

# HOUSE BILL 665

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7lr1405  
CF 7lr1778

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By: **Delegates Tarlau, Angel, Barron, Carr, Ebersole, Fennell, Glenn, Hayes, Haynes, Hettleman, Kelly, Korman, Lam, Moon, Morhaim, Patterson, Pena-Melnyk, Platt, Reznik, Robinson, Sanchez, M. Washington, and P. Young**

Introduced and read first time: February 1, 2017

Assigned to: Economic Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Exemptions From Overtime Pay – Administrative,**  
3 **Executive, or Professional Capacity**

4 FOR the purpose of altering the conditions under which an individual who works in a  
5 certain administrative, executive, or professional capacity qualifies for an exemption  
6 from overtime pay; requiring that individuals be compensated on a salary basis at a  
7 certain rate or amount to qualify as an individual who is employed in an  
8 administrative, executive, or professional capacity; providing that a certain required  
9 amount of compensation may be paid on a fee basis for certain individuals or  
10 translated into certain equivalent amounts; requiring the Commissioner to adjust in  
11 a certain manner a certain salary amount that determines eligibility for overtime  
12 pay on or after a certain date and at certain regular intervals; and generally relating  
13 to exemptions from overtime pay.

14 BY repealing and reenacting, with amendments,  
15 Article – Labor and Employment  
16 Section 3–403  
17 Annotated Code of Maryland  
18 (2016 Replacement Volume)

19 BY adding to  
20 Article – Labor and Employment  
21 Section 3–403.1  
22 Annotated Code of Maryland  
23 (2016 Replacement Volume)

24 BY repealing and reenacting, without amendments,  
25 Article – Labor and Employment

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 3–410 and 3–415  
Annotated Code of Maryland  
(2016 Replacement Volume)

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

**Article – Labor and Employment**

3–403.

This subtitle does not apply to an individual who:

(1) is employed in a capacity that the Commissioner defines, by regulation,  
to be administrative, executive, or professional **AND MEETS THE REQUIREMENTS UNDER**  
**§ 3–403.1 OF THIS SUBTITLE;**

(2) is employed in a nonadministrative capacity at an organized camp,  
including a resident or day camp;

(3) is under the age of 16 years and is employed no more than 20 hours in  
a week;

(4) is employed as an outside salesman;

(5) is compensated on a commission basis;

(6) is a child, parent, spouse, or other member of the immediate family of  
the employer;

(7) is employed in a drive-in theater;

(8) is employed as part of the training in a special education program for  
emotionally, mentally, or physically handicapped students under a public school system;

(9) is employed by an employer who is engaged in canning, freezing,  
packing, or first processing of perishable or seasonal fresh fruits, vegetables, or  
horticultural commodities, poultry, or seafood;

(10) engages in the activities of a charitable, educational, not for profit, or  
religious organization if:

(i) the service is provided gratuitously; and

(ii) there is, in fact, no employer–employee relationship;

(11) is employed in a cafe, drive-in, drugstore, restaurant, tavern, or other similar establishment that:

(i) sells food and drink for consumption on the premises; and

(ii) has an annual gross income of \$400,000 or less;

(12) is employed in agriculture if, during each quarter of the preceding calendar year, the employer used no more than 500 agricultural-worker days;

(13) is engaged principally in the range production of livestock; or

(14) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that, in the region of employment, has been and customarily and generally is recognized as having been paid on that basis, if:

(i) the individual:

1. commutes daily from the permanent residence of the individual to the farm where the individual is employed; and

2. during the preceding calendar year, was employed in agriculture less than 13 weeks; or

(ii) the individual:

1. is under the age of 17;

2. is employed on the same farm as a parent of the individual or a person standing in the place of the parent; and

3. is paid at the same rate that an employee who is at least 17 years old is paid on the same farm.

