HB 1229

Department of Legislative Services

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FISCAL AND POLICY NOTE
First Reader

House Bill 1229 (Delegate Stewart)
Government, Labor, and Elections

Consumer Protection and Labor and Employment - Food Service Facilities and Minimum Wage

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This proposed constitutional amendment, if approved by the voters at the next general election, establishes that every person employed in the State has a right to be paid the State minimum wage rate without regard to tips received. Contingent on the enactment of the constitutional amendment, the bill phases in an increase in the State minimum wage to $25.00 per hour by January 1, 2030, and indexes it to inflation beginning January 1, 2033, along with establishing minimum wage rates for small employers. The bill phases out the tip credit for tipped employees so that, beginning January 1, 2031, an employer must directly pay a tipped employee at least the State minimum wage. The bill repeals the Secure Maryland Wage Act and all general exemptions from the Maryland Wage and Hour Law. Additionally, a food service facility may not charge a service fee unless it is prominently disclosed to the customer and distributed to employees, as specified.

Fiscal Summary

State Effect: If the proposed constitutional amendment is approved by voters, State expenditures (all funds) increase significantly beginning in FY 2027 from repealing exemptions to the Maryland Wage and Hour Law and increasing the State minimum wage rate. General fund revenues may minimally increase from expanded application of existing penalty provisions beginning in FY 2027.

Local Effect: Local government expenditures increase significantly beginning in FY 2027 to pay overtime wages to employees who were previously exempt from overtime wage requirements and to pay higher wages to employees.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

State Minimum Wage

The bill specifies that, unless the federal minimum wage is set at a higher rate, the State minimum wage generally is as follows:

- $17.00 per hour as of January 1, 2027;
- $20.00 per hour as of January 1, 2028;
- $22.50 per hour as of January 1, 2029; and
- $25.00 per hour as of January 1, 2030.

The State minimum wage for a small employer (an employer that employs 14 or fewer employees) is as follows:

- $16.50 per hour as of January 1, 2027;
- $18.00 per hour as of January 1, 2028;
- $19.50 per hour as of January 1, 2029;
- $22.00 per hour as of January 1, 2030;
- $23.50 per hour as of January 1, 2031;
- $25.00 per hour as of January 1, 2032.

Beginning January 1, 2033, and each subsequent year, the State minimum wage rate is indexed to inflation as specified in the bill. Beginning September 1, 2032, and annually thereafter, the Commissioner of Labor and Industry must determine and announce the State minimum wage rate that will be in effect for the next calendar year.

Additionally, the bill repeals the authorization for an employer to pay 85% of the State minimum wage rate to employees younger than age 18.

Tip Credit Phase Out

The tip credit that an employer may include as part of the wage of a tipped employee may not exceed the State minimum wage, less:

- $12.00 for the 12-month period beginning January 1, 2027;
- $13.50 for the 12-month period beginning January 1, 2028;
- $15.00 for the 12-month period beginning January 1, 2029; and
- $16.50 for the 12-month period beginning January 1, 2030.

Beginning January 1, 2031, an employer may not include a tip credit as part of the wage of an employee subject to the Maryland Wage and Hour Law and must pay the employee at least the State minimum wage. Even so, the bill may not be construed as prohibiting the payment of tips to employees.

Food Service Facilities Service Fees

A "service fee" is a fee added by a food service facility to a customer's total charge that is separate from (1) the facility's menu price for food, drinks, or merchandise sold and (2) any sales tax the facility is required to collect.

A food service facility may not charge a service fee unless the facility prominently discloses to the customer on the menu, or in a location that is visible to the customer before placing an order, the amount or percentage rate of the service fee.

A violation of this is an unfair, abusive, or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Additionally, the bill prohibits an operator of a food service facility from charging a service fee unless the full amount of the service fee is distributed to the employee who directly performs the services for which the customer is paying the service fee. The bill specifies how the service fee is to be distributed under specified circumstances and prohibits the distribution to a supervisory or managerial employee. An employer may not consider a service fee as part of an employee's wages. If an employer violates these provisions, an employee may file a complaint with the Commissioner of Labor and Industry. The commissioner may investigate upon a written complaint of an employee, and the commissioner may try to resolve the issue informally, or if the commissioner determines a violation has occurred, must issue an order compelling compliance.

Current Law: The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act (FLSA), which specifies minimum wage and overtime requirements for employers and employees in the State. State law specifies that an employee must be paid the greater of the federal minimum wage (which is currently $7.25 per hour) or $15.00 per hour.

Individuals exempted from the Maryland Wage and Hour Law, along with information on tipped employees and additional related information, can be found in the **Appendix – Maryland Wage and Hour Law**.

