

# SENATE BILL 371

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By: **Senators Currie, Forehand, Frosh, Gladden, King, Montgomery, Peters, Raskin, Rosapepe, and Young**

Introduced and read first time: January 22, 2014

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

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

3 FOR the purpose of specifying the amount of the State minimum wage rate that is in  
4 effect for certain time periods; requiring the Commissioner of Labor and  
5 Industry to set the rate in a certain manner on or after a certain date; requiring  
6 that the Commissioner publish the rate in the Maryland Register on or before a  
7 certain date; altering the age under which certain individuals are exempt from  
8 the Maryland Wage and Hour Law; authorizing an employer to pay an employee  
9 who is a full-time student less than the minimum wage otherwise required for  
10 the employee under certain circumstances; prohibiting the wage paid to  
11 full-time students from being less than a certain percentage of the minimum  
12 wage otherwise required for the employee; altering the percentage of the  
13 minimum wage rate that may be included by an employer as a tip credit amount  
14 as part of an employee's wage; defining a certain term; and generally relating to  
15 the payment of wages under the Maryland Wage and Hour Law.

16 BY repealing and reenacting, with amendments,  
17 Article – Labor and Employment  
18 Section 3–403, 3–413, and 3–419  
19 Annotated Code of Maryland  
20 (2008 Replacement Volume and 2013 Supplement)

21 BY adding to  
22 Article – Labor and Employment  
23 Section 3–414.1  
24 Annotated Code of Maryland  
25 (2008 Replacement Volume and 2013 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Labor and Employment**

2 3–403.

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

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

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

8 (3) is under the age of [16] **18** years and is employed no more than 20  
9 hours in a week;

10 (4) is employed as an outside salesman;

11 (5) is compensated on a commission basis;

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

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

16 (8) is employed in a motion picture or drive-in theater;

17 (9) is employed as part of the training in a special education program  
18 for emotionally, mentally, or physically handicapped students under a public school  
19 system;

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

23 (11) engages in the activities of a charitable, educational, not for profit,  
24 or religious organization if:

25 (i) the service is provided gratuitously; and

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

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

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

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

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

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

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

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

9 (i) the individual:

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

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

14 (ii) the individual:

15 1. is under the age of 17;

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

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

20 3–413.

21 (a) In this section, “employer” includes a governmental unit.

22 (b) Except as provided in [§ 3–414] §§ 3–414 AND 3–414.1 of this subtitle,  
23 each employer shall pay:

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

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

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

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

2 (i) the greater of:

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

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

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

9 (c) (1) **THE STATE MINIMUM WAGE RATE IS:**

10 (i) **BEGINNING JULY 1, 2014, \$8 PER HOUR;**

11 (ii) **FOR THE 12-MONTH PERIOD BEGINNING JANUARY 1,**  
12 **2015, \$9 PER HOUR;**

13 (iii) **FOR THE 12-MONTH PERIOD BEGINNING JANUARY 1,**  
14 **2016, \$10.10 PER HOUR; AND**

15 (iv) **FOR THE 12-MONTH PERIOD BEGINNING JANUARY 1,**  
16 **2017, AND EACH SUBSEQUENT 12-MONTH PERIOD, THE RATE SET AND**  
17 **PUBLISHED BY THE COMMISSIONER UNDER PARAGRAPH (2) OF THIS**  
18 **SUBSECTION.**

19 (2) (i) **THIS PARAGRAPH APPLIES TO THE SETTING OF THE**  
20 **STATE MINIMUM WAGE RATE FOR THE 12-MONTH PERIOD BEGINNING JANUARY**  
21 **1, 2017, AND EACH SUBSEQUENT 12-MONTH PERIOD.**

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

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

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

3                   **A. THE STATE MINIMUM WAGE RATE THAT IS IN**  
4 **EFFECT FOR THE CURRENT 12-MONTH PERIOD; OR**

5                   **B. IF THE HIGHEST MINIMUM WAGE UNDER THE**  
6 **FEDERAL ACT HAS INCREASED TO A RATE THAT IS HIGHER THAN THE STATE**  
7 **MINIMUM WAGE RATE, THE HIGHEST MINIMUM WAGE UNDER THE FEDERAL ACT**  
8 **THAT IS IN EFFECT ON SEPTEMBER 1.**

9                   **(III) THE STATE MINIMUM WAGE SHALL REMAIN THE SAME**  
10 **AS THE RATE THAT WAS IN EFFECT FOR THE PRECEDING 12-MONTH PERIOD IF**  
11 **THE AVERAGE PERCENTAGE, AS CALCULATED UNDER SUBPARAGRAPH (II)1 OF**  
12 **THIS PARAGRAPH, IS LESS THAN OR EQUAL TO ZERO.**

13                   **(IV) THE COMMISSIONER SHALL PUBLISH THE STATE**  
14 **MINIMUM WAGE RATE IN THE MARYLAND REGISTER ON OR BEFORE OCTOBER 1**  
15 **OF THE YEAR BEFORE THE 12-MONTH PERIOD BEGINS.**

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

18 **3-414.1.**

19                   **(A) IN THIS SECTION, "FEDERAL CERTIFICATE" MEANS A CERTIFICATE**  
20 **THAT THE UNITED STATES DEPARTMENT OF LABOR ISSUES TO AN EMPLOYER**  
21 **TO ALLOW THE EMPLOYER TO PAY A FULL-TIME STUDENT LESS THAN THE WAGE**  
22 **OTHERWISE REQUIRED FOR THE FULL-TIME STUDENT UNDER THE FEDERAL**  
23 **ACT.**

24                   **(B) SUBJECT TO SUBSECTION (C) OF THIS SECTION, AN EMPLOYER MAY**  
25 **PAY AN EMPLOYEE WHO IS A FULL-TIME STUDENT LESS THAN THE MINIMUM**  
26 **WAGE OTHERWISE REQUIRED UNDER THIS SUBTITLE FOR THE EMPLOYEE IF:**

27                   **(1) THE EMPLOYEE WORKS FEWER THAN 20 HOURS PER WEEK;**  
28 **AND**

29                   **(2) THE EMPLOYER:**

30                   **(I) RECEIVES AUTHORIZATION FROM THE COMMISSIONER;**  
31 **OR**

32                   **(II) HAS BEEN ISSUED A FEDERAL CERTIFICATE.**

1           **(C) THE WAGE PAID UNDER SUBSECTION (B) OF THIS SECTION MAY NOT**  
2 **BE LESS THAN 85% OF THE MINIMUM WAGE OTHERWISE REQUIRED UNDER THIS**  
3 **SUBTITLE FOR THE EMPLOYEE.**

4 3-419.

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

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

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

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

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

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

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

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

19           (c) The tip credit amount that the employer may include under subsection  
20 (b) of this section may not exceed **[50%] 40%** of the minimum wage established under  
21 § 3-413 of this subtitle for the employee.

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