

HOUSE BILL 1235

K3

8lr2085

By: **Delegates Feldman, Ali, Barkley, Barnes, Barve, Benson, Braveboy, Bronrott, Frush, Gaines, Gilchrist, Gutierrez, Harrison, Haynes, Healey, Hecht, Heller, Hixson, Howard, Hucker, Ivey, Kirk, Kullen, Lee, Levi, Manno, Montgomery, Niemann, Oaks, Pena-Melnyk, Ramirez, Rice, Ross, Stukes, Tarrant, Taylor, V. Turner, Valderrama, and Vaughn**

Introduced and read first time: February 8, 2008

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Wage and Hour Law - Payment of Overtime - Exemptions**

3 FOR the purpose of exempting certain employers from the requirement to pay a
4 certain overtime wage; altering the manner in which a wage for overtime is
5 computed by employers for employees; and generally relating to overtime pay.

6 BY repealing and reenacting, without amendments,
7 Article - Labor and Employment
8 Section 3-401 and 3-415(a)
9 Annotated Code of Maryland
10 (1999 Replacement Volume and 2007 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article - Labor and Employment
13 Section 3-415(c) and 3-420
14 Annotated Code of Maryland
15 (1999 Replacement Volume and 2007 Supplement)

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

18 **Article - Labor and Employment**

19 3-401.

20 (a) In this subtitle the following words have the meanings indicated.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) "Employer" includes a person who acts directly or indirectly in the
2 interest of another employer with an employee.

3 (c) "Federal Act" means the federal Fair Labor Standards Act of 1938.

4 (d) "Wage" means all compensation that is due to an employee for
5 employment.

6 3-415.

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

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

11 (1) an employee for whom the United States Secretary of
12 Transportation may set qualifications and maximum hours of service under 49 U.S.C.
13 § 3102;

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

17 (3) a driver if the employer is engaged in the business of operating
18 taxicabs;

19 (4) **AN EMPLOYEE WHO RECEIVES AN OVERTIME WAGE EQUAL TO,**
20 **OR GREATER THAN, THE WAGE REQUIRED UNDER SUBSECTION (A) OF THIS**
21 **SUBTITLE, IF THE WAGE IS SUBJECT TO A WRITTEN AGREEMENT WITH THE**
22 **EMPLOYER; OR**

23 (5) **AN EMPLOYEE OF AN EMPLOYER WHO IS LICENSED:**

24 (I) **TO PROVIDE SERVICES FOR INDIVIDUALS WITH**
25 **DISABILITIES BY THE DEVELOPMENTAL DISABILITIES ADMINISTRATION OF**
26 **THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 7-101 OF THE**
27 **HEALTH - GENERAL ARTICLE;**

28 (II) **AS A PRIVATE MENTAL HEALTH FACILITY BY THE**
29 **DEPARTMENT OF HEALTH AND MENTAL HYGIENE UNDER § 10-517 OF THE**
30 **HEALTH - GENERAL ARTICLE;**

31 (III) **AS A CHILD CARE HOME BY THE DEPARTMENT OF**
32 **JUVENILE SERVICES UNDER § 9-235 OF THE HUMAN SERVICES ARTICLE;**

1 (IV) AS A CHILD CARE INSTITUTION BY THE DEPARTMENT
2 OF JUVENILE SERVICES UNDER § 9-236 OF THE HUMAN SERVICES ARTICLE;
3 OR

4 (V) AS A PRIVATE RESIDENTIAL REHABILITATIVE
5 INSTITUTION BY THE DEPARTMENT OF JUVENILE SERVICES UNDER § 9-238 OF
6 THE HUMAN SERVICES ARTICLE.

7 3-420.

8 (a) Except as otherwise provided in this section, an employer shall compute
9 the wage for overtime under § 3-415 of this subtitle on the basis of **THE GREATER OF:**

10 (1) DURING 1 WORKWEEK, EACH HOUR OVER 8 HOURS THAT AN
11 EMPLOYEE WORKS DURING A WORKDAY; AND

12 (2) DURING 1 WORKWEEK, each hour over 40 hours that an employee
13 works [during 1 workweek].

14 (B) IF AN EMPLOYEE, UNDER A MUTUAL AGREEMENT WITH AN
15 EMPLOYER, AGREES TO WORK MORE THAN 8 HOURS PER DAY IN LESS THAN 5
16 CALENDAR DAYS, FOR A TOTAL OF 40 HOURS WITHIN A SCHEDULED WEEK OF
17 WORK, THE WAGE FOR OVERTIME PAY AUTHORIZED UNDER SUBSECTION (A)(1)
18 OF THIS SECTION DOES NOT APPLY TO THE EMPLOYER.

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

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

25 (1) is engaged in agriculture; and

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

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

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

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

31 (i) is not a hospital; but

- 1 (ii) is engaged primarily in the care of individuals who:
- 2 1. are aged, mentally retarded, or sick or have a mental
- 3 disorder; and
- 4 2. reside at the institution.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect

6 October 1, 2008.