Secure Maryland Wage Act

Chapters 671 and 672 of 2021 established the Secure Maryland Wage Act, which requires an employer to pay specified wages and benefits to a covered employee beginning January 1, 2022. A "covered employee" is a nonexempt employee under FLSA who performs work at a "heightened security interest location," which is defined as Baltimore-Washington International Thurgood Marshall Airport (BWI Marshall Airport) or Pennsylvania Station in Baltimore (Penn Station), subject to specified exceptions.

An employer must pay a covered employee an hourly wage rate of at least $16.00 per hour, and, beginning January 1, 2026, an employer must also pay a covered employee an additional supplement benefit rate with a value of at least $1.00 per hour, which is calculated by (1) applying the full supplement benefit to assist in covering the employee's share of health or other benefits, excluding paid leave; (2) applying a portion of the supplement benefit to assist in covering the employee's share of health or other benefits, excluding paid leave and paying the balance in cash; or (3) paying the entire supplement benefit in cash. An employer must pay overtime wages as specified, and an employer may not include a tip credit amount as part of the wage of a covered employee whose duties include providing passengers with wheelchair assistance.

Local Minimum Wage and Tip Credit Laws

Howard, Montgomery, and Prince George's counties have local minimum wage laws. Prince George's County indexes minimum wage rates to inflation (capped at 5%), so employees must be paid $15.30 per hour as of January 1, 2026. Howard County requires most employees to be paid the Howard County minimum wage rate of $16.00 per hour by fiscal 2027. Montgomery County has different minimum wage rates depending on the employer's size. As of July 1, 2025, the Montgomery County minimum wage rates are $15.50 for small employers (10 or less employees), $16.00 for mid-sized employers (11 to 50 employees), and $17.65 for large employers (51 or more employees), and are set to increase annually with inflation and to catch up with the large employer rate. Employees younger than 19 and working less than 20 hours per week are exempt from the Montgomery County minimum wage rates. Montgomery County employers must pay tipped employees at least $4.00 per hour.

Federal Fair Labor Standards Act

An employer must pay a tipped worker at least $2.13 per hour under FLSA. When the state law differs from the federal FLSA, an employer must comply with the standard most protective to employees.

Food Service Facility

A "food service facility" is defined as a place where food or drink is prepared for sale or service on the premises or elsewhere or any operation where food is serviced to or provided for the public, with or without charge.

Maryland Consumer Protection Act

An unfair, abusive, or deceptive trade practice under MCPA includes, among other acts, any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair, abusive, or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer services; the extension of consumer credit; the collection of consumer debt; or the offer for or actual purchase of consumer goods or consumer realty from a consumer by a merchant whose business includes paying off consumer debt in connection with the purchase of any consumer goods or consumer realty from a consumer.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, issue a cease and desist order, or file a civil action in court. A merchant who violates MCPA is subject to a fine of up to $10,000 for each violation and up to $25,000 for each repetition of the same violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to $1,000 and/or imprisonment for up to one year.

State Revenues: If voters approve the constitutional amendment in November 2026, general fund revenues may minimally increase from expanded application of existing penalty provisions beginning in the latter half of fiscal 2027.

Any increase in personal income tax revenue stemming from workers being paid additional wages is likely offset from diminished revenues from businesses with higher payroll expenses and from a decrease in demand for labor. The net effect on State tax revenues (general and special funds) is indeterminate at this time.

The Maryland Aviation Administration notes that raising the State minimum wage and eliminating tip credits affects the revenue share received from the BWI Airport Concessions contract, although the revenue is indeterminate at this time.

State Expenditures: If voters approve the constitutional amendment in November 2026, State expenditures (all funds) increase significantly from repealing the exemptions to the

Maryland Wage and Hour Law. Employees defined as executive, administrative or professional (EAP) are among the employees now subject to the Maryland Wage and Hour Law and, thus, would be entitled to overtime pay under the bill. The State may respond by (1) reducing those employees' overtime hours; (2) hiring additional employees to mitigate the need for overtime; and/or (3) paying those employees overtime. To the extent that the State hires additional employees or pays overtime wages to employees previously exempt, State expenditures increase significantly. For example, the University System of Maryland (USM) advises that payment of overtime for EAP employees would be extremely costly – estimating the amount at several hundred million dollars across all constituent institutions.

Beginning January 1, 2027, as a result of increasing the State minimum wage rate to $17.00 per hour, State expenditures (all funds) increase further as the State minimum wage rate increases. The Department of Budget and Management (DBM) estimates that increasing the State minimum wage to $17.00 affects 208 positions in the State Personnel Management System (SPMS) and increases State expenditures by almost $1.0 million. These costs continue to escalate as the State minimum wage increases so that, by fiscal 2030, DBM estimates State expenditures for SPMS employees increase by $28.2 million, affecting more than 4,500 positions. Similarly, USM anticipates expenditures increasing significantly over the phase-in of the minimum wage increase to $25.00 per hour. For instance, the University of Maryland, College Park Campus alone estimates that wage payments increase by $58.8 million once fully phased in, primarily to pay higher wages to student employees currently earning the minimum wage.

