

2012 -- S 2843

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LC02238
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS

Introduced By: Senators Lynch, DiPalma, Lanzi, Walaska, and Nesselbush

Date Introduced: March 28, 2012

Referred To: Senate 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 prevent fraud upon the public in connection with the practice of tipping. No
7 employer or person shall contract with an employee or by any other means exempt itself from this
8 chapter.

9 **28-14.1-2. Definitions.** – Whenever used in this chapter:

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

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

1 service bartender.

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

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

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

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

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

20 **28-14.1-3. Prohibition on payment or deduction from tip.** – No employer or other
21 person shall demand, request or accept from any waitstaff employee, service employee or service
22 bartender any payment or deduction from a tip or service charge given to such waitstaff
23 employee, service employee or service bartender by a patron. An employer that permits patrons to
24 pay tips or service charges by credit card shall pay the employee the full amount of the tip or
25 service charge that the patron indicated on the credit card slip. No such employer or other person
26 shall retain or distribute in a manner inconsistent with this chapter any tip or service charge given
27 directly to the employer or person.

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

34 **28-14.1-5. Service charges and tips.** – (a) If an employer or person submits a bill,

1 invoice or charge to a patron or other person that imposes a service charge or tip, the total
2 proceeds of that service charge or tip shall be remitted only to the waitstaff employees, service
3 employees or service bartenders in proportion to the service provided by those employees.

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

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

13 **28-14.1-6. Violation and penalties.** – (a) Whoever violates this chapter shall be guilty of
14 a misdemeanor punishable by a fine not exceeding one thousand dollars (\$1,000) or by
15 imprisonment for not exceeding sixty (60) days, or both. Any person or employer who violates
16 this chapter shall make restitution for any tips accepted, distributed or retained in violation of this
17 chapter, together with interest thereon at the rate of twelve percent (12%) per annum. The
18 attorney general may bring an action under this chapter within three (3) years of any violation of
19 this chapter.

20 (b) An employee claiming to be aggrieved under this section may, ninety (90) days after
21 the filing of a complaint with the attorney general, or sooner if the attorney general assents in
22 writing, and within three (3) years after the violation, institute and prosecute in his or her own
23 name and on his or her own behalf, or for himself or herself and for others similarly situated, a
24 civil action for injunctive relief, for any damages incurred and for any lost wages and other
25 benefits. An employee so aggrieved who prevails in such an action shall be awarded treble
26 damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded
27 the costs of the litigation and reasonable attorneys' fees.

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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1 This act would seek to prevent fraud in connection with tipping by prohibiting employers
2 from demanding payment or deductions from a tip or service charge given to waitstaff,
3 prohibiting tip pools and would require that any service charge imposed by an employer be
4 remitted to the service staff.

5 This act would take effect upon passage.

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