

AMENDMENT TO H.R. 2312, AS REPORTED

OFFERED BY M__. _____

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Tipped Worker Protection Act”.

4 SEC. 2. SCHEDULED REPEAL OF SEPARATE MINIMUM

5 WAGE FOR TIPPED EMPLOYEES.

6 (a) IN GENERAL.—

7 (1) REPEAL.—Section 3(m)(2)(B) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(m)(2)(A)), as so redesignated by section 3(a) and as amended by section 3(b) of this Act, is amended by striking the sentence beginning with “In determining the wage an employer is required to pay a tipped employee,” and all that follows through “of this subsection.” and inserting “The wage required to be paid to a tipped employee shall be the wage set forth in section 6(a)(1).”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) RETENTION OF TIPS.—Section 3(m)(2)(C) of the Fair Labor Standards Act of

1 1938 (29 U.S.C. 203(m)(2)(B)), as so redesignated by section 3(a) and as amended by section 3(c) of this Act, is further amended in clause (i) of such section 3(m)(2)(C) by striking “Regardless of whether or not an employer takes a tip credit, the employer” and inserting “An employer”.

8 (B) STATUS AS A TIPPED EMPLOYEE.—
9 Subsection (t) of section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203) is repealed.

12 (C) PENALTIES.—Section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216), as amended by this Act, is further amended—

15 (i) in subsection (b), by striking “the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer” and inserting “the sum of all such tips unlawfully used or kept by the employer”; and

21 (ii) in subsection (c), by striking “the sum of any tip credit taken by the employer and all such tips unlawfully kept by the employer” and inserting “the sum of

1 all such tips unlawfully used or kept by the
2 employer".

3 (3) DELAYED EFFECTIVE DATE.—

4 (A) IN GENERAL.—Except as provided in
5 subparagraph (B), the amendments made by
6 paragraphs (1) and (2) shall take effect with
7 the beginning of the first 1-year period de-
8 scribed in 3(m)(2)(A)(i) of the Fair Labor
9 Standards Act of 1938 (29 U.S.C.
10 203(m)(2)(A)(i)), as amended by subsection
11 (b), for which the hourly wage for such 1-year
12 period would equal or exceed the minimum
13 wage in effect under section 6(a)(1) as of the
14 beginning of such 1-year period.

15 (B) SPECIAL RULE FOR TIP POOLS ESTAB-
16 LISHED OR MAINTAINED DURING TRANSITION
17 PERIOD.—In any case in which a system to pool
18 tips is established for the non-supervisory em-
19 ployees of an employer in accordance with sec-
20 tion 3(m)(2)(D) of such Act (29 U.S.C.
21 203(m)(2)(D)) (as added by section 3(d) of this
22 Act) prior to the beginning of the 1-year period
23 described in subparagraph (A), the amendments
24 made by paragraphs (1) and (2) shall apply

1 with respect to such employer beginning with
2 the date on which such system is established.

3 (b) MINIMUM WAGE FOR TIPPED EMPLOYEES DUR-
4 ING TRANSITION PERIOD.—

5 (1) IN GENERAL.—Clause (i) of section
6 3(m)(2)(B) of the Fair Labor Standards Act of
7 1938 (29 U.S.C. 203(m)(2)(A)), as so redesignated
8 by section 3(a) of this Act, is amended to read as
9 follows:

10 “(i) the cash wage paid such em-
11 ployee, which for purposes of such deter-
12 mination shall be not less than—

13 “(I) for the 1-year period begin-
14 ning on the date of enactment of the
15 Tipped Worker Protection Act, \$3.60
16 an hour;

17 “(II) for each succeeding 1-year
18 period, an hourly wage equal to the
19 amount determined under this clause
20 for the preceding 1-year period in-
21 creased by \$1.50 (but not to exceed
22 the minimum wage in effect under
23 section 6(a)(1) as of the beginning of
24 such 1-year period); and”.