To the extent that the State contracts with service providers who employ low-wage or minimum wage workers, State expenditures further increase beginning midway through fiscal 2027, although any such effect is likely mitigated by the State's living wage requirements.

The Office of Administrative Hearings can likely hear cases stemming from the bill and train administrative law judges on the substantive aspects of the bill with existing resources. Likewise, the Maryland Department of Labor and Judiciary do not anticipate a significant fiscal or operational impact from enforcing the bill. Assuming 50 or fewer complaints, the Consumer Protection Division of the Office of the Attorney General can enforce the bill relating to service fees.

Local Revenues: The bill may have an indeterminate fiscal impact on local income tax revenues from the personal income tax and local highway user revenues from the corporate income tax.

Local Expenditures: Similar to the State effect, local government expenditures increase significantly beginning in the latter half of fiscal 2027 to hire additional employees or pay overtime wages to employees who were previously exempt from the Maryland Wage and

Hour Law, and may increase further beginning January 1, 2027, to pay employees (typically part-time or contractual employees) the State minimum wage rates specified in the bill. This may also increase the costs of certain contracts local governments enter into for services.

Small Business Effect: Small businesses in the State are significantly affected by the bill removing exemptions to the Maryland Wage and Hour Law.

Small businesses that employ the following exempt employees are likely to incur significant increases in labor costs from paying overtime wages (and minimum wage if those employees are not already being paid minimum wage): those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16; salesmen and those who work on commission; an employer's immediate family; drive-in theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption and has an annual gross income of $400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; and certain farm workers.

An employer may no longer pay 85% of the State minimum wage rate to employees younger than age 18.

Small businesses in the State that employ minimum wage or low-wage workers may experience significant increases in their labor costs beginning January 1, 2027, from the bill raising the State minimum wage.

Assuming the bill is enacted in November 2026, small businesses with tipped employees who use the tip credit benefit for a brief amount of time through December 31, 2026, from only having to pay tipped employees $2.13 per hour under the federal FLSA as long as these employees earn at least the minimum wage.

Small businesses with tipped employees who use the tip credit must begin phasing out its use beginning January 1, 2027. By January 1, 2031, employers must pay tipped employees the full minimum wage rate without using a tip credit, thereby likely significantly increasing labor costs for employers that currently use a tip credit.

Additionally, small businesses that are food service facilities must disclose to customers if they charge a service fee and distribute the fee to specified employees.

Additional Comments: The bill deletes the $3.63 amount that is subtracted from the tip credit immediately once the bill takes effect after the November 2026 election (if approved

by voters), but the tip credit of the minimum wage less $12.00 does not take effect until January 1, 2027. Thus, from the effective date of the bill through December 31, 2026, the tip credit is the full minimum wage amount, so the federal FLSA provisions take effect as they are more protective to employees.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 886 (Senator Muse) - Finance.

Information Source(s): Maryland Municipal League; Maryland Association of Counties; Department of Budget and Management; Judiciary (Administrative Office of the Courts); Office of the Attorney General (Consumer Protection Division); Maryland Department of Health; Maryland Department of Labor; Maryland Department of Transportation; Office of Administrative Hearings; University System of Maryland; Department of Legislative Services

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Appendix – Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal Fair Labor Standards Act, which specifies minimum wage and overtime requirements for employers and employees in the State. State law specifies that an employee must be paid the greater of the federal minimum wage (which is currently $7.25 per hour) or $15.00 per hour. However, an employer may pay 85% of the State minimum wage rate to employees younger than age 18.

The Maryland Wage and Hour Law and minimum wage requirements do not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16; salesmen and those who work on commission; an employer's immediate family; drive-in theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption and has an annual gross income of $400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; certain farm workers; specified minor league baseball players; and covered employees under the Secure Maryland Wage Act.

Generally, the employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than $30.00 a month in tips. The tip credit is equal to the State minimum wage, less $3.63. Thus, the wage paid by employers to tipped employees is $3.63 as long as their wages plus tips equal the minimum wage.

Under Maryland's Wage and Hour Law, an employer is required to pay an overtime wage of at least 1.5 times the usual hourly wage for each hour over 40 hours that an employee works during one work week. This requirement does not apply to an employer that is subject to federal rail laws; a nonprofit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or specified amusement or recreational establishments. It also does not apply to an employee for whom the U.S. Secretary of Transportation sets qualifications and maximum hours of service under federal law; a mechanic, parts person, or salesperson, under certain conditions; a driver employed by a taxicab operator; or specified air carrier employees under certain conditions. Also, specific exemptions apply for farm work, bowling establishments, and infirmaries.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wage paid to the employee and the wage required; (2) an additional amount equal to the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

A person who pays or agrees to pay less than the required wages is guilty of a misdemeanor and on conviction is subject to a fine of up to $1,000.