a concert promoter, legitimate
14 theater, music festival, music pavilion, or theatrical show shall pay overtime for a
15 craft or trade employee as 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 **[(d)]** The wage for overtime may be computed on the basis of each hour over 48
22 hours that an employee works during 1 workweek:]; AND

23 **[(1)] (2)** for an employee of a bowling establishment[; and

24 (2) for an employee of an institution that:

25 (i) is not a hospital; but

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

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

29 2. reside at the institution].

1 3-427.

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

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

6 (2) **AN ADDITIONAL AMOUNT EQUAL TO THE DIFFERENCE**
7 **BETWEEN THE WAGE PAID TO THE EMPLOYEE AND THE WAGE REQUIRED UNDER**
8 **THIS SUBTITLE AS LIQUIDATED DAMAGES; AND**

9 (3) **COUNSEL FEES AND OTHER COSTS.**

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

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

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

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

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

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

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

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

28 (III) reasonable counsel fees and other costs.

29 (2) **IF AN EMPLOYER SHOWS TO THE SATISFACTION OF THE**
30 **COURT THAT THE EMPLOYER ACTED IN GOOD FAITH AND REASONABLY**

1 BELIEVED THAT THE WAGES PAID TO THE EMPLOYEE WERE NOT LESS THAN THE
2 WAGE REQUIRED UNDER THIS SUBTITLE, THE COURT MAY:

3 (I) DETERMINE THAT LIQUIDATED DAMAGES SHOULD NOT
4 BE AWARDED; OR

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 June 1, 2014.