(2) DEFINITION OF TIPPED EMPLOYEE.—Section 3(t) of such Act (29 U.S.C. 203(t)) is amended by striking “he customarily and regularly receives more than \$30 a month in tips” and inserting “the employee customarily and regularly receives for each month an amount in tips equal to (or in excess of) the difference between the total cash wages paid to the employee under subsection (m)(2)(A)(i) for such month and the total wages that would have been paid to the employee for the hours worked in such month pursuant to the minimum wage in effect under section 6(a)(1) but for subsection (m)(2), except that an employee shall not be considered a ‘tipped employee’ for any workweek in which the employee spends more than 20 percent of the employee’s hours of employment performing duties related to the employee’s occupation for which the employee does not directly receive tips”.

19 SEC. 3. REQUIREMENTS RELATING TO RETENTION AND
20 POOLING OF TIPS.

21 (a) TREATMENT OF CERTAIN AMOUNTS AS TIPS.—
22 Section 3(m)(2) of the Fair Labor Standards Act of 1938
23 (20 FR 51,516, 2020-03-12)

24 (1) by redesignating subparagraphs (A) and
25 (B) as subparagraphs (B) and (C), respectively; and

1 (2) by inserting before subparagraph (A), as so
2 redesignated, the following:

3 “(A) ‘Tip’ includes any discretionary amount paid di-
4 rectly to an employee by a customer and any portion of
5 a mandatory charge imposed on a customer by the em-
6 ployer which is added to the cost of the product or service
7 in any manner that may reasonably lead the customer to
8 believe that the amount collected by the employer from
9 such charge will be paid in full directly to the employee.”.

10 (b) ALL TIPS RETAINED BY EMPLOYEES.—Subpara-
11 graph (B) of section 3(m)(2) of the Fair Labor Standards
12 Act of 1938 (29 U.S.C. 203(m)(2)), as redesignated by
13 subsection (a), is amended by striking “of this subsection”
14 and all that follows through the end of the subparagraph
15 and inserting “of this subsection. Any employee shall have
16 the right to retain, regardless of whether received as part
17 of a system to pool tips established in accordance with
18 subparagraph (C), any tips received by such employee.”.

19 (c) NO TIPS RETAINED BY EMPLOYERS.—Subpara-
20 graph (C) of section 3(m)(2)(C) of the Fair Labor Stand-
21 ards Act of 1938 (29 U.S.C. 203(m)(2)), as redesignated
22 by subsection (b), is amended to read as follows:

23 “(C)(i) Regardless of whether or not an employer
24 takes a tip credit, the employer may not keep tips received
25 by its employees for any purpose or use such tips for any

1 purpose other than to facilitate the distribution to employ-
2 ees of the full amount of all such tips under a system to
3 pool tips established in accordance with subparagraph (D).

4 “(ii) A violation of clause (i) includes—

5 “(I) allowing managers or supervisors to keep
6 or use any portion of employees’ tips; and

7 “(II) keeping or using any portion of employ-
8 ees’ tips to cover the cost of financial transaction
9 fees, including any fee established, charged, or re-
10 ceived by a payment card network for the purpose
11 of compensating an issuer for its involvement in a
12 transaction in which a person uses a debit card or
13 credit card (as the terms “debit card”, “credit
14 card”, “issuer”, and “payment card network” are
15 defined in section 921(c) of the Electronic Fund
16 Transfer Act (15 U.S.C. 1693o–2(c))).”

17 (d) TIP POOLS.—Section 3(m)(2) of the Fair Labor
18 Standards Act of 1938 (29 U.S.C. 203(m)(2)), as amend-
19 ed by this section, is further amended by adding at the
20 end the following:

21 “(D)(i) In any case in which an employer is provided
22 with written documentation demonstrating that not less
23 than 30 percent of all of the non-supervisory employees
24 of the employer request a vote on whether to establish or
25 modify a system to pool tips in accordance with this sub-

1 paragraph, such a system shall be considered to be so es-
2 tablished or modified if the employer is provided with writ-
3 ten documentation demonstrating that not less than 51
4 percent of all such employees vote in favor of establishing
5 or modifying such a system.

