# HOUSE BILL 187

K3 4lr0517
HB 1204/13 – ECM

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, Hucker, 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**

Introduced and read first time: January 15, 2014
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

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

FOR the purpose of specifying the amount of the State minimum wage rate that is in effect for certain time periods; requiring the Commissioner of Labor and Industry to set the rate in a certain manner on or after a certain date or under certain circumstances; requiring that the Commissioner publish the rate in the Maryland Register on or before a certain date each year; repealing the exemption from the Maryland Wage and Hour Law for certain individuals; repealing the exemption from a certain provision of law related to the payment of overtime wages for certain employers; altering the percentage of the minimum wage rate that may be included by an employer as a tip credit amount as part of an employee's wage; altering the number of hours to be used by certain employers to compute overtime wages for certain employees; repealing the authorization for certain employers to use a certain number of hours to compute overtime wages for certain employees; authorizing an employee, under certain circumstances, to bring an action against the employer for certain damages, fees, and costs; requiring a court, under certain circumstances, to make a certain award to an employee; requiring, rather than authorizing, a court, under certain circumstances, to award an employee certain fees and costs; and generally relating to the payment of wages under the Maryland Wage and Hour Law.

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

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

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

**Article – Labor and Employment**

3–403.

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

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

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

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

(4) is employed as an outside salesman;

(5) is compensated on a commission basis;

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

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

**[**(8) is employed in a motion picture or drive–in theater;**]**

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

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

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

(i) the service is provided gratuitously; and

(ii) there is, in fact, no employer–employee relationship**[**; or

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

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

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

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

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

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

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

(i) the individual:

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

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

(ii) the individual:

1. is under the age of 17;

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

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

3–413.

(a) In this section, "employer" includes a governmental unit.

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

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

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

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

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

(i) the greater of:

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

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

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

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

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

**(II) FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2015:**

**1. $9.15 PER HOUR; OR**

**2. IF THE COMMISSIONER IS REQUIRED TO SET THE RATE UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE RATE SET AND PUBLISHED BY THE COMMISSIONER UNDER PARAGRAPH (3) OF THIS SUBSECTION;**

**(III) FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2016:**

**1. $10.10 PER HOUR; OR**

**2. IF THE COMMISSIONER IS REQUIRED TO SET THE RATE UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE RATE SET AND**

PUBLISHED BY THE COMMISSIONER UNDER PARAGRAPH (3) OF THIS SUBSECTION; AND

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

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

(3) (I) THIS PARAGRAPH APPLIES:

1. TO THE SETTING OF THE STATE MINIMUM WAGE RATE FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2017, AND EACH SUBSEQUENT 12–MONTH PERIOD; AND

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

(II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, THE COMMISSIONER SHALL SET THE STATE MINIMUM WAGE RATE BY:

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

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

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

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

**(III) THE STATE MINIMUM WAGE SHALL REMAIN THE SAME AS THE RATE THAT WAS IN EFFECT FOR THE PRECEDING 12–MONTH PERIOD IF THERE WAS NO CHANGE TO THE CONSUMER PRICE INDEX OR THE CONSUMER PRICE INDEX DECREASED, AS CALCULATED UNDER SUBPARAGRAPH (II)1 OF THIS PARAGRAPH.**

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

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

3–415.

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

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

(1) subject to 49 U.S.C. § 10501;

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

(3) an establishment that is a restaurant;

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

(5) a bona fide private country club;

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

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

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

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

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

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

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

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

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

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

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

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

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

3–419.

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

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

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

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

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

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

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

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

(c) The tip credit amount that the employer may include under subsection (b) of this section may not exceed **[**50%**] 30%** of the minimum wage established under § 3–413 of this subtitle for the employee.

3–420.

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

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

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

**(1)** for an employee who:

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

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

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

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

(2) for an employee of an institution that:

(i) is not a hospital; but

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

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

2. reside at the institution**]**.

3–427.

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

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

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

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

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

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

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

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

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

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

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

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

**(3)** reasonable counsel fees and other costs.

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