

TESTIMONY IN SUPPORT OF HB 419 (March 2024).pdf

Uploaded by: Carolea Grant

Position: FAV

TESTIMONY IN SUPPORT OF HB 419

TO: Senator Pamela Beidle, Chair, and members of the Senate Finance Committee

FROM: Caralea Jenell Grant, Esq. and Brian J. Markovitz, Esq. of Joseph, Greenwald & Laake, P.A.

Senator Beidle and members of the Committee, my colleague and I are litigation attorneys at Joseph, Greenwald & Laake, P.A. in Greenbelt, Maryland. We represent employees and consumers all over the State of Maryland in various matters. I come before the Committee in support of HB 419, respectfully seeking that the Committee take the first step towards clarifying and supporting both employee and consumer rights in Maryland.

HB 419 promises to strengthen both employee rights and consumer protection. First, HB 419 would prohibit an employer from raising the argument of good faith under a “bona fide” dispute defense in cases where employees claim that they have not received all rightful wages. Second, HB 419 would allow consumers to raise allegations of fraud in instances where employers fail to provide consumers what they are paying for.

In terms of employee rights in cases of unpaid wages, HB 419 would provide important clarification as to what would no longer constitute a good faith, bona fide dispute. Under Section 3-507(b) of the MWPCCL, withholding wages from an employee in the absence of a good faith, bona fide dispute may result in the employee being awarded an amount up to three times their wages in addition to other fees and costs. A bona fide dispute has been defined as “a legitimate dispute over the validity of a claim or the amount that is owing where the employer has a good faith basis for refusing an employee’s claim for unpaid wages.” *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646, 657 (2014) (internal citations omitted). Simply, HB 419 would clarify to whom tips (thus, wages) are owed. Thus, employers would fail to muster a good faith basis if and when the employer pointedly refused to transmit the tips to the named workers.

In addition to protecting workers, HB 419 would enhance consumer rights by clarifying what constitutes fraud under the Maryland Consumer Protection Act. Under Maryland Code, a trade practice may be unfair, abusive, or deceptive if it includes: “(9) Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression or omission of any material fact with the intent that a consumer rely on the same...” Md. Code Com. Law § 13-301(9). A business’ promise to provide tips to certain workers and subsequent failure to do so after making such representations to consumers would fit squarely within the definition of an unfair, abusive, or deceptive trade practice. HB 419 would clarify and encourage truthful business practices by strengthening Maryland law and providing a mechanism by which consumers could ensure that their tips are put in the proper hands.

HB 419 is simple fix to a larger problem. My firm and I therefore urge a favorable report for HB 419.

HB0419_Automatic_Tip_Prompt_Screen_MLC_FAV.pdf

Uploaded by: Cecilia Plante

Position: FAV



TESTIMONY FOR HB0419
Business Regulation – Automatic Tip Prompt Screen - Requirements

Bill Sponsor: Delegate Lehman

Committee: Finance

Organization Submitting: Maryland Legislative Coalition

Person Submitting: Cecilia Plante, co-chair

Position: FAVORABLE

I am submitting this testimony in strong support of HB0419 on behalf of the Maryland Legislative Coalition. The Maryland Legislative Coalition is an association of activists - individuals and grassroots groups in every district in the state. We are unpaid citizen lobbyists and our Coalition supports well over 30,000 members.

Automatic tipping systems are becoming a fact of life. We see them in Starbucks and at hair salons, online ordering at restaurants and many other service organizations. There are some automated tipping systems that specify who the tip goes to, but many don't.

When we order curbside pickup at restaurants, and someone runs the order to our car in the rain, are they really seeing any of the tip that was added to my order? Unknown. We think that it is completely reasonable to know who is getting the tip.

We strongly support this bill and recommend a **FAVORABLE** report in committee.

Crossover Testimony - HB 419 - Business Regulation

Uploaded by: Donna Edwards

Position: FAV



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Gerald W. Jackson

**HB 419 - Business Regulation - Automatic Tip Prompt Screen - Requirements
Senate Finance Committee
March 27, 2024**

SUPPORT

**Donna S. Edwards
President
Maryland State and DC AFL-CIO**

Madame Chair and members of the Committee, thank you for the opportunity to provide testimony in support of HB 419. My name is Donna S. Edwards, and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 300,000 union members in the state of Maryland, I offer the following comments.

