

SENATE BILL 803

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3lr2630
CF 3lr3046

By: **Senator Ellis**

Introduced and read first time: February 6, 2023

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Payment of Minimum Wage – Tipped Employees**

3 FOR the purpose of specifying a certain tip credit amount that is in effect for certain time
4 periods; prohibiting certain employers of tipped employees, beginning on a certain
5 date, from including a tip credit amount as part of the employees' wages; requiring
6 the Commissioner of Labor and Industry to establish the High Road Kitchen
7 Program as a recognition program for restaurants that do not include the tip credit
8 as part of certain employees' wages; and generally relating to the payment of the
9 minimum wage.

10 BY repealing and reenacting, with amendments,
11 Article – Labor and Employment
12 Section 3–419
13 Annotated Code of Maryland
14 (2016 Replacement Volume and 2022 Supplement)

15 BY adding to
16 Article – Labor and Employment
17 Section 3–718
18 Annotated Code of Maryland
19 (2016 Replacement Volume and 2022 Supplement)

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

22 **Article – Labor and Employment**

23 3–419.

24 (a) (1) Except as provided in § 3–1604(d) of this title, this section applies to
25 each employee who:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(i) is engaged in an occupation in which the employee customarily and regularly receives more than \$30 each month in tips;

(ii) has been informed by the employer about the provisions of this section; and

(iii) has kept all of the tips that the employee received.

(2) Notwithstanding paragraph (1)(iii) of this subsection, this section does not prohibit the pooling of tips.

(b) Subject to the limitations in this section, an employer may include, as part of the wage of an employee to whom this section applies:

(1) an amount that the employer sets to represent the tips of the employee; or

(2) if the employee or representative of the employee satisfies the Commissioner that the employee received a lesser amount in tips, the lesser amount.

(c) **(1)** The tip credit amount that the employer may include under subsection (b) of this section may not exceed the minimum wage established under § 3–413 of this subtitle for the employee less:

(I) FOR THE 3–MONTH PERIOD BEGINNING OCTOBER 1, 2023, \$3.63;

(II) FOR THE 6–MONTH PERIOD BEGINNING JANUARY 1, 2024, \$8.50;

(III) FOR THE 6–MONTH PERIOD BEGINNING JULY 1, 2024, \$10.50;

(IV) FOR THE 6–MONTH PERIOD BEGINNING JANUARY 1, 2025, \$12.00; AND

(V) FOR THE 12–MONTH PERIOD BEGINNING JULY 1, 2026, \$13.50.

(2) BEGINNING JULY 1, 2027, AN EMPLOYER:

(I) MAY NOT INCLUDE A TIP CREDIT AS PART OF THE WAGE OF AN EMPLOYEE SUBJECT TO THIS SUBTITLE; AND

(II) SHALL PAY AN EMPLOYEE A WAGE THAT IS AT LEAST EQUAL TO THE STATE MINIMUM WAGE SET UNDER § 3-413 OF THIS SUBTITLE.

(d) (1) The Commissioner shall adopt regulations, in consultation with payroll service providers and restaurant industry trade group representatives, to require restaurant employers that include a tip credit as part of the wage of an employee to provide tipped employees with a written or electronic wage statement for each pay period that shows the effective hourly tip rate as derived from employer-paid cash wages plus all reported tips for tip credit hours worked each workweek of the pay period.

(2) The Commissioner shall provide notification of the tip credit wage statement regulations on the Department's website.

3-718.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) "EQUITY TRAINING" MEANS A TRAINING PROGRAM PROVIDED, OR APPROVED, BY THE COMMISSIONER THAT IS FOCUSED ON:

(I) ACHIEVING EQUITY AMONG RESTAURANT EMPLOYEES; AND

(II) MAINTAINING PROFITABILITY WITHOUT INCLUDING A TIP CREDIT AS PART OF AN EMPLOYEE'S WAGE.

(3) "PROGRAM" MEANS THE HIGH ROAD KITCHEN PROGRAM.

(B) THE COMMISSIONER SHALL ESTABLISH THE HIGH ROAD KITCHEN PROGRAM AS A RECOGNITION PROGRAM FOR RESTAURANTS.

(C) TO QUALIFY FOR THE PROGRAM, A RESTAURANT:

(1) SHALL CERTIFY THAT IT:

(I) HAS COMPLETED EQUITY TRAINING; AND

(II) DOES NOT INCLUDE THE TIP CREDIT AMOUNT AS PART OF THE WAGES OF AN EMPLOYEE SUBJECT TO § 3-419 OF THIS TITLE; AND

(2) HAS NOT BEEN DETERMINED TO BE IN VIOLATION OF ANY PROVISION OF THE MARYLAND WAGE AND HOUR LAW, DURING THE IMMEDIATELY PRECEDING 3 YEARS.

(D) A RESTAURANT THAT MEETS THE REQUIREMENTS OF SUBSECTION (C) OF THIS SECTION SHALL BE:

(1) LISTED ON THE DEPARTMENT'S WEBSITE AS A HIGH ROAD KITCHEN PROGRAM – CERTIFIED RESTAURANT; AND

(2) ISSUED A CERTIFICATE IDENTIFYING THE RESTAURANT AS A PROGRAM RESTAURANT.

(E) A RESTAURANT ISSUED A CERTIFICATE UNDER SUBSECTION (D)(2) OF THIS SECTION MAY DISPLAY THE CERTIFICATE IN THE RESTAURANT.

(F) IF, AFTER RECEIVING CERTIFICATION, A RESTAURANT IS DETERMINED TO BE IN VIOLATION OF ANY PROVISION OF THE MARYLAND WAGE AND HOUR LAW, THE COMMISSIONER:

(1) SHALL NOTIFY THE RESTAURANT IN WRITING THAT:

(I) THE CERTIFICATION WILL BE REVOKED;

(II) THE RESTAURANT WILL BE REMOVED FROM THE DEPARTMENT'S WEBSITE; AND

(III) THE RESTAURANT MAY NO LONGER DISPLAY THE CERTIFICATION; AND

(2) MAY ISSUE A CIVIL PENALTY OF UP TO \$1,500 PER DAY FOR EACH VIOLATION OF THIS SECTION.

(G) THE COMMISSIONER SHALL ADOPT REGULATIONS TO CARRY OUT THE PROGRAM, INCLUDING:

(1) CRITERIA FOR APPROVAL OF THE EQUITY TRAINING PROGRAMS;

(2) FORMS USED BY RESTAURANTS TO CERTIFY THE REQUIREMENTS ESTABLISHED UNDER SUBSECTION (C) OF THIS SECTION; AND

(3) THE PROCESS FOR VERIFYING WHETHER A RESTAURANT HAS VIOLATED ANY PROVISION OF THE MARYLAND WAGE AND HOUR LAW, DURING THE IMMEDIATELY PRECEDING 3 YEARS.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2023.