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January 28, 2025

To: The Honorable C. T. Wilson  
Chair, Economic Matters Committee

From: Karen S. Straughn  
Consumer Protection Division

Re: House Bill 385 – Consumer Protection – Automatic Tip Prompt Screen - Requirements (SUPPORT WITH AMENDMENT)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support of House Bill 385 submitted by Delegates Mary A. Lehman, *et al*, with one amendment described below. This bill requires each licensed business that uses a point-of-sale system at the time of checkout that displays a screen prompting a customer to select an amount for a tip to conspicuously display on the same screen information concerning to whom the tip will be allocated and that the default tip amount be set to 0.

Consumers are increasingly asked to provide a tip when purchasing everyday items. This can range from restaurants, to retail stores, to auto mechanics and more. The business determines the tip suggestions, but they typically range from 10% to 30% of the total bill. Consumers customarily believe that the tips they pay are a gratuity or extra compensation for the employees who serve them. However, the Federal Trade Commission has taken action against businesses that misled consumers about the purpose of their tips by diverting them from their employees and, instead, using consumer tips to defray overhead.<sup>1</sup> Although the Division believes that failure to disclose that tips are not being allocated to employees already violates the Consumer Protection Act, this bill would expressly make such practices a violation of the Act.

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<sup>1</sup> See e.g. FTC Press Release – Amazon Flex (“Amazon will pay more than \$61.7 million to settle Federal Trade Commission charges that it failed to pay Amazon Flex drivers the full amount of tips they received from Amazon customers over a two and a half year period.”) at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1923123-amazon-flex>.

While most businesses that use a point-of-sale system distribute tips to the employees who helped the customer, some may distribute the tips more generally among employees, and still others may be failing to distribute all of the tips to the employees, thereby deceiving consumers about the use of the surcharge. Consumers should not be misled into leaving a tip thinking it is for a helpful employee when it is not. Consumers should also not be told that their payments are “tips” when, in fact, they are collected by the business for its overhead.

This bill does not require that a tip be provided, only that the point-of-sale system identify to whom the tip is being provided. This will allow consumers to make an educated decision about whether and how much to tip. Additionally, by setting the default amount to \$0, it lessens the pressure on consumers to leave a tip or, if the consumer chooses to tip, give the suggested amount.

We ask that an amendment be made removing the unnecessary requirement that the Division promulgate regulations relating to enforcement of the bill. House Bill 385 provides the details necessary for a business to comply with the bill’s requirements.

For these reasons, the Consumer Protection Division asks that the Economic Matters Committee return a favorable report on this bill with the amendment discussed.

cc: The Honorable Mary A. Lehman  
The Honorable Gabriel Acevero  
The Honorable Nick Allen  
The Honorable Heather Bagnall  
The Honorable Linda Foley  
The Honorable Michele Guyton  
The Honorable Kevin M. Harris  
The Honorable Julian Ivey  
The Honorable Dana Jones  
The Honorable Aaron M. Kaufman  
The Honorable Robbyn Lewis  
The Honorable Jeffrie E. Long, Jr  
The Honorable Joseline A. Pena-Melnyk  
The Honorable N. Scott Phillips  
The Honorable Andrew C. Pruski  
The Honorable Stuart Michael Schmidt, Jr.  
The Honorable Vaughn Stewart  
The Honorable Deni Taveras  
The Honorable Kym Taylor  
The Honorable Nicole A. Williams  
The Honorable Jamila J. Woods  
The Honorable Chao Wu  
The Honorable Natalie Ziegler  
Members, Economic Matters Committee