

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 739

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H.P. 544

House of Representatives, February 11, 2019

**An Act To Help Small Businesses by Establishing an Alternate  
Minimum Wage**

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Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative RUDNICKI of Fairfield.  
Cosponsored by Senator CYRWAY of Kennebec and  
Representatives: BRADSTREET of Vassalboro, HANLEY of Pittston, STEWART of Presque  
Isle.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 26 MRSA §42-B, sub-§1, ¶F**, as enacted by PL 2017, c. 219, §2, is  
3 amended to read:

4 F. Minimum wage and overtime provisions as described in ~~section~~ sections 664 and  
5 664-A.

6 **Sec. 2. 26 MRSA §664, sub-§2**, as amended by PL 2017, c. 272, §1, is further  
7 amended to read:

8 **2. Tip credit.** An employer may consider tips as part of the wages of a service  
9 employee, but such a tip credit may not exceed 50% of the minimum hourly wage  
10 established in this section, or, if applicable, section 664-A, except that from January 1,  
11 2017 to December 31, 2017, the minimum cash wage paid directly to a tipped service  
12 employee may not be less than \$5.00 per hour. An employer who elects to use the tip  
13 credit must inform the affected employee in advance, as provided for in this subsection,  
14 and must be able to show that the employee receives at least the minimum hourly wage  
15 when direct wages and the tip credit are combined within the established 7-day  
16 workweek. Upon a satisfactory showing by the employee or the employee's  
17 representative that the actual tips received were less than the tip credit, the employer shall  
18 increase the direct wages by the difference.

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

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

- 29 A. The amount of the direct wage to be paid by the employer to the tipped employee;
- 30 B. The amount of tips to be credited as wages toward the minimum wage;
- 31 C. That the amount of tips to be credited as wages may not exceed the value of the  
32 tips actually received by the employee;
- 33 D. That all tips received by the affected employee must be retained by the employee,  
34 except for a valid tip pooling arrangement limited to employees who customarily and  
35 regularly receive tips in accordance with subsection 2-A;
- 36 E. That the tip credit may not apply to any employee who has not been informed by  
37 the employer of the provisions for a tip credit; and
- 38 F. If the employer uses a tip pooling arrangement, any required tip pool contribution  
39 amount from the employee.