HB 419 requires that point of sale systems at licensed businesses with display screens that prompt customers for tips must disclose on the same screen who receives those tips. Consumers deserve transparency when tipping. Consumers should be confident when tipping that their voluntary contributions are going to the workers that they intended to reward. Workers should not be robbed of potential compensation by misleading tip screens or service fees on point of sale systems that actually send consumers tip money to the business.

We urge the committee to issue a favorable report for HB 419.

HB 419 SLIDES.pdf

Uploaded by: Mary Lehman

Position: FAV



Add a Tip

YOUR BILL: \$34.40

15%

Good

18%

Great

20%

Wow!

30%

Best Service Ever!

No Tip

Custom

Verifone

Would you like to tip your
bakery-CAFE team?

No Tip

Other

\$0.50

\$1.00

\$2.00

\$3.00

HB419 Amendment.pdf

Uploaded by: Mary Lehman

Position: FAV

AMENDMENT REQUEST FORM

Date Submitted

REQUESTER INFORMATION

Name Phone E-mail

REQUEST INFORMATION

Bill No. Bill Title

Amendment Sponsor

Hearing Date

Name(s) and contact information of individual(s) the drafter is authorized to contact

To Be Offered

Description and Comments

****PLEASE ATTACH ANY ADDITIONAL COMMENTS AND SUPPORTING DOCUMENTS TO THE EMAIL WITH THIS FORM.****

Please click the SUBMIT button to create an email to send this form.

Updated: 8/18/2022

HB419 LEHMAN TESTIMONY SENATE.pdf

Uploaded by: Mary Lehman

Position: FAV



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HOUSE BILL 419

BUSINESS REGULATION - AUTOMATIC TIP PROMPT SCREEN – REQUIREMENTS

SUPPORT

GOOD AFTERNOON CHAIR BEIDLE, VICE CHAIR KLAUSMEIER AND ESTEEMED COMMITTEE MEMBERS,

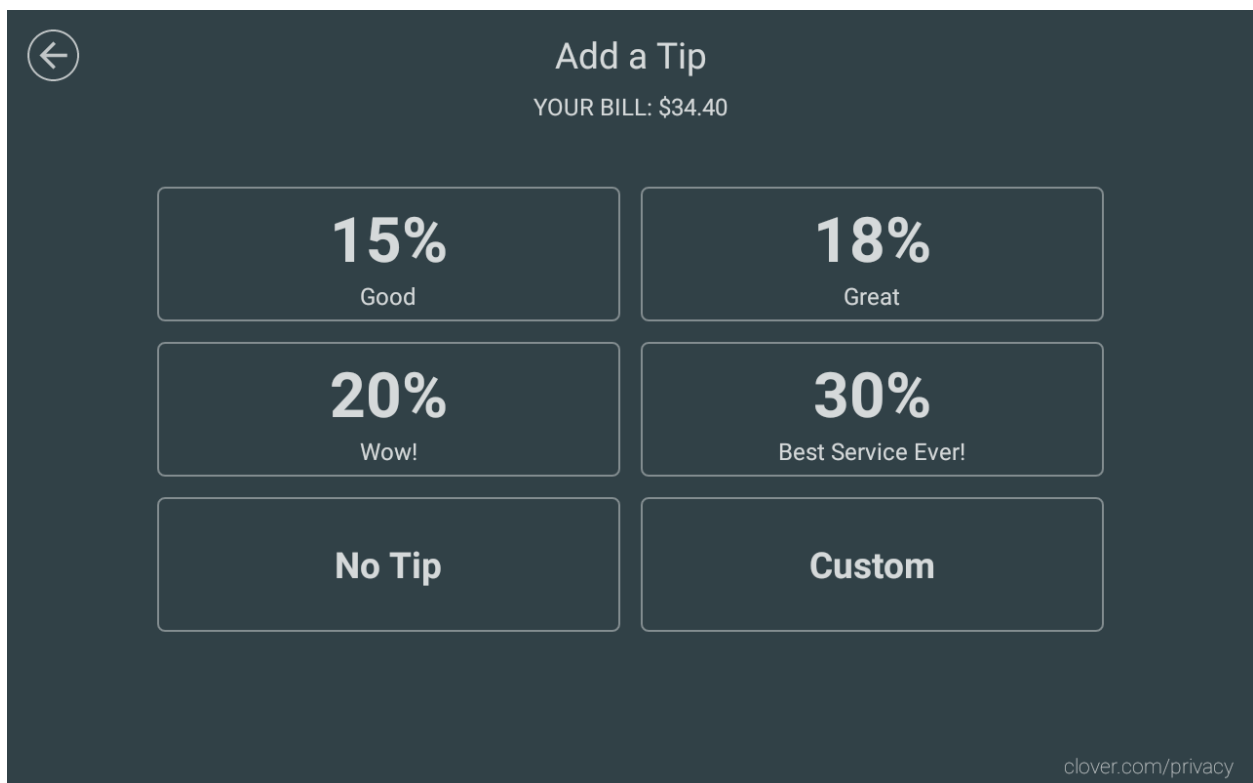
I AM ASKING FOR YOUR FAVORABLE CONSIDERATION OF HB 419 AUTOMATIC TIP PROMPT SCREEN.

