SENATE BILL 823

I3, K3, Q3 5lr1538
CF 5lr1537

By: **Senator McCray**
Introduced and read first time: January 28, 2025
Assigned to: Finance and Budget and Taxation

A BILL ENTITLED

AN ACT concerning

No Tax on Tips Act

FOR the purpose of establishing consumer protections related to service fees charged by food service facilities; specifying the State minimum wage rate and tip credit amount that is in effect for certain time periods; prohibiting certain employers of tipped employees, beginning on a certain date, from including a tip credit amount as part of the employees' wages; allowing a subtraction under the State income tax for certain qualified tips received by individuals during the course of employment; allowing a person a credit against the State income tax for up to a certain amount paid to an employee of the person based on the payment of certain wages and tips; and generally relating to service fees, the payment of wages, tip credits, and State income taxes.

BY repealing and reenacting, with amendments,
Article – Commercial Law
Section 13–301(14)(xlii)
Annotated Code of Maryland
(2013 Replacement Volume and 2024 Supplement)

BY repealing and reenacting, without amendments,
Article – Commercial Law
Section 13–301(14)(xliii)
Annotated Code of Maryland
(2013 Replacement Volume and 2024 Supplement)

BY adding to
Article – Commercial Law
Section 13–301(14)(xliv) and 14–1328
Annotated Code of Maryland
(2013 Replacement Volume and 2024 Supplement)

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–413 and 3–419
Annotated Code of Maryland
(2016 Replacement Volume and 2024 Supplement)

BY repealing and reenacting, without amendments,
Article – Tax – General
Section 10–207(a)
Annotated Code of Maryland
(2022 Replacement Volume and 2024 Supplement)

BY adding to
Article – Tax – General
Section 10–207(qq) and 10–758
Annotated Code of Maryland
(2022 Replacement Volume and 2024 Supplement)

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

Article – Commercial Law

13–301.

Unfair, abusive, or deceptive trade practices include any:

(14) Violation of a provision of:

(xlii) Section 12–6C–09.1 of the Health Occupations Article; **[**or**]**

(xliii) Title 14, Subtitle 48 of this article; or

(XLIV) SECTION 14–1328 OF THIS ARTICLE; OR

14–1328.

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

(2) "FOOD SERVICE FACILITY" HAS THE MEANING STATED IN § 21–301 OF THE HEALTH – GENERAL ARTICLE.

(3) "SERVICE FEE" MEANS A FEE ADDED BY A FOOD SERVICE FACILITY TO A CUSTOMER'S TOTAL CHARGE THAT IS SEPARATE FROM:

(I) THE PRICE LISTED ON THE MENU FOR FOOD, DRINKS, OR MERCHANDISE SOLD BY THE FOOD SERVICE FACILITY; AND

(II) ANY SALES TAX THE FOOD SERVICE FACILITY IS REQUIRED TO COLLECT.

(B) A FOOD SERVICE FACILITY MAY NOT CHARGE A SERVICE FEE UNLESS THE FOOD SERVICE FACILITY PROMINENTLY DISCLOSES TO THE CUSTOMER ON THE MENU OR IN A LOCATION THAT IS VISIBLE TO THE CUSTOMER BEFORE THE CUSTOMER PLACES AN ORDER:

(1) THE AMOUNT AND PURPOSE OF THE SERVICE FEE; AND

(2) WHETHER THE SERVICE FEE IS PAID DIRECTLY TO EMPLOYEES IN ADDITION TO THEIR WAGES.

(C) A VIOLATION OF THIS SECTION BY A FOOD SERVICE FACILITY IS:

(1) AN UNFAIR, ABUSIVE, OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE; AND

(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS CONTAINED IN TITLE 13 OF THIS ARTICLE.

Article – Labor and Employment

3–413.

(a) **[**(1)**]** In this section **[**the following words have the meanings indicated.

(2) “Employer”**], “EMPLOYER”** includes a governmental unit.

[(3) “Small employer” means an employer that employs 14 or fewer employees.**]**

(b) Except as provided in subsection (d) of this section and § 3–414 of this subtitle, each employer shall pay:

(1) to each employee who is subject to both the federal Act and this subtitle, at least the greater of:

(i) the minimum wage for that employee under the federal Act; or

(ii) the State minimum wage set under subsection (c) of this section; and

(2) to each other employee who is subject to this subtitle, at least the greater of:

(i) the highest minimum wage under the federal Act; or

(ii) the State minimum wage set under subsection (c) of this section.

