

SENATE BILL 716

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11r1405
CF 11r2772

By: **Senators Garagiola, Benson, Conway, Frosh, Jones–Rodwell, King, Madaleno, Manno, McFadden, Montgomery, Muse, Pinsky, Ramirez, Raskin, and Rosapepe**

Introduced and read first time: February 4, 2011

Assigned to: Finance

A BILL ENTITLED

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 12–month periods; specifying that, beginning with a certain
5 12–month period, the rate is the amount published in a certain manner by the
6 Commissioner of Labor and Industry; requiring the Commissioner, beginning on
7 a certain date and for each year thereafter, to set the rate in a certain manner;
8 requiring that the Commissioner publish the rate in the Maryland Register on
9 or before a certain date each year; specifying the method by which the rate is to
10 be determined; repealing the exemption from the Maryland Wage and Hour
11 Law for certain individuals; repealing the exemption from a certain provision of
12 law related to the payment of overtime wages for certain employers; altering the
13 percentage of the minimum wage rate that can be included by an employer as a
14 tip credit amount as part of an employee’s wage; altering the number of hours to
15 be used by certain employers to compute overtime wages for certain employees;
16 and generally relating to the payment of wages under the Maryland Wage and
17 Hour Law.

18 BY repealing and reenacting, with amendments,
19 Article – Labor and Employment
20 Section 3–403, 3–413, 3–415, 3–419, and 3–420
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2010 Supplement)

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

25 **Article – Labor and Employment**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 3-403.

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

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

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

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

9 (4) is employed as an outside salesman;

10 (5) is compensated on a commission basis;

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

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

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

16 [(9)] (7) is employed as part of the training in a special education
17 program for emotionally, mentally, or physically handicapped students under a public
18 school system; **OR**

19 [(10) is employed by an employer who is engaged in canning, freezing,
20 packing, or first processing of perishable or seasonal fresh fruits, vegetables, or
21 horticultural commodities, poultry, or seafood;]

22 [(11)] (8) engages in the activities of a charitable, educational, not for
23 profit, or religious organization if:

24 (i) the service is provided gratuitously; and

25 (ii) there is, in fact, no employer-employee relationship[; or

26 (12) is employed in a cafe, drive-in, drugstore, restaurant, tavern, or
27 other similar establishment that:

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

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

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

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

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

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

8 (i) the individual:

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

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

13 (ii) the individual:

14 1. is under the age of 17;

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

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

19 3–413.

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

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

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

24 (i) the minimum wage for that employee under the federal Act;
25 or

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

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

29 (i) the greater of:

- 1 1. the highest minimum wage under the federal Act; or
- 2 2. [a wage that equals a rate of \$6.15 per hour] **THE**
- 3 **STATE MINIMUM WAGE RATE SET UNDER SUBSECTION (C) OF THIS SECTION;** or
- 4 (ii) a training wage under regulations that the Commissioner
- 5 adopts that include the conditions and limitations authorized under the federal Fair
- 6 Labor Standards Amendments of 1989.

7 **(C) (1) THE STATE MINIMUM WAGE RATE IS:**

8 **(I) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2011,**

9 **\$8.25 PER HOUR;**

10 **(II) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2012,**

11 **\$9.00 PER HOUR;**

12 **(III) FOR THE 12-MONTH PERIOD BEGINNING JULY 1, 2013,**

13 **\$9.75 PER HOUR; AND**

14 **(IV) FOR THE 12-MONTH PERIOD BEGINNING ON EACH**

15 **SUBSEQUENT JULY 1, THE AMOUNT PUBLISHED BY THE COMMISSIONER UNDER**

16 **PARAGRAPH (2) OF THIS SUBSECTION.**

17 **(2) (I) BEGINNING MARCH 1, 2014, AND EACH YEAR**

18 **THEREAFTER, THE COMMISSIONER SHALL SET THE STATE MINIMUM WAGE**

19 **RATE IN ACCORDANCE WITH PARAGRAPH (3) OF THIS SUBSECTION.**

20 **(II) THE COMMISSIONER SHALL PUBLISH THE STATE**

21 **MINIMUM WAGE RATE IN THE MARYLAND REGISTER ON OR BEFORE APRIL 1 OF**

22 **EACH YEAR.**

23 **(3) (I) THE STATE MINIMUM WAGE RATE SHALL:**

24 1. **BE INCREASED BY THE AMOUNT OF INCREASE, IF**

25 **ANY, IN THE MOST RECENT 12-MONTH CONSUMER PRICE INDEX FOR ALL**

26 **URBAN CONSUMERS FOR THE WASHINGTON-BALTIMORE METROPOLITAN AREA,**

27 **OR A SUCCESSOR INDEX, PUBLISHED BY THE FEDERAL BUREAU OF LABOR**

28 **STATISTICS;**

29 2. **IF THE FEDERAL MINIMUM WAGE HAS INCREASED**

30 **DURING THE 12-MONTH PERIOD IMMEDIATELY PRECEDING MARCH 1 BY AN**

31 **AMOUNT GREATER THAN THE INCREASE CALCULATED UNDER ITEM 1 OF THIS**

1 SUBPARAGRAPH, BE INCREASED BY THE SAME AMOUNT AS THE INCREASE IN
2 THE FEDERAL MINIMUM WAGE; OR

3 3. REMAIN THE SAME AS THE RATE THAT WAS IN
4 EFFECT FOR THE PRECEDING 12-MONTH PERIOD IF THERE WAS NO CHANGE TO
5 THE CONSUMER PRICE INDEX OR THE CONSUMER PRICE INDEX DECREASED,
6 AS CALCULATED UNDER ITEM 1 OF THIS SUBPARAGRAPH.

7 (II) AN INCREASE OF THE STATE MINIMUM WAGE SHALL BE
8 ROUNDED TO THE NEAREST 5 CENTS.

9 3-415.

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

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

14 (1) subject to 49 U.S.C. § 10501;

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

16 (3) an establishment that is a restaurant;

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

20 (5) a bona fide private country club;

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

25 [(7) (2) a not for profit concert promoter, legitimate theater, music
26 festival, music pavilion, or theatrical show; or

27 [(8) (3) an amusement or recreational establishment, including a
28 swimming pool, if the establishment:

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

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

1 (c) This section does not apply to an employer with respect to:

2 (1) an employee for whom the United States Secretary of
3 Transportation may set qualifications and maximum hours of service under 49 U.S.C.
4 § 31502; **OR**

5 (2) a mechanic, partsperson, or salesperson who primarily sells or
6 services automobiles, farm equipment, trailers, or trucks, if the employer is engaged
7 primarily in selling those vehicles to ultimate buyers and is not a manufacturer[]; or

8 (3) a driver if the employer is engaged in the business of operating
9 taxicabs].

10 3–419.

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

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

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

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

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

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

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

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

25 (c) The tip credit amount that the employer may include under subsection
26 (b) of this section may not exceed **[50%] 25%** of the minimum wage established under
27 § 3–413 of this subtitle for the employee.

28 3–420.

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

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

5 (c) The wage for overtime may be computed on the basis of each hour over
6 [60] 48 hours that an employee works during 1 workweek for an employee who:

7 (1) is engaged in agriculture; and

8 (2) is exempt from the overtime provisions of the federal Act.

9 [(d) The wage for overtime may be computed on the basis of each hour over 48
10 hours that an employee works during 1 workweek:

11 (1) for an employee of a bowling establishment; and

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

13 (i) is not a hospital; but

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

15 1. are aged, intellectually disabled, or sick or have a
16 mental disorder; and

17 2. reside at the institution.]

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 June 1, 2011.