

HOUSE BILL 1392

K3

8lr1856

By: **Delegates Ramirez, Barkley, Barnes, Davis, Feldman, Frush, Griffith, Haynes, Healey, Hucker, Ivey, Kaiser, Kirk, Krysiak, Kullen, Lee, Manno, Mizeur, Montgomery, Murphy, Niemann, Taylor, Valderrama, and Vaughn**

Introduced and read first time: February 8, 2008

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Maryland Wage and Hour Law – Civil Penalties**

3 FOR the purpose of establishing certain civil penalties for violations of certain wage
4 and hour laws; allowing an employee to recover certain damages under certain
5 circumstances; requiring a court to allow specified costs against an employer for
6 a certain recovery in a certain action; and generally relating to violations of the
7 wage and hour laws.

8 BY repealing and reenacting, without amendments,
9 Article – Labor and Employment
10 Section 3–403, 3–413, 3–415, 3–419, and 3–420
11 Annotated Code of Maryland
12 (1999 Replacement Volume and 2007 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article – Labor and Employment
15 Section 3–427
16 Annotated Code of Maryland
17 (1999 Replacement Volume and 2007 Supplement)

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

20 **Article – Labor and Employment**

21 3–403.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

7 (4) is employed as an outside salesman;

8 (5) is compensated on a commission basis;

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

11 (7) is a child, parent, spouse, or other member of the immediate family
12 of the employer;

13 (8) is employed in a motion picture or drive-in theater;

14 (9) is employed as part of the training in a special education program
15 for emotionally, mentally, or physically handicapped students under a public school
16 system;

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

20 (11) engages in the activities of a charitable, educational, not for profit,
21 or religious organization if:

22 (i) the service is provided gratuitously; and

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

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

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

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

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

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

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

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

5 (i) the individual:

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

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

10 (ii) the individual:

11 1. is under the age of 17;

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

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

16 3-413.

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

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

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

21 (i) the minimum wage for that employee under the federal Act;
22 or

23 (ii) a wage that equals a rate of \$6.15 per hour; and

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

25 (i) the greater of:

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

27 2. a wage that equals a rate of \$6.15 per hour; or

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

4 3-415.

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

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

9 (1) subject to 49 U.S.C. § 10501;

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

11 (3) an establishment that is a restaurant;

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

15 (5) a bona fide private country club;

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

20 (7) a not for profit concert promoter, legitimate theater, music festival,
21 music pavilion, or theatrical show; or

22 (8) an amusement or recreational establishment, including a
23 swimming pool, if the establishment:

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

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

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

28 (1) an employee for whom the United States Secretary of
29 Transportation may set qualifications and maximum hours of service under 49 U.S.C.
30 § 3102;

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

4 (3) a driver if the employer is engaged in the business of operating
5 taxicabs.

6 3-419.

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

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

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

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

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

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

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

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

21 (c) The tip credit amount that the employer may include under subsection
22 (b) of this section may not exceed 50% of the minimum wage established under § 3-413
23 of this subtitle for the employee.

24 3-420.

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

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

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

1 (1) is engaged in agriculture; and

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

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

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

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

7 (i) is not a hospital; but

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

9 1. are aged, mentally retarded, or sick or have a mental
10 disorder; and

11 2. reside at the institution.

12 3-427.

13 (a) If an employer pays an employee less than the wage required under this
14 subtitle, the employee may bring an action against the employer to recover the
15 difference between the wage paid to the employee and the wage required under this
16 subtitle, **AS WELL AS REASONABLE COUNSEL FEES AND ANY DAMAGES ALLOWED**
17 **UNDER § 3-428 OF THIS SUBTITLE.**

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

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

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

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

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

27 (d) If a court determines that an employee is entitled to recovery in an action
28 under this section, the court [may] **SHALL** allow against the employer reasonable
29 counsel fees and other costs, **INCLUDING:**

1 **(1) THE DIFFERENCE BETWEEN THE WAGE PAID TO THE**
2 **EMPLOYEE AND THE WAGE REQUIRED UNDER THIS SUBTITLE; AND TWO TIMES**
3 **THE AMOUNT PROVIDED FOR IN SUBSECTION 1 OF THIS SECTION.**

4 **(E) INSTEAD OF PURSUING CRIMINAL CHARGES PROVIDED IN THIS**
5 **SUBTITLE, THE COMMISSIONER MAY IMPOSE ON ANY PERSON WHO VIOLATES**
6 **THIS SUBTITLE A CIVIL PENALTY THAT WILL BE RETAINED BY THE**
7 **DEPARTMENT OF LABOR, LICENSING AND REGULATION TO FINANCE**
8 **ACTIVITIES IN ENFORCEMENT OF THIS SUBTITLE:**

9 **(1) FOR A FIRST VIOLATION, NOT EXCEEDING \$2,500;**

10 **(2) FOR A SECOND VIOLATION, NOT LESS THAN \$500 AND NOT**
11 **MORE THAN \$5,000; OR**

12 **(3) FOR A THIRD OR SUBSEQUENT VIOLATION, NOT LESS THAN**
13 **\$2,500 AND NOT MORE THAN \$5,000.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2008.