
Introduced by Senator Miriam Defensor Santiago RECEIVED BY

EXPLANATORY NOTE

The Constitution, Article II, provides:

Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Pursuant to the policy, laws have been enacted to protect the rights of the workingman. In the case of wait staff employees, service employees, and service bartenders, however, the pertinent laws are the following: Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines in Section 96, and the Omnibus Rules Implementing the labor Code in Book III, Rule VI. A cursory study of these laws reveal that they focus merely on the distribution of service charges – what portion goes to the employees and to the management – without any provision to safeguard the tips paid to the wait staff employees, service employees, and service bartenders personally. Neither is there any provision that regulates the interference of management in the payment of such tips.

In view of the dearth of laws to protect the wages and tips of wait staff employees, service employees, and service bartenders, this Bill seeks to extend the State's protection to the such employees by ensuring the gratuities given to them shall be theirs alone and not subject to any deduction or interference by their employers.*

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO
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* This bill was originally filed during the Thirteenth Congress, Second Regular Session.

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SENATE
S. No. 1820

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1 AN ACT
2 PROVIDING FOR THE PROTECTION OF WAGES AND TIPS RECEIVED BY CERTAIN
3 EMPLOYEES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

4 SECTION 1. *Short Title.* – This Act shall be known as the “Wages and Tips Protection
5 Act.”

6 SECTION 2. *Purpose.* – Pursuant to the State’s policy of protecting the rights of workers,
7 the purpose of the Act is to protect the wages and tips of certain employees, particularly wait
8 staff employees, service employees, or service bartenders, from unlawful deductions and
9 interference by their employees.

10 SECTION 3. *Definition of Terms.* – For the purposes of this Act, the term

11 (A) “Wait staff employee” means a person, including a waiter, waitress, bus person, and
12 counter staff, who:

13 (1) Serves beverages or prepared food directly to patrons, or who clears patrons’
14 tables;

15 (2) Works in a restaurant, banquet facility, or other place where prepared food or
16 beverages are served; and

17 (3) Has no managerial responsibility.

18 (B) “Service employee” means a person who works in an occupation in which employees
19 customarily receive tips or gratuities, and who provides service directly to customers
20 or consumers, but who works in an occupation other than in food or beverage service,
21 and who has no managerial responsibility.

1 (C) "Service bartender" means a person who prepares alcoholic or nonalcoholic
2 beverages for patrons to be served by another employee, such as a wait staff
3 employee.

4 (D) "Employer" means any person or entity having employees in its service, including an
5 owner or officer of an establishment employing wait staff employees, service
6 employees, or service bartenders, or any person whose primary responsibility is the
7 management or supervision of wait staff employees, service employees, or service
8 bartenders.

9 (E) "Patron" means any person who is served by a wait staff employee or service
10 employee at any place where such employees perform work, including, but not
11 limited to, any restaurant, banquet facility or other place at which prepared food or
12 beverage is served, or any person who pays a tip or service charge to any wait staff
13 employee, service employee, or service bartender.

14 (F) "Service charge" means a fee, charged by an employer to a patron in lieu of a tip to
15 any wait staff employee, service employee, or service bartender, including any fee
16 designated as a service charge, tip, gratuity, or a fee that a patron or other consumer
17 would reasonably expect to be given to a wait staff employee, service employee, or
18 service bartender in lieu of, or in addition to, a tip.

19 (G) "Tip" means a sum of money, including any amount designated by a credit card
20 patron, a gift or a gratuity, given as an acknowledgment of any service performed by
21 a wait staff employee, service employee, or service bartender.

22 SECTION 4. *Payment of Service Charges or Tips by Employers.* – Any service charge or
23 tip remitted by a patron or person to an employer shall be paid to the wait staff employee, service
24 employee, or service bartender by the end of the same business day, and in no case later than the
25 time set forth for timely payment of wages under Article 103 of the Presidential Decree 442, as
26 amended, otherwise known as the Labor Code of the Philippines, and Section 4, Rule VI, Book
27 III of the Omnibus Rules Implementing the Labor Code.