MORE AND MORE EATERIES AND OTHER SERVICE-RELATED BUSINESSES ARE ASKING CUSTOMERS IF THEY WOULD LIKE TO ADD A TIP AT POINT OF SALE TRANSACTIONS. PRIOR TO COVID, TIPS FOR FOOD AND BEVERAGE SERVICES WERE MOST OFTEN ASSOCIATED WITH SIT-DOWN RESTAURANTS AND WERE VOLUNTARILY ADDED TO A BILL BY THE CUSTOMER. NOW, COFFEE SHOPS, ICE CREAM STORES, BAKERIES, DELIS, CONVENIENCE STORES, AND OTHER VENUES ASK CUSTOMERS WHETHER THEY WANT TO ADD A TIP FOR TAKE OUT FOOD AND BEVERAGES. TECHNOLOGY HAS PLAYED AN IMPORTANT ROLE IN FACILITATING TIPPING REQUESTS AT THE END OF SUCH TRANSACTIONS. THE MOST COMMON SCENARIO OCCURS WHEN THE CASHIER FLIPS A REGISTER TABLET FOR A CUSTOMER TO PAY AND SIGN FOR A PURCHASE AND THEN THE OPTION TO TIP POPS UP. THESE SCREENS RARELY SPECIFY TO WHOM THE TIP IS GOING.

HB 419 IS AN ATTEMPT TO REQUIRE TRANSPARENCY AND INFORM CONSUMERS ABOUT WHOM THEY ARE TIPPING. THE BILL REQUIRES A SIMPLE SENTENCE ON THE SAME PAY SCREEN THAT OFFERS A CHOICE OF TIPPING LEVELS (10%, 20%, ETC.), CLEARLY STATING WHO WOULD RECEIVE THE TIP. FOR EXAMPLE, IT WOULD SAY “DO YOU WANT TO TIP THE BARISTA?” OR “DO YOU WANT TO TIP THE SANDWICH MAKER?” OR SIMPLY “DO YOU WANT TO TIP THE STAFF?” PANERA DOES THIS ON ITS PAY SCREEN BY ASKING: DO YOU WANT TO TIP THE BAKERY-CAFÉ STAFF?

THIRD READER OF THE HOUSE BILL ADOPTED AMENDMENTS WHICH ADDED THAT THE TIP AMOUNT ON THE PROMPT SCREENS BE SET AT ZERO AS DEFAULT, CLARIFIES THAT THE TIP DISCLOSURE BE SUBJECT TO RECORD-KEEPING REQUIREMENTS UNDER THE WAGE RECORDS PROVISION OF THE LABOR AND EMPLOYMENT ARTICLE , IDENTIFIES THE DIVISION OF CONSUMER PROTECTION TO ADOPT REGULATIONS TO ENFORCE THE BILL, AND SPECIFIES THAT A VIOLATION OF THIS BILL CONSTITUTES AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE UNDER THE MARYLAND CONSUMER PROTECTION ACT, THEREFORE SUBJECTING VIOLATORS OF THIS BILL TO THE ACT'S CIVIL AND CRIMINAL PENALTY PROVISIONS.

THANK YOU FOR YOUR CONSIDERATION. I URGE YOUR FAVORABLE REPORT.



Verifone

Would you like to tip your
bakery-CAFE team?

