

SENATE BILL REPORT

SB 5738

As Reported By Senate Committee On:
Commerce & Labor, February 28, 1997

Title: An act relating to compensation for employment.

Brief Description: Requiring that terminated employees be paid within five days of the last date of employment and prohibiting employers from requiring employees to turn over tips.

Sponsors: Senators Horn, Haugen, Schow, Wood, McDonald and Winsley.

Brief History:

Committee Activity: Commerce & Labor: 2/13/97, 2/28/97 [DPS, DNPS].

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5738 be substituted therefor, and the substitute bill do pass.

Signed by Senators Schow, Chair; Horn, Vice Chair; Anderson and Newhouse.

Minority Report: Do not pass substitute.

Signed by Senators Franklin, Fraser and Heavey.

Staff: Traci Ratzliff (786-7452)

Background: The state minimum wage is \$4.90. State law does not permit employers to count tips as wages in meeting the minimum wage requirement. Therefore, an employer of "tipped employees" is required to pay a cash wage of \$4.90 per hour.

The current federal minimum wage is \$4.75. It will increase to \$5.15 on September 1, 1997. Federal law does permit an employer to count tips as wages in meeting the minimum wage requirement. An employer of a "tipped employee" is required to pay a cash wage of at least \$2.13 per hour. All tips given to a "tipped employee" are considered the property of the employee.

If state and federal wage and hour laws are inconsistent, federal law requires that the law (either federal or state) that is most beneficial to an employee prevails and must be followed.

Summary of Substitute Bill: Employers of "tipped employees" are authorized to count tips as wages in meeting any state minimum wage requirement above \$4.90 an hour.

A "tipped employee" is defined as an employee who is engaged in an occupation in which he or she customarily and regularly receives more than \$30 a month in tips.

All tips given to a "tipped employee" are considered the property of the employee.

Substitute Bill Compared to Original Bill: The provision requiring the payment of all wages due to a terminated employee within five days of termination is stricken.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Employees tip income is considered reportable income under the federal tax code. Employers are required to pay social security and unemployment tax on tip income but cannot count tip income in meeting the minimum wage that must be paid to employees. This is not fair to employers.

Testimony Against: The federal government approved an increase in the minimum wage last year. This bill, if passed, would take away that pay increase for many employees.

Testified: PRO: Kit Hawkins, Restaurant Association; Lane Hoss, Anthony's Restaurant; Judy Andrews, Charlie's Restaurant; Rick Mathews, Restaurant Association, J.B.'s Restaurant; CON: Robbie Stern, Washington State Labor Council; Joe Bissonnette, Hotel and Restaurant Employees; Jonathon Rosenbloom; King County Labor Council, AFL-CIO.