1 SECTION 5. *Acts Prohibited.* – Any agreement to the contrary notwithstanding, the
2 following acts shall be unlawful when committed by an employer or any other person against a
3 wait staff employee, service employee, or service bartender:

4 (A) To demand, request or accept from any wait staff employee, service employee, or
5 service bartender any payment or deduction from a tip or service charge given to such
6 wait staff employee, service employee, or service bartender by a patron.

7 (B) To retain or distribute in a manner inconsistent with this Act any tip or service charge
8 given directly to the employer or person.

9 (C) To cause, require or permit any wait staff employee, service employee, or service
10 bartender to participate in a tip pool through which such employee remits any wage,
11 tip or service charge, or any portion thereof, for distribution to any person who is not
12 a wait staff employee, service employee, or service bartender, except as provided in
13 Section 6 of this Act.

14 (D) To submit a bill, invoice or charge to a patron or other person that imposes a service
15 charge or tip, where the total proceeds of that service charge or tip is not remitted to
16 the wait staff employees, service employees, or service bartenders in proportion to the
17 service provided by those employees.

18 SECTION 6. *Valid Tip Pool.* – The Department of Labor and Employment (DOLE) is
19 hereby tasked to promulgate implementing rules and regulations for the creation and
20 administration of a valid tip pool. Such tip pool may be maintained by the employer or any
21 person who is also a wait staff employee, service employee, or service bartender of the
22 establishment for which the tip pool contributors work. Such employer or person shall keep a
23 record of the amounts received for bookkeeping or tax reporting purposes. He shall be required
24 to pay the wait staff employee, service employee, or service bartender his share in the tip pool in
25 accordance with Section 4 of this Act and any rules and guidelines to be promulgated by the
26 Department of Labor and Employment.

27 SECTION 7. *House or Administrative Fee.* – Nothing in this Act shall prohibit an
28 employer from imposing on a patron any house or administrative fee in addition to a service

1 charge or tip, if the employer provides a designation or written description of that house or
2 administrative fee and informs the patron that the fee does not represent a tip or service charge
3 for wait staff employees, service employees, or service bartenders.

4 SECTION 8. *Exemption by Special Contract or Other Means.* – No employer or person
5 shall by a special contract with an employee or by any other means exempt itself from the
6 provisions of this Act.

7 SECTION 9. *Penalties.* - Any person, corporation, trust, firm, partnership, association or
8 entity found violating this Act or the rules and regulations promulgated thereunder shall be
9 punished by a fine not exceeding Twenty-five thousand pesos (P25,000) or imprisonment of not
10 less than thirty (30) days nor more than six (6) months.

11 If the violation is committed by a corporation, trust or firm, partnership, association or
12 any other entity, the penalty of imprisonment shall be imposed on the entity's responsible
13 officers, including, but not limited to, the president, vice-president, chief executive officer,
14 general manager, managing director or partner directly responsible therefor.

15 SECTION 10. *Nondiminution.* – Nothing in this Act shall be construed to reduce any
16 existing benefits of any form granted under existing laws, decrees, executive orders, or any
17 contract, agreement or policy between employer and employee.

18 SECTION 11. *Appropriations.* – The amount necessary to carry out the provisions of this
19 Act shall be included in the budget of concerned government agencies in the General
20 Appropriations Act of the year following its enactment into law and thereafter.

21 SECTION 12. *Repealing Clause.* – All laws, decrees, executive orders, administrative
22 orders or parts thereof inconsistent with the provisions of this Act are hereby repealed, amended
23 or modified accordingly.

24 SECTION 13. *Separability Clause.* – If any provision of this Act is held invalid or
25 unconstitutional, other provisions not affected thereby shall continue to be in full force and
26 effect.

1 SECTION 14. *Effectivity Clause.* – This Act shall take effect fifteen (15) days following
2 its complete publication in the Official Gazette or in at least two (2) newspapers of general
3 circulation.

Approved.