No Tip

Other

\$0.50

\$1.00

\$2.00

\$3.00

HB 419 Tip Prompt Screen 2024.pdf

Uploaded by: Tom Clark

Position: FAV



International Brotherhood of Electrical Workers

JOSEPH F. DABBS: Business Manager • THOMAS C. MYERS: President • RICHARD D. WILKINSON: Vice President
CHRISTOPHER M. CASH: Financial Secretary • RICHARD G. MURPHY: Recording Secretary • PAULO C. HENRIQUES: Treasurer



TESTIMONY IN SUPPORT OF HB 419 BUSINESS REGULATION-AUTOMATIC TIP PROMPT SCREEN March 27, 2024

TO: Chair Beidle, Vice Chair Klausmeier and members of the Senate Finance Committee
FROM: Tom Clark, Political Director, International Brotherhood of Electrical Workers Local 26

Madam Chair, Madam Vice Chair, and distinguished members of the Senate Finance Committee. I ask you to **support HB 419**, a bill that is a practical response to the world of 2024 and its use of electronic payments.

Many workers rely on tips to put food on their own table. HB 419 ensures that tips for exceptional service go to the very person that delivers that exceptional service, not to the business owners or someone not involved in the act itself. I understand that some businesses add a service charge, which is their right to do so. This smart legislation seeks to make it clear to the customer who is to receive this “service charge” or “tip”.

The “ask” of this bill is simple and has virtually no fiscal effect on the business or customer. The bill only states that on each electronic transaction, a discloser is conspicuously displayed on the screen. A disclosure that clearly states to whom the tip will be allocated. This point of sale, electronic transaction is commonplace in 2024, and I salute the sponsors of this bill for recognizing an issue that is faced by Mr. and Mrs. Marylander each and every day. And a bill that will put well deserved tips in the pockets of hard-working people in the food and service industry.

I respectfully ask that you join with me and those in the food and service industry and **support HB 419**. Support the clarity this bill gives to the consumer and support the proper payment that is received by the tipped worker. Thank you.



HB419 Written Testimony - FAV 2024.pdf

Uploaded by: Zoe Gallagher

Position: FAV



Testimony to the Senate Finance Committee
HB419- Consumer Protection - Automatic Tip Prompt Screen - Requirements
Position: Favorable

3/25/2024

The Honorable Pam Beidle, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401
cc: Members, Senate Finance

Chair Beidle and Members of the Committee:

Economic Action Maryland (formerly the Maryland Consumer Rights Coalition) is a people-centered movement to expand economic rights, housing justice, and community reinvestment for working families, low-income communities, and communities of color. Economic Action Maryland provides direct assistance today while passing legislation and regulations to create systemic change in the future.

I am writing to urge your favorable report on HB419, which would require that businesses licensed by the Maryland Department of Labor that use a digital point-of-sale system to display a disclosure that shows who will be receiving a tip on the same screen that offers a tip option. Additionally, the bill establishes that a violation of this requirement constitutes an unfair, abusive, or deceptive trade practice.

In an era where electronic payment systems have become ubiquitous, it is crucial that consumers are fully informed about how their tips are allocated. Many customers may assume that their tips go directly to the service provider, only to later discover that they are distributed among various employees or even withheld entirely by the employer. This lack of transparency erodes trust and undermines the integrity of the tipping system. Consumers have the right to know where their tips are going, especially considering that these funds are optional and most often based on the interaction between consumer and worker.

Although we support the transparency this bill creates, we do have some concerns about the impact it will have on tipped workers. The consumer should not bear the burden of helping workers stay afloat amidst inadequate hourly wages. However, setting the default tip to zero could mean that workers see a major dip in pay without a corresponding raise in wages.

HB419 aligns with Economic Action Maryland's mission to promote fairness and transparency in consumer transactions. For these reasons, we urge a favorable report.

Best,
Zoe Gallagher, Policy Associate

HB 419 crossover Support Letter.pdf

Uploaded by: Karen Straughn

Position: FWA

CANDACE McLAREN LANHAM
Chief Deputy Attorney General

CAROLYN A. QUATTROCKI
Deputy Attorney General

LEONARD J. HOWIE III
Deputy Attorney General

CHRISTIAN E. BARRERA
Chief Operating Officer

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

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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.¹ Although the Division believes that failure to disclose that tips are not being

¹ 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 Boafó
 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

HB419_RestaurantAssoc_Thompson_UNFAVORABLE.pdf

Uploaded by: Melvin Thompson

Position: UNF

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

