

SENATE BILL 823

I3, K3, Q3

5lr1538
CF 5lr1537

By: **Senator McCray**

Introduced and read first time: January 28, 2025

Assigned to: Finance and Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **No Tax on Tips Act**

3 FOR the purpose of establishing consumer protections related to service fees charged by
4 food service facilities; specifying the State minimum wage rate and tip credit amount
5 that is in effect for certain time periods; prohibiting certain employers of tipped
6 employees, beginning on a certain date, from including a tip credit amount as part
7 of the employees' wages; allowing a subtraction under the State income tax for
8 certain qualified tips received by individuals during the course of employment;
9 allowing a person a credit against the State income tax for up to a certain amount
10 paid to an employee of the person based on the payment of certain wages and tips;
11 and generally relating to service fees, the payment of wages, tip credits, and State
12 income taxes.

13 BY repealing and reenacting, with amendments,
14 Article – Commercial Law
15 Section 13–301(14)(xlii)
16 Annotated Code of Maryland
17 (2013 Replacement Volume and 2024 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article – Commercial Law
20 Section 13–301(14)(xlili)
21 Annotated Code of Maryland
22 (2013 Replacement Volume and 2024 Supplement)

23 BY adding to
24 Article – Commercial Law
25 Section 13–301(14)(xliv) and 14–1328
26 Annotated Code of Maryland
27 (2013 Replacement Volume and 2024 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Labor and Employment
3 Section 3–413 and 3–419
4 Annotated Code of Maryland
5 (2016 Replacement Volume and 2024 Supplement)

6 BY repealing and reenacting, without amendments,
7 Article – Tax – General
8 Section 10–207(a)
9 Annotated Code of Maryland
10 (2022 Replacement Volume and 2024 Supplement)

11 BY adding to
12 Article – Tax – General
13 Section 10–207(qq) and 10–758
14 Annotated Code of Maryland
15 (2022 Replacement Volume and 2024 Supplement)

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

18 **Article – Commercial Law**

19 13–301.

20 Unfair, abusive, or deceptive trade practices include any:

21 (14) Violation of a provision of:

22 (xlii) Section 12–6C–09.1 of the Health Occupations Article; [or]

23 (xliii) Title 14, Subtitle 48 of this article; or

24 (XLIV) SECTION 14–1328 OF THIS ARTICLE; OR

25 14–1328.

26 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
27 INDICATED.

28 (2) “FOOD SERVICE FACILITY” HAS THE MEANING STATED IN §
29 21–301 OF THE HEALTH – GENERAL ARTICLE.

30 (3) “SERVICE FEE” MEANS A FEE ADDED BY A FOOD SERVICE
31 FACILITY TO A CUSTOMER’S TOTAL CHARGE THAT IS SEPARATE FROM:

1 **(I) THE PRICE LISTED ON THE MENU FOR FOOD, DRINKS, OR**
2 **MERCHANDISE SOLD BY THE FOOD SERVICE FACILITY; AND**

3 **(II) ANY SALES TAX THE FOOD SERVICE FACILITY IS REQUIRED**
4 **TO COLLECT.**

5 **(B) A FOOD SERVICE FACILITY MAY NOT CHARGE A SERVICE FEE UNLESS**
6 **THE FOOD SERVICE FACILITY PROMINENTLY DISCLOSES TO THE CUSTOMER ON THE**
7 **MENU OR IN A LOCATION THAT IS VISIBLE TO THE CUSTOMER BEFORE THE**
8 **CUSTOMER PLACES AN ORDER:**

9 **(1) THE AMOUNT AND PURPOSE OF THE SERVICE FEE; AND**

10 **(2) WHETHER THE SERVICE FEE IS PAID DIRECTLY TO EMPLOYEES IN**
11 **ADDITION TO THEIR WAGES.**

12 **(C) A VIOLATION OF THIS SECTION BY A FOOD SERVICE FACILITY IS:**

13 **(1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN**
14 **THE MEANING OF TITLE 13 OF THIS ARTICLE; AND**

15 **(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS**
16 **CONTAINED IN TITLE 13 OF THIS ARTICLE.**

17 **Article – Labor and Employment**

18 3–413.

19 (a) [(1)] In this section [the following words have the meanings indicated.

20 (2) “Employer”], “EMPLOYER” includes a governmental unit.

21 [(3) “Small employer” means an employer that employs 14 or fewer
22 employees.]

23 (b) Except as provided in subsection (d) of this section and § 3–414 of this subtitle,
24 each employer shall pay:

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

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

28 (ii) the State minimum wage set under subsection (c) of this section;

29 and

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

3 (i) the highest minimum wage under the federal Act; or

4 (ii) the State minimum wage set under subsection (c) of this section.

5 (c) [(1) Except as provided in paragraph (2) of this subsection, the] **THE** State
6 minimum wage rate is:

7 [(i) for the 12-month period beginning January 1, 2023, \$13.25 per
8 hour; and

9 (ii)] **(1) FOR THE 36-MONTH PERIOD** beginning January 1, 2024,
10 \$15.00 per hour[.];

11 [(2) The State minimum wage rate for a small employer is:

12 (i) for the 12-month period beginning January 1, 2023, \$12.80 per
13 hour; and

14 (ii) beginning January 1, 2024, \$15.00 per hour.]