6 “(ii) The employer shall maintain a written record
7 of any vote to establish or modify a system to pool tips
8 held pursuant to this subparagraph, including the name
9 of each employee voting and the vote totals. The employer
10 shall provide a copy of such record to any employee upon
11 request.

12 “(iii)(I) A system to pool tips established under this
13 subparagraph shall be administered by the employer, at
14 the employer’s expense, in a manner ensuring that—

15 “(aa) participation in the system is voluntary
16 for each employee and determined without coercion
17 from the employer;

18 “(bb) such tips are shared among all non-super-
19 visory employees participating in such system;

20 “(cc) funds held in such system are maintained
21 separately from any other funds; and

22 “(dd) the records of such system are available
23 to be examined by each such participating employee.

1 “(II) In administering a system to pool tips estab-
2 lished under this subparagraph, an employer may suggest
3 reasonable and customary practices.

4 “(III) In any dispute among employees relating to the
5 administration of a system to pool tips established under
6 this subparagraph, the employer may mediate and impose
7 a resolution of the dispute on the employees participating
8 in the system only if—

9 “(aa) in the case of employees in a restaurant
10 or similar retail food establishment, no agreement
11 resolving the dispute can be reached among—

12 “(AA) 50 percent or more of the partici-
13 pating service employees whose primary job du-
14 ties include direct interaction with customers;
15 and

16 “(BB) 50 percent or more of all other par-
17 ticipating employees; and

18 “(bb) in the case of employees in any other es-
19 tablishment, no agreement resolving the dispute can
20 be reached among 50 percent or more of the partici-
21 pating employees.

22 “(iv) An employer shall not be required to com-
23 pensate any employee participating in a system to pool
24 tips established under this subparagraph in any case aris-

1 ing as a result of another participating employee with-
2 holding tips from such system.

3 “(v) An employer shall not discharge an employee or
4 otherwise discriminate against an employee based on the
5 employee’s vote with respect to, or participation in, a sys-
6 tem to pool tips established under this subparagraph.

7 “(vi) In this subparagraph, the term ‘non-supervisory
8 employee’ means any employee who has, at any point in
9 their typical duties, decision making authority over the
10 scheduling of other employees, the hiring of other employ-
11 ees, or the termination of other employees.”.

12 (e) SERVICE CHARGES.—Section 3(m)(2) of the Fair
13 Labor Standards Act of 1938 (29 U.S.C. 203(m)(2)), as
14 amended by this section, is further amended by adding
15 at the end the following:

16 “(E)(i) In any case in which an employer imposes a
17 mandatory charge on a customer which is added to the
18 cost of the product or service, the employer shall—

19 “(I) disclose to the customer and to all employ-
20 ees involved in the sale of such product or delivery
21 of such service—

22 “(aa) the reason for such charge; and

23 “(bb) the portion of such charge, if any,
24 which upon its collection will be paid in full by
25 the employer directly to employees; and

1 “(II) promptly pay to employees upon collection
2 of such charge any portion identified in the disclo-
3 sure required under subclause (I)(bb).

4 “(ii) In any case in which an employer represents
5 that a charge is payable at the discretion of the customer,
6 the employer may not add such charge to the cost of any
7 product or service unless first requested by the cus-
8 tomer.”.

9 (f) PENALTIES.—Section 16(e)(2) of the Fair Labor
10 Standards Act of 1938 (29 U.S.C. 216(e)(2)) is amend-
11 ed—

12 (1) by striking “section 3(m)(2)(B)” and in-
13 serting “any provision of section 3(m)(2)”; and
14 (2) by inserting “or used” after “kept”.

15 (g) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the date of enactment of
17 this Act and shall apply with respect to all tips received
18 on or after such date.

22 (a) IN GENERAL.—Section 3121(q) of the Internal
23 Revenue Code of 1986 is amended by adding at the end
24 the following: “In the case of any mandatory charge to
25 which section 3(m)(2)(E) of the Fair Labor Standards Act

1 applies, the portion of such charge described in subclause
2 (I)(bb) of such section shall be treated as tips for purposes
3 of this subsection.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to amounts received on or after
6 the date of the enactment of this Act.

