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March 27, 2024

To: The Honorable Pamela Beidle  
Chair, Finance Committee

From: Karen S. Straughn  
Consumer Protection Division

Re: House Bill 419 – Business Regulation – Automatic Tip Prompt Screen - Requirements  
(SUPPORT WITH AMENDMENT)

The Consumer Protection Division of the Office of the Attorney General submits the following written testimony in support of House Bill 419, as amended, submitted by Delegates Mary A. Lehman, *et al*, with one additional amendment described below. This bill requires each licensed business that uses a point-of-sale system at the time of checkout that displays a screen prompting a customer to select an amount for a tip to conspicuously display on the same screen information concerning to whom the tip will be allocated.

Consumers are increasingly asked to provide a tip when purchasing everyday items. This can range from restaurants, to retail stores, to auto mechanics and more. The business determines the tip suggestions, but they typically range from 10% to 30% of your total bill. Consumers customarily believe that the tips they pay are a gratuity or extra compensation for the employees who serve them. The Federal Trade Commission has taken action against businesses that misled consumers about the purpose of their tips by diverting them from their employees and, instead, using consumer tips to defray overhead.<sup>1</sup> Although the Division believes that failure to disclose that tips are not being

<sup>1</sup> See e.g. FTC Press Release – Amazon Flex (“Amazon will pay more than \$61.7 million to settle Federal Trade Commission charges that it failed to pay Amazon Flex drivers the full amount of tips they received from Amazon customers over a two and a half year period.”) at <https://www.ftc.gov/legal-library/browse/cases-proceedings/1923123-amazon-flex>.

allocated to employees already violates the Consumer Protection Act, this bill, as amended, would expressly make such practices a violation of the Consumer Protection Act.

While most businesses that use a point-of-sale system distribute tips to the employees who helped the customer, some may distribute the tips more generally among employees, and still others may be failing to distribute all of the tips to the employees, thereby deceiving consumers about the use of the surcharge. Consumers should not be misled into leaving a tip thinking it is for a helpful employee when it is not. Consumers should also not be told that their payments are “tips” when, in fact, they are collected by the business for its overhead.

This bill does not require that a tip be provided, only that the point-of-sale system identify to whom the tip is being provided. This will allow consumers to make an educated decision about whether and how much to tip.

The sponsor has agreed to an amendment removing the unnecessary requirement that the Division promulgate regulations relating to enforcement of the bill. We believe that the provision should have been removed when enforcement was changed from the Department of Labor to the Division.

For these reasons, the Consumer Protection Division asks that the Finance Committee return a favorable report on this bill with the Sponsor’s amendment.

cc:       The Honorable Mary A. Lehman  
          The Honorable Jen Terrasa  
          The Honorable Nick Allen  
          The Honorable Heather Bagnall  
          The Honorable Adrian Boaf  
          The Honorable Lorig Charkoudian  
          The Honorable Linda Foley  
          The Honorable Michele Guyton  
          The Honorable Steve Johnson  
          The Honorable Dana Jones  
          The Honorable Aaron M. Kaufman  
          The Honorable Robbyn Lewis  
          The Honorable Lesley J. Lopez  
          The Honorable Aletheia McCaskill  
          The Honorable Joseline A. Pena-Melnyk  
          The Honorable Stuart Michael Schmidt, Jr.  
          The Honorable Karen Simpson  
          The Honorable Vaughn Stewart  
          The Honorable Deni Taveras  
          The Honorable Kym Taylor  
          The Honorable Joe Vogel  
          The Honorable Nicole A. Williams  
          The Honorable Chao Wu  
          Members, Finance Committee