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March 19, 2025

To: The Honorable Pamela Beidle
Chair, Finance 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*, as amended. 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 a disclosure that the tip will be paid to employees and a tip amount set to \$0 or a “No Tip” option. The Consumer Protection Division seeks an amendment to restore the enforcement provisions under the Consumer Protection Act, including a private right of action for deceived consumers.

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. 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.¹ 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 require a disclosure that the tips are being allocated to

¹ 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>.

employees and make failure to make the disclosure or deviation from such allocation a violation of the Act.

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 that the tip is being provided to employees. This will allow consumers to make an educated decision about whether and how much to tip. Additionally, by setting a tip amount to \$0 or providing a “No Tip” option, it lessens the pressure on consumers to leave a tip or, if the consumer chooses to tip, give the suggested amount.

The bill was amended in the House to remove §§ 13-408 and 13-411 from the enforcement provisions. However, consumers who are deceived as to where their tips are going should have the right to bring an action to recover the money taken from them through deception. The Consumer Protection Division seeks the attached amendment which will restore those sections and will permit a private right of action by consumers harmed by a violation of this law.

For these reasons, the Consumer Protection Division asks that the Finance Committee return a favorable report on this bill with the amendments described.

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, Finance Committee

AMENDMENT TO HB 385 (2025)

Amendment 1

On Page 3, Strike beginning with “except” in line 22, down through “Article” in line 23.