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Date: (Filing No. S-)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

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**STATE OF MAINE
SENATE
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 235, L.D. 673, Bill, “An Act To Restore the Tip Credit to Maine's Minimum Wage Law”

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, tourism is a vital industry in Maine; and

Whereas, the restaurant and hospitality industries are essential components of the tourism industry; and

Whereas, tipped service employees are of crucial importance to the restaurant and hospitality industries; and

Whereas, adjustment to the minimum wage laws concerning tipped service employees is necessary before the summer tourism season begins; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,'

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 26 MRSA §664, sub-§2, as amended by IB 2015, c. 2, §2, is further amended to read:

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. ~~Starting~~ except that from January 1, 2017 to December 31, 2017, the minimum cash wage paid directly to a tipped service employee may not be less than \$5.00 per hour, ~~and the tip credit may not exceed the difference between the~~

COMMITTEE AMENDMENT

1 ~~minimum cash wage paid directly to a tipped service employee and the minimum hourly~~
2 ~~wage established under subsection 1. Starting January 1, 2018, and on each January 1st~~
3 ~~thereafter, the minimum cash wage paid directly to a tipped service employee must be~~
4 ~~increased by an additional \$1.00 per hour until it reaches the same amount as the annually~~
5 ~~adjusted minimum hourly wage established under subsection 1, except that if the~~
6 ~~minimum cash wage paid directly to a tipped service employee is less than \$1.00 less~~
7 ~~than the annually adjusted minimum hourly wage, it must be increased by that lesser~~
8 ~~amount. An employer who elects to use the tip credit, until it is eliminated under this~~
9 ~~subsection, must inform the affected employee in advance, as provided for in this~~
10 ~~subsection, and must be able to show that the employee receives at least the minimum~~
11 ~~hourly wage when direct wages and the tip credit are combined within the established 7-~~
12 ~~day workweek. Upon a satisfactory showing by the employee or the employee's~~
13 ~~representative that the actual tips received were less than the tip credit, the employer shall~~
14 ~~increase the direct wages by the difference.~~

15 The tips received by a service employee become the property of the employee and may
16 not be shared with the employer. Tips that are automatically included in the customer's
17 bill or that are charged to a credit card must be treated like tips given to the service
18 employee. A tip that is charged to a credit card must be paid by the employer to the
19 employee by the next regular payday and may not be held while the employer is awaiting
20 reimbursement from a credit card company. The employer may not deduct any amount
21 from employee tips charged to a credit card, including, but not limited to, service fees
22 assessed to the employer in connection with the credit card transaction.

23 An employer who elects to use the tip credit must inform the affected employee in
24 advance, either orally or in writing, of the following information:

25 A. The amount of the direct wage to be paid by the employer to the tipped employee;

26 B. The amount of tips to be credited as wages toward the minimum wage;

27 C. That the amount of tips to be credited as wages may not exceed the value of the
28 tips actually received by the employee;

29 D. That all tips received by the affected employee must be retained by the employee,
30 except for a valid tip pooling arrangement limited to employees who customarily and
31 regularly receive tips in accordance with subsection 2-A;

32 E. That the tip credit may not apply to any employee who has not been informed by
33 the employer of the provisions for a tip credit; and

34 F. If the employer uses a tip pooling arrangement, any required tip pool contribution
35 amount from the employee.

36 **Emergency clause.** In view of the emergency cited in the preamble, this
37 legislation takes effect when approved.'

38 SUMMARY

39 This amendment keeps the provisions in the bill restoring the tip credit in the
40 minimum wage laws, and it makes the following additional changes to current law.

1 1. It clarifies that for purposes of the tip credit, wages must be measured in the
2 context of the 7-day workweek.

3 2. It clarifies that an employer may not deduct any amount from employee tips
4 charged to a credit card, including, but not limited to, service fees assessed to the
5 employer in connection with the credit card transaction.

6 3. It adopts the current requirements in federal law, found at 29 Code of Federal
7 Regulations, Section 531.54 and 29 Code of Federal Regulations, Section 531.59(b),
8 requiring an employer to provide notice to employees affected by the employer’s use of a
9 tip credit and the employer’s use of a tip pooling arrangement.

10 The amendment also adds an emergency preamble and clause.