15 **(2) FOR THE 12-MONTH PERIOD BEGINNING JANUARY 1, 2027,**
16 **\$17.00 PER HOUR;**

17 **(3) FOR THE 6-MONTH PERIOD BEGINNING JANUARY 1, 2028, \$18.50**
18 **PER HOUR; AND**

19 **(4) BEGINNING JULY 1, 2028, \$20.00 PER HOUR.**

20 (d) An employer may pay an employee a wage that equals a rate of 85% of the
21 State minimum wage established under this section if the employee is under the age of 18
22 years.

23 3-419.

24 (a) (1) Except as provided in § 3-1604(d) of this title, this section applies to
25 each employee who:

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

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

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

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

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

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

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

10 (c) (1) The tip credit amount that the employer may include under subsection
11 (b) of this section may not exceed the minimum wage established under § 3–413 of this
12 subtitle for the employee less [\$3.63]:

13 (I) FOR THE 12–MONTH PERIOD BEGINNING JANUARY 1, 2027,
14 \$12.00; AND

15 (II) FOR THE 6–MONTH PERIOD BEGINNING JANUARY 1, 2028,
16 \$13.50.

17 (2) BEGINNING JULY 1, 2028, AN EMPLOYER:

18 (I) MAY NOT INCLUDE A TIP CREDIT AS PART OF THE WAGE OF
19 AN EMPLOYEE SUBJECT TO THIS SUBTITLE; AND

20 (II) SHALL PAY AN EMPLOYEE A WAGE THAT IS AT LEAST EQUAL
21 TO THE STATE MINIMUM WAGE SET UNDER § 3–413 OF THIS SUBTITLE.

22 (3) THIS SECTION MAY NOT BE CONSTRUED AS PROHIBITING THE
23 PAYMENT OF TIPS TO EMPLOYEES.

24 (d) (1) The Commissioner shall adopt regulations, in consultation with payroll
25 service providers and restaurant industry trade group representatives, to require
26 restaurant employers that include a tip credit as part of the wage of an employee to provide
27 tipped employees with a written or electronic wage statement for each pay period that
28 shows the effective hourly tip rate as derived from employer–paid cash wages plus all
29 reported tips for tip credit hours worked each workweek of the pay period.

30 (2) The Commissioner shall provide notification of the tip credit wage
31 statement regulations on the Department’s website.

Article – Tax – General

1

2 10–207.

3 (a) To the extent included in federal adjusted gross income, the amounts under
4 this section are subtracted from the federal adjusted gross income of a resident to determine
5 Maryland adjusted gross income.

6 **(QQ) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE**
7 **MEANINGS INDICATED.**

8 **(II) “EMPLOYMENT” MEANS WORK IN AN OCCUPATION OR**
9 **INDUSTRY IN WHICH AN INDIVIDUAL IS CUSTOMARILY COMPENSATED THROUGH A**
10 **COMBINATION OF WAGES AND TIPS, SUCH AS BARBERING, COSMETOLOGY,**
11 **HOSPITALITY, FOOD AND BEVERAGE SERVICE, PARKING SERVICES, AND CUSTODIAL**
12 **SERVICES.**

13 **(III) “QUALIFIED TIPS” MEANS TIPS RECEIVED BY AN**
14 **INDIVIDUAL DURING THE COURSE OF EMPLOYMENT THAT ARE PAID TO THE**
15 **INDIVIDUAL BY AN UNRELATED PARTY WHO DOES NOT HAVE AN OWNERSHIP STAKE**
16 **IN THE BUSINESS PROVIDING THE EMPLOYMENT.**

17 **(2) THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION**
18 **INCLUDES THE AMOUNT OF QUALIFIED TIPS RECEIVED BY AN INDIVIDUAL DURING**
19 **THE TAXABLE YEAR.**

20 10–758.

21 **(A) SUBJECT TO THE LIMITATIONS OF THIS SECTION, FOR A TAXABLE YEAR**
22 **BEGINNING AFTER DECEMBER 31, 2026, BUT BEFORE JANUARY 1, 2029, A PERSON**
23 **MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN AMOUNT EQUAL TO**
24 **50% OF THE DIFFERENCE BETWEEN:**

25 **(1) THE MINIMUM WAGE PAID TO AN EMPLOYEE OF THE PERSON IN**
26 **ACCORDANCE WITH § 3–413 OF THE LABOR AND EMPLOYMENT ARTICLE; AND**

27 **(2) THE TIP CREDIT AMOUNT ALLOWED UNDER § 3–419 OF THE**
28 **LABOR AND EMPLOYMENT ARTICLE.**

29 **(B) (1) FOR ANY TAXABLE YEAR, THE TOTAL AMOUNT OF THE CREDIT**
30 **ALLOWED UNDER THIS SECTION MAY NOT EXCEED:**

31 **(I) THE STATE INCOME TAX IMPOSED FOR THAT TAXABLE**

1 YEAR; OR

2 (II) \$10,000.

3 (2) ANY UNUSED AMOUNT OF THE CREDIT FOR ANY TAXABLE YEAR
4 MAY NOT BE CARRIED OVER TO ANY OTHER TAXABLE YEAR.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is contingent on the
6 passage of Chapter(s) ____(S.B. ___ or H.B. ___) (5lr1540 or 5lr1536) of the Acts of the
7 General Assembly of 2025, a constitutional amendment, and its ratification by the voters
8 of the State.

9 SECTION 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of this
10 Act, this Act shall take effect on the proclamation of the Governor that the constitutional
11 amendment, having received a majority of the votes cast at the general election, has been
12 adopted by the people of Maryland.