

# HOUSE BILL 665

K3

7lr1405  
CF 7lr1778

---

By: **Delegates Tarlau, Angel, Barron, Carr, Ebersole, Fennell, Glenn, Hayes, Haynes, Hettleman, Kelly, Korman, Lam, Moon, Morhaim, Patterson, Pena-Melnyk, Platt, Reznik, Robinson, Sanchez, M. Washington, and P. Young**

Introduced and read first time: February 1, 2017

Assigned to: Economic Matters

---

## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Exemptions From Overtime Pay – Administrative,**  
3 **Executive, or Professional Capacity**

4 FOR the purpose of altering the conditions under which an individual who works in a  
5 certain administrative, executive, or professional capacity qualifies for an exemption  
6 from overtime pay; requiring that individuals be compensated on a salary basis at a  
7 certain rate or amount to qualify as an individual who is employed in an  
8 administrative, executive, or professional capacity; providing that a certain required  
9 amount of compensation may be paid on a fee basis for certain individuals or  
10 translated into certain equivalent amounts; requiring the Commissioner to adjust in  
11 a certain manner a certain salary amount that determines eligibility for overtime  
12 pay on or after a certain date and at certain regular intervals; and generally relating  
13 to exemptions from overtime pay.

14 BY repealing and reenacting, with amendments,  
15 Article – Labor and Employment  
16 Section 3–403  
17 Annotated Code of Maryland  
18 (2016 Replacement Volume)

19 BY adding to  
20 Article – Labor and Employment  
21 Section 3–403.1  
22 Annotated Code of Maryland  
23 (2016 Replacement Volume)

24 BY repealing and reenacting, without amendments,  
25 Article – Labor and Employment

---

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 3–410 and 3–415  
2 Annotated Code of Maryland  
3 (2016 Replacement Volume)

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

6 **Article – Labor and Employment**

7 3–403.

8 This subtitle does not apply to an individual who:

9 (1) is employed in a capacity that the Commissioner defines, by regulation,  
10 to be administrative, executive, or professional **AND MEETS THE REQUIREMENTS UNDER**  
11 **§ 3–403.1 OF THIS SUBTITLE;**

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

14 (3) is under the age of 16 years and is employed no more than 20 hours in  
15 a week;

16 (4) is employed as an outside salesman;

17 (5) is compensated on a commission basis;

18 (6) is a child, parent, spouse, or other member of the immediate family of  
19 the employer;

20 (7) is employed in a drive-in theater;

21 (8) is employed as part of the training in a special education program for  
22 emotionally, mentally, or physically handicapped students under a public school system;

23 (9) is employed by an employer who is engaged in canning, freezing,  
24 packing, or first processing of perishable or seasonal fresh fruits, vegetables, or  
25 horticultural commodities, poultry, or seafood;

26 (10) engages in the activities of a charitable, educational, not for profit, or  
27 religious organization if:

28 (i) the service is provided gratuitously; and

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

1 (11) is employed in a cafe, drive-in, drugstore, restaurant, tavern, or other  
2 similar establishment that:

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

4 (ii) has an annual gross income of \$400,000 or less;

5 (12) is employed in agriculture if, during each quarter of the preceding  
6 calendar year, the employer used no more than 500 agricultural-worker days;

7 (13) is engaged principally in the range production of livestock; or

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

11 (i) the individual:

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

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

16 (ii) the individual:

17 1. is under the age of 17;

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

20 3. is paid at the same rate that an employee who is at least  
21 17 years old is paid on the same farm.

22 **3-403.1.**

23 **(A) (1) TO QUALIFY AS AN INDIVIDUAL WHO IS EMPLOYED IN AN**  
24 **ADMINISTRATIVE, EXECUTIVE, OR PROFESSIONAL CAPACITY UNDER § 3-403 OF**  
25 **THIS SUBTITLE, AN INDIVIDUAL SHALL BE COMPENSATED ON A SALARY BASIS:**

26 **(I) AT A RATE PER WEEK OF THE 40TH PERCENTILE OR MORE**  
27 **OF WEEKLY EARNINGS OF FULL-TIME NONHOURLY WORKERS IN THE LOWEST-WAGE**  
28 **CENSUS REGION; AND**

