

JAN 21 2011

S.B. NO. 759

A BILL FOR AN ACT

RELATING TO TIP CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that divergent interests
2 generally exist between employees and employers with regard to
3 the treatment of tips received by tipped employees. Employees
4 desire to retain all tips received, regarding tips as an
5 integral part of their payment for services. Employers - who
6 provide employment, a work place, equipment, marketing,
7 products, and training - believe these benefits contribute
8 directly to the employee's ability to earn tips. As a result,
9 employers seek to establish that the amount of tips an employee
10 receives be recognized as income and be credited as a greater
11 part of the minimum wage, which is the case in federal law and
12 minimum wage legislation in the majority of other states.

13 In 1969, the legislature established a minimum wage of
14 \$1.60 and tip credit amount of 20 cents (Act 36, Session Laws of
15 Hawaii 1969, codified as section 387-2, Hawaii Revised
16 Statutes). In subsequent years, the legislature increased the
17 minimum wage several times to the current amount of \$7.25, while
18 the tip credit has been increased only one time by 5 cents to



1 the current amount of 25 cents - an amount that has been
2 seriously eroded by inflation.

3 The legislature further finds that the failure of Hawaii's
4 tip credit to keep pace with the increased minimum wage amount
5 hampers an employer's ability to increase the wages of
6 non-tipped employees, who also contribute valuable services to
7 the business. The balance between the competing interests of
8 employers and employees must be adjusted to ensure that
9 employers' interests and ability to do business are protected,
10 employees are provided appropriate living wage, and fundamental
11 fairness exists among employees.

12 In addition, in 2010, the senate committee on economic
13 development and technology and the house committee on economic
14 revitalization, business, and military affairs convened an
15 informal small business discussion group to address the most
16 critical issues facing the small business sectors within
17 Hawaii's economy. Representatives from the Chamber of Commerce
18 of Hawaii, construction and trades industries, community
19 nonprofits, the agricultural sector, food and restaurant
20 industries, retailing, the science and technology sector, the
21 commercial transportation industry, and interested stakeholders



1 developed a package of bills that address the most pressing
2 problems facing Hawaii's small business community.

3 The purpose of this Act is to support the findings of the
4 small business working group and to provide greater equality in
5 Hawaii's tip credit law by:

- 6 (1) Allowing employers to increase the tip credit by
7 changing it from a fixed amount to a percentage of
8 hourly tips claimed by the employee as income;
- 9 (2) Ensuring that employees subject to a tip credit earn
10 three times the amount of tip income over the minimum
11 wage as the tip credit (25 per cent:75 per cent =
12 1:3);
- 13 (3) Ensuring that the tip credit keeps pace with future
14 minimum wage increases; and
- 15 (4) Increasing the amount of tips reported as taxable
16 income.

17 This Act provides assistance to Hawaii employers by
18 changing the tip credit from 25 cents per hour to twenty-five
19 per cent of the tips claimed by an employee on an hourly basis,
20 but not less than an employer paid wage of \$5 an hour.

21 SECTION 2. Section 387-2, Hawaii Revised Statutes, is
22 amended to read as follows:



1 "§387-2 Minimum wages. Except as provided in section
2 387-9 and this section, every employer shall pay to each
3 employee employed by the employer, wages at the rate of not less
4 than:

- 5 (1) \$6.25 per hour beginning January 1, 2003;
- 6 (2) \$6.75 per hour beginning January 1, 2006; and
- 7 (3) \$7.25 per hour beginning January 1, 2007.

8 The hourly wage of a tipped employee may be deemed to be
9 increased on account of tips if the employee is paid not less
10 than ~~[25 cents]~~ twenty-five per cent of tips claimed as income
11 by the employee calculated at an hourly basis below the
12 applicable minimum wage by the employee's employer ~~[and the~~
13 ~~combined amount the employee receives from the employee's~~
14 ~~employer and in tips is at least 50 cents more than the~~
15 ~~applicable minimum wage.]~~, but not less than \$5 per hour."

16 SECTION 3. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

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Spencer Chun Oakland
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Malama [Signature]



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Report Title:

Minimum Wage; Tip Credit

Description:

Allows employers to increase the tip credit by changing it from a fixed amount to a percentage of hourly tips claimed by the employee as income; ensures that employees subject to a tip credit earn three times the amount of tip income over the minimum wage as the tip credit; ensures that the tip credit keeps pace with future minimum wage increases; increases the amount of tips reported as taxable income.

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