

2013 -- H 5121

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS

Introduced By: Representatives Blazejewski, Keable, Kazarian, Johnston, and Silva

Date Introduced: January 22, 2013

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 14.1

4 PREVENTION OF TIPPING FRAUD

5 **28-14.1-1. Legislative purpose.** – The general assembly declares that the purpose of this
6 chapter is to prohibit employers from demanding payment or deductions from a tip or service
7 charge to waitstaff, regular tip pools, and require that any service charge imposed by an employer
8 be remitted to the service staff. No employer or person shall contract with an employee or by any
9 other means exempt itself from this chapter.

10 **28-14.1-2. Definitions.** – Whenever used in this chapter:

11 (1) "Employer" means any person or entity engaged in any business or enterprise in this
12 state that has employees in its service, including, without limitation, any appointment, contract of
13 hire or apprenticeship, expressed or implied, oral or written, irrespective of whether the person is
14 the owner of the business or is operating on a concessionaire or other basis, and also including,
15 without limitation, any person other than the employer having the authority to hire or discharge
16 any employee or supervise, direct or control the acts of employees.

17 (2) "Patron" means any person who is served by a waitstaff employee or service
18 employee at any place where such employees perform work, including, but not limited to, any
19 restaurant, banquet facility or other place at which prepared food and/or beverages are served, or

1 any person who pays a tip or service charge to any waitstaff employee, service employee or
2 service bartender.

3 (3) “Service bartender” means a person who prepares alcoholic or nonalcoholic
4 beverages for patrons to be served by another employee, such as a waitstaff employee.

5 (4) “Service charge” means a fee charged by an employer to a patron in lieu of a tip to
6 any waitstaff employee, service employee or service bartender, including any fee designated as a
7 service charge, tip, gratuity or a fee that a patron or other consumer would reasonably expect to
8 be given to a waitstaff employee, service employee or service bartender in lieu of, or in addition
9 to, a tip.

10 (5) “Service employee” means a person who works in an occupation in which employees
11 customarily receive tips or gratuities, and who provides service directly to customers or
12 consumers, but who works in an occupation other than in food or beverage service and who has
13 no managerial responsibility.

14 (6) “Tip” means a sum of money, including any amount designated by a credit card
15 patron, a gift or a gratuity, given as an acknowledgment of any service performed by a waitstaff
16 employee, service employee or service bartender.

17 (7) “Waitstaff employee” means a person, including a waiter, waitress, bus person, and
18 counter staff, who: (i) Serves beverages or prepared food directly to patrons or who clears
19 patrons’ tables; (ii) Works in a restaurant, banquet facility or other place where prepared food or
20 beverages are served; and (iii) Who has no managerial responsibility.

21 **28-14.1-3. Prohibition on payment or deduction from tip.** – No employer or other
22 person shall demand, request or accept from any waitstaff employee, service employee or service
23 bartender any payment or deduction from a tip or service charge given to such waitstaff
24 employee, service employee or service bartender by a patron. An employer that permits patrons to
25 pay tips or service charges by credit card shall pay the employee the full amount of the tip or
26 service charge that the patron indicated on the credit card slip. No such employer or other person
27 shall retain or distribute in a manner inconsistent with this chapter any tip or service charge given
28 directly to the employer or person.

29 **28-14.1-4. Prohibition against tip pools.** – No employer or person shall cause, require
30 or permit any waitstaff employee, service employee or service bartender to participate in a tip
31 pool through which such employee remits any wage, tip or service charge or any portion thereof,
32 for distribution to any person who is not a waitstaff employee, service employee or service
33 bartender. An employer may administer a valid tip pool and may keep a record of the amounts
34 received for bookkeeping or tax reporting purposes.

1 **28-14.1-5. Service charges and tips.** – (a) If an employer or person submits a bill,
2 invoice or charge to a patron or other person that imposes a service charge or tip, the total
3 proceeds of that service charge or tip shall be remitted only to the waitstaff employees, service
4 employees or service bartenders in proportion to the service provided by those employees.

5 (b) Nothing in this section shall prohibit an employer from imposing on a patron any
6 house or administrative fee in addition to or instead of a service charge or tip, if the employer
7 provides a designation or written description of that house or administrative fee, which informs
8 the patron that the fee does not represent a tip or service charge for waitstaff employees, service
9 employees or service bartenders

10 (c) Any service charge or tip remitted by a patron or person to an employer shall be paid
11 to the waitstaff employee, service employee, or service bartender by the end of the same business
12 day, and in no case later than the time set forth for timely payment of wages under chapter 28-14-
13 2.2.

14 **28-14.1-6. Violation and penalties.** – (a) Whoever violates this chapter shall be guilty of
15 a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or by
16 imprisonment for not exceeding sixty (60) days, or both. Any person or employer who violates
17 this chapter shall make restitution for any tips accepted, distributed or retained in violation of this
18 chapter, together with interest thereon at the rate of twelve percent (12%) per annum.

19 (b) An employee claiming to be aggrieved under this section may, within three (3) years
20 after the violation, institute and prosecute in his or her own name and on his or her own behalf, or
21 for himself or herself and for others similarly situated, a civil action for injunctive relief, for any
22 damages incurred and for any lost wages and other benefits. An employee so aggrieved who
23 prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost
24 wages and other benefits and shall also be awarded the costs of the litigation and reasonable
25 attorneys' fees.

26 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS

1 This act would seek to prohibit employers from demanding payment or deductions from a
2 tip or service charge given to waitstaff, prohibiting tip pools and would require that any service
3 charge imposed by an employer be remitted to the service staff.

4 This act would take effect upon passage.

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