

SENATE BILL 607

K3

7lr1778
CF HB 665

By: **Senators Pinsky, Kagan, Manno, and Ramirez**

Introduced and read first time: February 2, 2017

Assigned to: Finance

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
26 Section 3–410 and 3–415
27 Annotated Code of Maryland
28 (2016 Replacement Volume)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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. \$913 OR MORE; OR

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

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

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

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

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

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

19 3-410.

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

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

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

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

28 (i) avoid undue hardship;

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

30 (iii) safeguard the minimum wage under this subtitle.

31 3-415.

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

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

5 (1) subject to 49 U.S.C. § 10501;

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

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

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

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

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

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

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

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

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

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

25 (ii) the employer does not require the employee to work more than
26 40 hours during 1 workweek; and

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

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