

## **TESTIMONY IN SUPPORT OF HB 385**

TO: Senator Pamela Beidle, Chair, and members of the Senate Finance Committee

FROM: Brian J. Markovitz, Esq. of Joseph, Greenwald & Laake, P.A.

Chair Beidle and members of the Committee, my colleagues and I are litigation attorneys at Joseph, Greenwald & Laake, P.A. in Greenbelt, Maryland. We represent employees and consumers all over the State of Maryland in various matters. I come before the Committee in support of HB 385, respectfully seeking that the Committee take an important step towards clarifying and supporting both employee and consumer rights in Maryland.

HB 385 promises to strengthen both employee rights and consumer protection. First, HB 385 would prohibit an employer from raising the argument of good faith under a “bona fide” dispute defense in cases where employees claim that they have not received all rightful wages. Second, HB 385 would allow consumers to raise allegations of fraud in instances where employers fail to provide consumers with what they are paying for.

In terms of employee rights in cases of unpaid wages, HB 385 would provide important clarification as to what would no longer constitute a good faith, bona fide dispute. Under Section 3-507(b) of the MWPCCL, withholding wages from an employee in the absence of a good faith, bona fide dispute may result in the employee being awarded an amount up to three times their wages in addition to other fees and costs. A bona fide dispute has been defined as “a legitimate dispute over the validity of a claim or the amount that is owing where the employer has a good faith basis for refusing an employee’s claim for unpaid wages.” *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646, 657 (2014) (internal citations omitted). Simply, HB 385 would clarify to whom tips (thus, wages) are owed. Thus, employers would fail to muster a good faith basis if and when the employer pointedly refused to transmit the tips to the named workers.

In addition to protecting workers, HB 385 would enhance consumer rights by clarifying what constitutes fraud under the Maryland Consumer Protection Act. Under Maryland Code, a trade practice may be unfair, abusive, or deceptive if it includes: “(9) Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression or omission of any material fact with the intent that a consumer rely on the same...” Md. Code Com. Law § 13-301(9). A business’ promise to provide tips to certain workers and subsequent failure to do so after making such representations to consumers would fit squarely within the definition of an unfair, abusive, or deceptive trade practice. HB 385 would clarify and encourage truthful business practices by strengthening Maryland law and providing a mechanism by which consumers could ensure that their tips are put in the proper hands.

HB 385 is a simple fix to a larger problem. I, therefore, urge a favorable report for HB 385.