

**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 Protec-  
3 tion 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  
8 Labor Standards Act of 1938 (29 U.S.C.  
9 203(m)(2)(A)), as so redesignated by section 3(a)  
10 and as amended by section 3(b) of this Act, is  
11 amended by striking the sentence beginning with “In  
12 determining the wage an employer is required to pay  
13 a tipped employee,” and all that follows through “of  
14 this subsection.” and inserting “The wage required  
15 to be paid to a tipped employee shall be the wage  
16 set forth in section 6(a)(1).”.

17 (2) CONFORMING AMENDMENTS.—

18 (A) RETENTION OF TIPS.—Section  
19 3(m)(2)(C) of the Fair Labor Standards Act of

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

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

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

15                 (i) in subsection (b), by striking “the  
16                 sum of any tip credit taken by the em-  
17                 ployer and all such tips unlawfully kept by  
18                 the employer” and inserting “the sum of  
19                 all such tips unlawfully used or kept by the  
20                 employer”; and

21                 (ii) in subsection (c), by striking “the  
22                 sum of any tip credit taken by the em-  
23                 ployer and all such tips unlawfully kept by  
24                 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”.

1           (2) DEFINITION OF TIPPED EMPLOYEE.—Sec-  
2           tion 3(t) of such Act (29 U.S.C. 203(t)) is amended  
3           by striking “he customarily and regularly receives  
4           more than \$30 a month in tips” and inserting “the  
5           employee customarily and regularly receives for each  
6           month an amount in tips equal to (or in excess of)  
7           the difference between the total cash wages paid to  
8           the employee under subsection (m)(2)(A)(i) for such  
9           month and the total wages that would have been  
10          paid to the employee for the hours worked in such  
11          month pursuant to the minimum wage in effect  
12          under section 6(a)(1) but for subsection (m)(2), ex-  
13          cept that an employee shall not be considered a  
14          ‘tipped employee’ for any workweek in which the em-  
15          ployee spends more than 20 percent of the employ-  
16          ee’s hours of employment performing duties related  
17          to the employee’s occupation for which the employee  
18          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           (29 U.S.C. 203(m)(2)) is amended—

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.

19 **SEC. 4. SERVICE CHARGES TREATED AS TIPS FOR PUR-**  
20 **POSES OF EMPLOYER CREDIT FOR SOCIAL**  
21 **SECURITY TAXES, ETC.**

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.