(c) **[**(1) Except as provided in paragraph (2) of this subsection, the**] THE** State minimum wage rate is:

[(i) for the 12–month period beginning January 1, 2023, $13.25 per hour; and

(ii)**] (1) FOR THE 36–MONTH PERIOD** beginning January 1, 2024, $15.00 per hour**[.];**

[(2) The State minimum wage rate for a small employer is:

(i) for the 12–month period beginning January 1, 2023, $12.80 per hour; and

(ii) beginning January 1, 2024, $15.00 per hour.**]**

(2) FOR THE 12–MONTH PERIOD BEGINNING JANUARY 1, 2027, $17.00 PER HOUR;

(3) FOR THE 6–MONTH PERIOD BEGINNING JANUARY 1, 2028, $18.50 PER HOUR; AND

(4) BEGINNING JULY 1, 2028, $20.00 PER HOUR.

(d) An employer may pay an employee a wage that equals a rate of 85% of the State minimum wage established under this section if the employee is under the age of 18 years.

3–419.

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

(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 **[**$3.63**]:**

(I) FOR THE 12–MONTH PERIOD BEGINNING JANUARY 1, 2027, $12.00; AND

(II) FOR THE 6–MONTH PERIOD BEGINNING JANUARY 1, 2028, $13.50.

(2) BEGINNING JULY 1, 2028, 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.

(3) THIS SECTION MAY NOT BE CONSTRUED AS PROHIBITING THE PAYMENT OF TIPS TO EMPLOYEES.

(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.

Article – Tax – General

10–207.

(a) To the extent included in federal adjusted gross income, the amounts under this section are subtracted from the federal adjusted gross income of a resident to determine Maryland adjusted gross income.

(QQ) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(II) "EMPLOYMENT" MEANS WORK IN AN OCCUPATION OR INDUSTRY IN WHICH AN INDIVIDUAL IS CUSTOMARILY COMPENSATED THROUGH A COMBINATION OF WAGES AND TIPS, SUCH AS BARBERING, COSMETOLOGY, HOSPITALITY, FOOD AND BEVERAGE SERVICE, PARKING SERVICES, AND CUSTODIAL SERVICES.

(III) "QUALIFIED TIPS" MEANS TIPS RECEIVED BY AN INDIVIDUAL DURING THE COURSE OF EMPLOYMENT THAT ARE PAID TO THE INDIVIDUAL BY AN UNRELATED PARTY WHO DOES NOT HAVE AN OWNERSHIP STAKE IN THE BUSINESS PROVIDING THE EMPLOYMENT.

(2) THE SUBTRACTION UNDER SUBSECTION (A) OF THIS SECTION INCLUDES THE AMOUNT OF QUALIFIED TIPS RECEIVED BY AN INDIVIDUAL DURING THE TAXABLE YEAR.

10–758.

(A) SUBJECT TO THE LIMITATIONS OF THIS SECTION, FOR A TAXABLE YEAR BEGINNING AFTER DECEMBER 31, 2026, BUT BEFORE JANUARY 1, 2029, A PERSON MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX IN AN AMOUNT EQUAL TO 50% OF THE DIFFERENCE BETWEEN:

(1) THE MINIMUM WAGE PAID TO AN EMPLOYEE OF THE PERSON IN ACCORDANCE WITH § 3–413 OF THE LABOR AND EMPLOYMENT ARTICLE; AND

(2) THE TIP CREDIT AMOUNT ALLOWED UNDER § 3–419 OF THE LABOR AND EMPLOYMENT ARTICLE.

(B) (1) FOR ANY TAXABLE YEAR, THE TOTAL AMOUNT OF THE CREDIT ALLOWED UNDER THIS SECTION MAY NOT EXCEED:

(I) THE STATE INCOME TAX IMPOSED FOR THAT TAXABLE

YEAR; OR

(II) $10,000.

(2) ANY UNUSED AMOUNT OF THE CREDIT FOR ANY TAXABLE YEAR MAY NOT BE CARRIED OVER TO ANY OTHER TAXABLE YEAR.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act is contingent on the passage of Chapter(s) ___(S.B. ___ or H.B. ___) (5lr1540 or 5lr1536) of the Acts of the General Assembly of 2025, a constitutional amendment, and its ratification by the voters of the State.

SECTION 3. AND BE IT FURTHER ENACTED, That, subject to Section 2 of this Act, this Act shall take effect on the proclamation of the Governor that the constitutional amendment, having received a majority of the votes cast at the general election, has been adopted by the people of Maryland.