

**House Bill 419**

*Consumer Protection - Automatic Tip Prompt Screen - Requirements*

March 27, 2024

***Position: OPPOSE***

Madame Chair and Members of the Senate Finance Committee:

The Restaurant Association of Maryland opposes House Bill 419 as amended and passed by the House. This legislation requires businesses that use a point-of-sale (POS) system that automatically displays a screen prompting the customer to select an amount for a tip (during the transaction) to conspicuously display on the same screen information disclosing to whom the tip will be allocated.

Although we took no position on the original version of this legislation at the House hearing, we did submit a letter regarding the potential compliance challenges of including the required disclosure on point-of-sale (POS) equipment with small display screens. This continues to be a concern. However, we now have several other important concerns as a result of amendments adopted by the House, which caused us to reconsider our position on this legislation.

1. As introduced, the disclosure requirement of this legislation was drafted to the Business Regulation Article and would have required the Maryland Department of Labor to adopt regulations to administer and enforce. The original bill language specified that the disclosure requirement applied only to businesses licensed by the Department. This limited scope was confirmed in the original Fiscal Note that was released prior to the House hearing. We submitted a Letter of Information for the House hearing expressing our concern about the limitations of smaller POS equipment because we suspected that this legislation was intended to also apply to restaurants and other businesses that are not licensed by the Department. The House amendments struck this limited scope (the bill now applies to any business that uses a POS system with a customer tip prompt screen).
2. We have significant concerns about the House amendments that add the bill's requirements to the Commercial Law Article, and requires the Division of Consumer Protection to adopt regulations to administer and enforce. Passage of this legislation as currently drafted would likely result in widespread and inadvertent non-compliance because businesses would not expect a law and regulations related to tipping to be part of the Consumer Protection Title. If there is a growing problem regarding distribution of such customer tips that are collected in this manner, then it should be addressed in Maryland's Labor and Employment Article. That is the appropriate place for matters related to wages and tips. And we would be happy to work with the bill sponsor and the Department of Labor on that. But the Division of Consumer Protection is not the appropriate State agency to address this.
3. As amended, this legislation would impose hefty penalties for non-compliance under the enforcement and penalty provisions contained in Title 13. A review by our legal counsel noted civil penalties of up to \$10,000 for a first offense and up to \$25,000 for subsequent offenses under §13-410. Businesses that fail to comply may also be subject to other complaints and actions under §§13-401 and 13-408.

*(more)*

4. It is important to note that a business's failure to provide the required disclosure as specified in HB 419 would be "*an unfair, abusive, or deceptive trade practice within the meaning of Title 13*" and subject to penalties, even when all tips collected via POS screen prompts are distributed to employees as customers intended.
  
5. As we shared in our letter for the House hearing, smaller POS display screens may not be capable of conspicuously displaying the required disclosure on the same screen as the customer tip prompt. Businesses with limited check-out counter space often choose slim/compact customer-facing POS devices and may be forced to purchase new POS equipment with larger displays to comply with such a disclosure requirement. (*see small 3.5" and 2.8" POS screen examples below*)

For these reasons, we oppose this legislation as currently drafted.

Sincerely,



Melvin R. Thompson  
Senior Vice President