### **3-403.1.**

**(A) (1) TO QUALIFY AS AN INDIVIDUAL WHO IS EMPLOYED IN AN ADMINISTRATIVE, EXECUTIVE, OR PROFESSIONAL CAPACITY UNDER § 3-403 OF THIS SUBTITLE, AN INDIVIDUAL SHALL BE COMPENSATED ON A SALARY BASIS:**

**(I) AT A RATE PER WEEK OF THE 40TH PERCENTILE OR MORE OF WEEKLY EARNINGS OF FULL-TIME NONHOURLY WORKERS IN THE LOWEST-WAGE CENSUS REGION; AND**

**(II) AT AN AMOUNT PER WEEK, EXCLUSIVE OF BOARD, LODGING, OR OTHER FACILITIES, THAT IS:**

1                               1.     **\$913 OR MORE; OR**

2                               2.     **BEGINNING JANUARY 1, 2020, DETERMINED BY THE**  
3 **COMMISSIONER UNDER SUBSECTION (B) OF THIS SECTION.**

4                               **(2)     THE REQUIRED AMOUNT OF COMPENSATION PER WEEK UNDER**  
5 **PARAGRAPH (1) OF THIS SUBSECTION MAY BE:**

6                               **(I)     FOR AN INDIVIDUAL EMPLOYED IN AN ADMINISTRATIVE**  
7 **CAPACITY OR A PROFESSIONAL CAPACITY, PAID ON A FEE BASIS; OR**

8                               **(II)    TRANSLATED INTO EQUIVALENT AMOUNTS FOR PERIODS OF**  
9 **TIME LONGER THAN ONE WEEK, INCLUDING COMPENSATION THAT IS PAID ON A**  
10 **BIWEEKLY, SEMIMONTHLY, OR MONTHLY BASIS.**

11                           **(B)    ON JANUARY 1, 2020, AND EVERY 3 YEARS THEREAFTER, THE**  
12 **COMMISSIONER SHALL ADJUST THE SALARY AMOUNT UNDER SUBSECTION (A) OF**  
13 **THIS SECTION TO EQUAL THE 40TH PERCENTILE OF WEEKLY EARNINGS OF**  
14 **FULL-TIME NONHOURLY WORKERS IN THE LOWEST-WAGE CENSUS REGION IN THE**  
15 **SECOND QUARTER OF THE YEAR IMMEDIATELY PRECEDING THE UPDATE**  
16 **PUBLISHED BY THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR**  
17 **STATISTICS.**

18                           **(C)    THE COMMISSIONER MAY ADOPT REGULATIONS TO IMPLEMENT THIS**  
19 **SECTION.**

20     3-410.

21             In addition to any regulation specifically required by this subtitle, regulations that  
22 the Commissioner adopts to carry out this subtitle may include:

23                           (1)     definitions of the terms “administrative capacity”, “executive capacity”,  
24 “professional capacity”, and “outside salesman”;

25                           (2)     a scale of wages that is suitable for learners and apprentices but is at  
26 least 80% of the minimum wage under this subtitle; and

27                           (3)     a wage for a special case or class of case if the Commissioner finds the  
28 wage appropriate to:

29                               (i)     avoid undue hardship;

30                               (ii)    prevent the curtailment of employment opportunity; and

(iii) safeguard the minimum wage under this subtitle.

3–415.

(a) Except as otherwise provided in this section, each employer shall pay an overtime wage of at least 1.5 times the usual hourly wage, computed in accordance with § 3–420 of this subtitle.

(b) This section does not apply to an employer that is:

(1) subject to 49 U.S.C. § 10501;

(2) a not-for-profit concert promoter, legitimate theater, music festival, music pavilion, or theatrical show; or

(3) an amusement or recreational establishment, including a swimming pool, if the establishment:

(i) operates for no more than 7 months in a calendar year; or

(ii) for any 6 months during the preceding calendar year, has average receipts that do not exceed one-third of the average receipts for the other 6 months.

(c) This section does not apply to an employer with respect to:

(1) an employee for whom the United States Secretary of Transportation may set qualifications and maximum hours of service under 49 U.S.C. § 31502;

(2) a mechanic, partsperson, or salesperson who primarily sells or services automobiles, farm equipment, trailers, or trucks, if the employer is engaged primarily in selling those vehicles to ultimate buyers and is not a manufacturer;

(3) a driver if the employer is engaged in the business of operating taxicabs; or

(4) unless a collective bargaining agreement between an employer and a labor organization provides otherwise, an employee of the employer if:

(i) the employer is subject to Title II of the federal Railway Labor Act;

(ii) the employer does not require the employee to work more than 40 hours during 1 workweek; and

(iii) the employee voluntarily enters into an agreement with another employee to trade scheduled work hours and as a result the employee works more than 40 hours during a single workweek.

1           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2   October 1, 2017.