

SENATE BILL 452

K3
HB 1392/08 – ECM

9lr2045
CF 9lr1469

By: **Senator Lenett**
Introduced and read first time: February 4, 2009
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Maryland Wage and Hour Law – Damages**

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

7 BY repealing and reenacting, without amendments,
8 Article – Labor and Employment
9 Section 3–413, 3–415(a), 3–419, and 3–420
10 Annotated Code of Maryland
11 (2008 Replacement Volume)

12 BY repealing and reenacting, with amendments,
13 Article – Labor and Employment
14 Section 3–427
15 Annotated Code of Maryland
16 (2008 Replacement Volume)

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

19 **Article – Labor and Employment**

20 3–413.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



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

3 (i) the minimum wage for that employee under the federal Act;
4 or

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

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

7 (i) the greater of:

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

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

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

13 3-415.

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

17 3-419.

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

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

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

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

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

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

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

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

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

6 3–420.

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

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

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

16 (1) is engaged in agriculture; and

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

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

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

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

22 (i) is not a hospital; but

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

24 1. are aged, mentally retarded, or sick or have a mental
25 disorder; and

26 2. reside at the institution.

27 3–427.

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

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

3 (2) **AN ADDITIONAL AMOUNT EQUAL TO TWO TIMES THE**
4 **DIFFERENCE BETWEEN THE WAGE PAID TO THE EMPLOYEE AND THE WAGE**
5 **REQUIRED UNDER THIS SUBTITLE AS LIQUIDATED DAMAGES; AND**

6 (3) **THE COUNSEL FEES AND COSTS, SPECIFIED IN SUBSECTION**
7 **(D) OF THIS SECTION.**

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

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

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

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

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

17 (d) If a court determines that an employee is entitled to recovery in an action
18 under this section, the court [may] **SHALL** allow against the employer:

19 (1) reasonable counsel fees and other costs;

20 (2) **THE DIFFERENCE BETWEEN THE WAGE REQUIRED UNDER**
21 **THIS SUBTITLE AND THE WAGE PAID TO THE EMPLOYEE; AND**

22 (3) **AN ADDITIONAL AMOUNT EQUAL TO TWO TIMES THE**
23 **DIFFERENCE BETWEEN THE WAGE PAID TO THE EMPLOYEE AND THE WAGE**
24 **REQUIRED UNDER THIS SUBTITLE AS LIQUIDATED DAMAGES.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2009.