

HOUSE BILL REPORT

HB 3114

As Reported By House Committee On:

Commerce & Labor

Title: An act relating to tipped employee health care insurance.

Brief Description: Providing for health care coverage for tipped employees.

Sponsors: Representatives McMorris, Kessler, Wolfe, Lantz, Quall, Anderson, Dyer, Buck, Morris, Clements, Lisk, Gombosky, Linville, Boldt, Honeyford and Doumit.

Brief History:

Committee Activity:

Commerce & Labor: 2/5/98 [DPS].

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives McMorris, Chairman; Honeyford, Vice Chairman; Conway, Ranking Minority Member; Wood, Assistant Ranking Minority Member; Boldt; Clements and Lisk.

Minority Report: Do not pass. Signed by 2 members: Representatives Cole and Hatfield.

Staff: Selwyn Walters (786-7117).

Background: Federal and state laws establish a minimum wage affecting full-time and part-time workers in the private and public sectors. In Washington, the minimum wage law is administered by the Department of Labor and Industries.

Federal law:

The federal minimum wage is \$5.15 per hour. Federal law allows an employee's tips to be counted as wages in meeting an employer's minimum wage obligation. Employers of tipped employees must pay at least \$2.13 per hour if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least \$2.13 per hour do not equal the minimum hourly wage, the employer must make up the difference. Certain other conditions must also be met.

The federal Employment Retirement Insurance Security Act (ERISA) regulates employee pension plans and welfare benefit plans. State laws that "relate to" ERISA employee benefit plans are superseded by ERISA's preemption provision.

State law:

The state minimum wage is \$4.90 per hour. The department has administratively determined that the Minimum Wage Act prohibits tip credit. Therefore, an employer must pay tipped employees a cash wage of \$4.90 per hour. Washington courts have held that all tips given to an employee are the property of the employee.

The minimum wage provision that is more beneficial to employees, whether federal or state, will govern.

Summary of Substitute Bill: The Legislature intends to address the issues of wages and health insurance to tipped employees in a way that balances the needs of employers and employees.

Substitute Bill Compared to Original Bill: The substitute bill deletes the provisions in the original bill that allowed an employer to count tips as wages in meeting any state minimum wage rate above \$5.15 per hour, if the employer offers health care insurance coverage to the employer's full time and qualified part time employees. The substitute bill adds that the Legislature intends to address the issues of wages and health insurance to tipped employees.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: Restaurant owners are aware of the Washington initiative polling numbers and are aware of the results of the Oregon and California initiatives. Restaurant owners want to make it possible to operate with a \$6.50 minimum wage and are planning to adjust operations in order to stay in business. Restaurant owners can offer health care if they can hold the line on minimum wages, but they cannot do both. The issue of tipped employees in the restaurant business is unique and requires a unique solution. Normal business standards should not apply. Restaurant owners are trying to achieve three things at once: payroll relief, a voluntary employer-based health care system, and value in trade to tipped employees.

Testimony Against: Employee choice standards are not established, and there is no coverage for dependents. Employees will lose earning power because their wages will

be frozen as the minimum wage rises, and the escalator time frame is too long to make any increases beneficial. There are no protections for employees with ERISA covered plans, and the lag times are too long. The suggested enforcement mechanism is unworkable because the Department of Labor and Industries does not have the expertise to monitor and enforce compliance with the basic health plan. The net result of the proposal will be to drive a greater part-time labor force.

Testified: (Pro) Diane Symms & Kit Hawkins, Washington Restaurant Association.
(Con) Jeff Johnson, Washington State Labor Council.