29 **(II) AT AN AMOUNT PER WEEK, EXCLUSIVE OF BOARD, LODGING,**  
30 **OR OTHER FACILITIES, THAT IS:**

1                   1.     **\$913 OR MORE; OR**

2                   2.     **BEGINNING JANUARY 1, 2020, DETERMINED BY THE**  
3 **COMMISSIONER UNDER SUBSECTION (B) OF THIS SECTION.**

4                   **(2) THE REQUIRED AMOUNT OF COMPENSATION PER WEEK UNDER**  
5 **PARAGRAPH (1) OF THIS SUBSECTION MAY BE:**

6                   **(I) FOR AN INDIVIDUAL EMPLOYED IN AN ADMINISTRATIVE**  
7 **CAPACITY OR A PROFESSIONAL CAPACITY, PAID ON A FEE BASIS; OR**

8                   **(II) TRANSLATED INTO EQUIVALENT AMOUNTS FOR PERIODS OF**  
9 **TIME LONGER THAN ONE WEEK, INCLUDING COMPENSATION THAT IS PAID ON A**  
10 **BIWEEKLY, SEMIMONTHLY, OR MONTHLY BASIS.**

11                  **(B) ON JANUARY 1, 2020, AND EVERY 3 YEARS THEREAFTER, THE**  
12 **COMMISSIONER SHALL ADJUST THE SALARY AMOUNT UNDER SUBSECTION (A) OF**  
13 **THIS SECTION TO EQUAL THE 40TH PERCENTILE OF WEEKLY EARNINGS OF**  
14 **FULL-TIME NONHOURLY WORKERS IN THE LOWEST-WAGE CENSUS REGION IN THE**  
15 **SECOND QUARTER OF THE YEAR IMMEDIATELY PRECEDING THE UPDATE**  
16 **PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR**  
17 **STATISTICS.**

18                  **(C) THE COMMISSIONER MAY ADOPT REGULATIONS TO IMPLEMENT THIS**  
19 **SECTION.**

20 3-410.

21                  In addition to any regulation specifically required by this subtitle, regulations that  
22 the Commissioner adopts to carry out this subtitle may include:

23                  (1) definitions of the terms “administrative capacity”, “executive capacity”,  
24 “professional capacity”, and “outside salesman”;

25                  (2) a scale of wages that is suitable for learners and apprentices but is at  
26 least 80% of the minimum wage under this subtitle; and

27                  (3) a wage for a special case or class of case if the Commissioner finds the  
28 wage appropriate to:

29                               (i) avoid undue hardship;

30                               (ii) prevent the curtailment of employment opportunity; and

1 (iii) safeguard the minimum wage under this subtitle.

2 3-415.

3 (a) Except as otherwise provided in this section, each employer shall pay an  
4 overtime wage of at least 1.5 times the usual hourly wage, computed in accordance with §  
5 3-420 of this subtitle.

6 (b) This section does not apply to an employer that is:

7 (1) subject to 49 U.S.C. § 10501;

8 (2) a not-for-profit concert promoter, legitimate theater, music festival,  
9 music pavilion, or theatrical show; or

10 (3) an amusement or recreational establishment, including a swimming  
11 pool, if the establishment:

12 (i) operates for no more than 7 months in a calendar year; or

13 (ii) for any 6 months during the preceding calendar year, has  
14 average receipts that do not exceed one-third of the average receipts for the other 6 months.

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

16 (1) an employee for whom the United States Secretary of Transportation  
17 may set qualifications and maximum hours of service under 49 U.S.C. § 31502;

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

21 (3) a driver if the employer is engaged in the business of operating taxicabs;  
22 or

23 (4) unless a collective bargaining agreement between an employer and a  
24 labor organization provides otherwise, an employee of the employer if:

25 (i) the employer is subject to Title II of the federal Railway Labor  
26 Act;

27 (ii) the employer does not require the employee to work more than  
28 40 hours during 1 workweek; and

29 (iii) the employee voluntarily enters into an agreement with another  
30 employee to trade scheduled work hours and as a result the employee works more than 40  
31 hours during a single workweek.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2017.