



SENATE BILL 803

Labor and Employment - Payment of Minimum Wage - Tipped Employees

March 2, 2023

Position: UNFAVORABLE

Madame Chair and Members of the Senate Finance Committee:

The Restaurant Association of Maryland strongly opposes Senate Bill 803, which would phase out Maryland's tip credit. We urge you to reject any legislation or amendments to other bills that would eliminate or reduce Maryland's tip credit.

Like all Maryland workers, restaurant tipped employees must earn at least the full applicable minimum wage per hour. There is no subminimum wage for restaurant tipped employees. Maryland law allows employers to pay tipped employees a tip wage (a.k.a. cash wage) of at least \$3.63 per hour.

The "tip credit" is the difference between the minimum tip wage (or cash wage) and the full applicable minimum wage. The tip credit is lawful acknowledgement that tips contribute to the wages of tipped employees. The law allows employers to apply this portion of tip earnings to the employer's obligation to pay tipped employees the applicable minimum wage, and it is critical to the full-service restaurant business model.

Under federal, state and local minimum wage laws, employers are required to make up any deficiencies if a tipped employee does not make enough in combined tip wages (or cash wages) plus tips to make at least the full applicable minimum wage per hour for the workweek. Therefore, tipped employees are guaranteed by law to make at least the applicable minimum wage. The tip credit was initially established under the federal *Fair Labor Standards Act* in 1966 and is also allowed under most state and local minimum wage laws.

The earnings potential of restaurant servers would significantly decrease if the tip credit was eliminated because most full-service restaurant employers would be forced to impose a service charge on customer checks to cover the increased labor costs, and would pay servers a flat hourly rate instead. Menu price increases could not cover the additional labor costs and would result in decreased customer traffic. Customers are unlikely to tip on top of service charges. And there would be no incentive for servers to provide the best possible customer service because they would no longer be rewarded with tips.

Tipped employees are among the highest earners in full-service restaurants (earning a median of \$27/hour including tips, according to National Restaurant Association research). Servers at many restaurants can earn \$40 or more per hour including tips. If Maryland's tip credit was eliminated, the consequences would be devastating for Maryland's full-service restaurants and their tipped employees.

(more)

Without the tip credit, full-service restaurants would be required to pay tipped employees at least the applicable minimum wage rate per hour without the ability to apply any tips towards the employer's obligation. This would significantly increase labor costs for the full-service restaurant industry, and could destroy restaurants locked into long-term leases for their business model that utilizes the tip credit.

Without the tip credit, casual restaurants that could offer counter service to dine-in customers would likely eliminate server positions altogether because the increased labor costs would be unaffordable and impossible to pass on to customers through price increases. And customers at these restaurants with lower check averages would reject service charges they perceive to be too high for the level of service provided.

For these and other reasons, we strongly oppose eliminating or reducing Maryland's tip credit, and request an unfavorable report on this legislation.

Sincerely,

A handwritten signature in cursive script, reading "Melvin R. Thompson", followed by a long horizontal flourish line.

Melvin R. Thompson
Senior Vice President
Government Affairs and Public Policy