



SPONSOR: Rep. K. Williams & Rep. Osienski & Sen. Walsh
Reps. Baumbach, Heffernan, Kowalko, Matthews, Viola;
Sens. Lockman, Paradee, Sokola

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 251

AN ACT TO AMEND TITLE 19 OF THE DELAWARE CODE RELATING TO THE DELAWARE MINIMUM WAGE
FOR EMPLOYEES THAT RECEIVE TIPS OR GRATUITIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend Chapter 9, Title 19 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows and by redesignating accordingly:

3 § 902 Minimum wage rate (For current federal minimum wage, see 29 U.S.C. § 206(a)(1)(A))

4 (b) Gratuities received by employees engaged in occupations in which gratuities customarily constitute part of the
5 remuneration may be considered wages for purposes of this chapter in an amount equal to the tip credit percentage, as set
6 by the federal government as of June 15, 2006, of the minimum rate as set forth in subsection (a) of this section. In no event
7 shall the minimum rate, under this subsection, be less than \$2.23 per hour.

8 (c) For purposes of this section:

9 (1) An employee engaged in an occupation in which tips or gratuities customarily constitute part of the
10 remuneration shall be any worker engaged in an occupation in which workers customarily and regularly receive more
11 than ~~\$30~~ 50% of their income from employment at the employer's place of business per month in tips or gratuities.
12 The occupation in question must involve direct receipt of tips or gratuities from a customer, not from a tip pool or other
13 intervening mechanism distributing tips or gratuities.

14 (2) "Tips or Gratuities" means monetary contributions received directly or indirectly by an employee from a
15 guest, patron or customer for services rendered where the customer is entirely free to determine whether to make any
16 payment at all and, if so, the amount.

17 (3) A "primary direct service employee" is one who in a given situation performs the main direct service for a
18 customer and is to be considered the recipient of the tip or gratuity.

19 (d)(1) ~~Any gratuity received by an employee, indicated on any receipt as a gratuity, or deposited in or about a~~
20 ~~place of business for direct services rendered by an employee is the sole property of the primary direct service employee~~
21 ~~and may not be taken or retained by the employer except as required by state or federal law. The tips or gratuities received~~
22 ~~by a service employee become the property of the employee and may not be shared with the employer. Tips or gratuities~~
23 ~~that are automatically included in the customer's bill or that are charged to a credit card must be treated like tips or~~
24 ~~gratuities given to the service employee. A tip or gratuity that is charged to a credit card must be paid by the employer to~~
25 ~~the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit~~
26 ~~card company. The employer may not deduct any amount from employee tips or gratuities charged to a credit card,~~
27 ~~including, but not limited to, service fees assessed to the employer in connection with the credit card transaction.~~

28 (2) Employees may establish a system for the sharing or pooling of tips or gratuities among direct service
29 employees, provided that the employer shall not in any fashion require or coerce employees to agree upon such a
30 system. ~~Where more than 1 direct service employee provides personal service to the same customer from whom~~
31 ~~gratuities are received, the employer may require that such employees establish a tip pooling or sharing system not to~~
32 ~~exceed 15% of the primary direct service employee's gratuities.~~ The employer shall not, under any circumstances,
33 receive any portion of the tips or gratuities received by the employees.

34 (3) The Department may require the employer to pay restitution if the employer diverts any tips or gratuities
35 of its employees in the amount of the tips or gratuities diverted. If the records maintained by the employer do not
36 provide sufficient information to determine the exact amount of tips or gratuities diverted, the Department may make a
37 determination of tips or gratuities diverted based on available evidence.

38 (g) Any employer who violates sections (d) of this act shall be liable for a civil penalty in an amount not to exceed
39 \$1,000 for the first violation, \$2,000 for the second violation, and \$5,000 for each subsequent violation.

SYNOPSIS

This bill clarifies that the definition of employees who receive gratuities also includes employees that receive tips, that these employees earn more than 50% of their income from tips or gratuities. This bill clarifies that employers may continue to pay a tipped minimum wage to primary direct service employees under this bill. Employers cannot direct employees to engage in tip pooling in Delaware—tip pooling arrangements must be controlled by the employees themselves.

It also clarifies that tips automatically added to a bill or added to credit card charges are to be treated like tips or gratuity and must be paid by the employer directly to the employee at the next pay period as opposed to being held by the employer waiting to receive payment from the credit card company and that the employer may not deduct service fees from the employees tips or gratuities.