LEGISLATIVE COMMITTEE MINUTES

SB269

Bill as Introduced

SB 269 - AS INTRODUCED

2023 SESSION

23-1058
05/10

SENATE BILL ***269***

AN ACT relative to tip pooling and sharing.

SPONSORS: Sen. Soucy, Dist 18; Sen. Innis, Dist 7; Sen. Ricciardi, Dist 9; Sen. Chandley, Dist 11; Rep. Soucy, Merr. 21; Rep. Seaworth, Merr. 12

COMMITTEE: Commerce

ANALYSIS

This bill removes a reference to service charge in the definition of tip, and provides that an employer may administer a valid tip pooling or tip sharing arrangement, including documenting agreed upon practice, provided that the employer does not requires or coerce employee participation.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-1058
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to tip pooling and sharing.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Minimum Wage Law; Definition of Tip. Amend RSA 279:1, XII to read as follows:

XII. "Tip" means money given to an employee by a customer, in cash or its equivalent, or transferred to the employee by the employer pursuant to directions from a credit card customer who designates a sum to be added to the bill as a tip, or added as a gratuity [~~or service charge~~] to a customer's bill, in recognition of service performed.

2 Tip Pooling and Sharing. Amend RSA 279:26-b to read as follows:

279:26-b Tip Pooling and Sharing.

I. Tips are wages and shall be the property of the employee receiving the tip and shall be retained by the employee, unless the employee voluntarily and without coercion from his or her employer agrees to participate in a tip pooling or tip sharing arrangement.

II. No employer is precluded from administering a valid tip pooling or tip sharing arrangement [~~at the request of the employee~~], including suggesting reasonable and customary practices, ***documenting agreed upon practice,*** and mediating disputes between employees regarding a valid tip pooling or tip sharing arrangement***, provided that the employer does not require or coerce employees to participate in the tip pooling or tip sharing arrangement.***

III. Nothing shall preclude employee participants in a tip pool from agreeing, voluntarily and without coercion ***from the employer***, to provide a portion of the common pool to other employees, regardless of job category, who participated in providing service to customers.

3 Effective Date. This act shall take effect 60 days after its passage.

SB 269 - VERSION ADOPTED BY BOTH BODIES

2023 SESSION

23-1058
05/10

SENATE BILL ***269***

AN ACT relative to tip pooling and sharing.

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CHAPTER 176
SB 269 - FINAL VERSION

2023 SESSION

23-1058
05/10

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CHAPTER 176
SB 269 - FINAL VERSION

23-1058
05/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to tip pooling and sharing.

Be it Enacted by the Senate and House of Representatives in General Court convened:

176:1 Minimum Wage Law; Definition of Tip. Amend RSA 279:1, XII to read as follows:

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176:2 Tip Pooling and Sharing. Amend RSA 279:26-b to read as follows:

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III. Nothing shall preclude employee participants in a tip pool from agreeing, voluntarily and without coercion ***from the employer***, to provide a portion of the common pool to other employees, regardless of job category, who participated in providing service to customers.

176:3 Effective Date. This act shall take effect 60 days after its passage.

Approved: July 28, 2023
Effective Date: September 26, 2023

Committee Minutes

SENATE CALENDAR NOTICE
Commerce

Sen Bill Gannon, Chair
Sen Denise Ricciardi, Vice Chair
Sen Daniel Innis, Member
Sen Donna Soucy, Member
Sen Shannon Chandley, Member

Date: February 21, 2023

HEARINGS

Tuesday	03/07/2023
(Day)	(Date)

Commerce	State House 100	9:00 a.m.
(Name of Committee)	(Place)	(Time)

9:00 a.m. **SB 269** relative to tip pooling and sharing.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:
SB 269
Sen. Soucy
Rep. Soucy
Sen. Innis
Rep. Seaworth
Sen. Ricciardi
Sen. Chandley

Aaron Jones 271-2609

Bill M. Gannon
Chairman

Senate Commerce Committee

Aaron Jones 271-2609

SB 269, relative to tip pooling and sharing.

Hearing Date: March 7, 2023

Time Opened: 9:03 a.m. **Time Closed:** 9:12 a.m.

Members of the Committee Present: Senators Gannon, Ricciardi, Innis, Soucy and Chandley

Members of the Committee Absent : None

Bill Analysis: This bill removes a reference to service charge in the definition of tip, and provides that an employer may administer a valid tip pooling or tip sharing arrangement, including documenting agreed upon practice, provided that the employer does not requires or coerce employee participation.

Sponsors:

Sen. Soucy	Sen. Innis	Sen. Ricciardi
Sen. Chandley	Rep. Soucy	Rep. Seaworth

Who supports the bill: Senator Donna Soucy, Senator Dan Innis, Mike Somers (NHLRA), James Reidy (Sheehan Phinney), Noy Kravi (Sheehan Phinney)

Who opposes the bill: Joanne Worthen, Kayden Houser

Who is neutral on the bill: Rudy Ogden (NH Department of Labor)

Summary of testimony presented in support:

Senator Donna Soucy

- Issues have arisen around tip pooling and its enforcement. This bill would codify an agreement reached between the NH Department of Labor (NH DOL) and the NH Lodging and Restaurant Association.
- Senator Soucy believed an employee should have a choice, and this bill would not change that. Instead, it would clarify the responsibilities of management and employees.
- There have been instances where employers were trying to help, not interfere in the process, but they acted contrary to existing statute.
- Senator Soucy reiterated that this bill would provide more explicit language for those involved in tip pooling in their facilities.

Mike Somers, President, NH Lodging and Restaurant Association

- This bill would clarify what a business could do without making the program coercive or non-voluntary.
- Service charges are considered part of the income of a business by the IRS; thus, it is taxable. Under existing state law, however, tips or gratuities are defined as the property of employees. Consequently, businesses are paying taxes on property that is not their own.
- **Senator Gannon** asked if this would make it easier for the government to track tipped wages.
    - In this scenario, **Mr. Somers** said service charges would not be the issue.
- **Senator Gannon** said they would know how much the employee brought home if tips were pooled.
    - **Mr. Somers** responded that tip pooling was rare. Typically, it took place in a team service environment, and it was almost impossible to determine who earned which tips. There could be a scenario where tip sharing has occurred, but an employee would declare only their tips for tax purposes.

James Reidy, Sheehan Phinney

- Attorney Reidy said the language, "at the request of the employee", had been impractical.
- An employer can have a policy and administer it, suggest a customary and usual tip, and resolve disputes; however, they are unable to discuss tip pooling unless it is raised by an employee.
- Questions have been raised on how it can be determined when a tip system went into effect.
- This bill would fix a problem as well as take care of litigation that has developed over this issue.

Summary of testimony presented in opposition: None

Neutral Information Presented:

Rudy Ogden, Deputy Commissioner, NH Department of Labor

- Under existing statute, an employer should not bring up the idea or concept of tip pooling.
- The removal of "at the request of the employee" would clarify that it is not a violation for an employer to broach the subject. Additionally, it would not be problematic for the employer to document what the parties have agreed to or what their practices are.

AJ
Date Hearing Report completed: March 8, 2023

Speakers

Senate Commerce Committee
SIGN-IN SHEET

Date: 02/27/2023 **Time:** 9:00 a.m.

SB 269 An ACT relative to tip pooling and sharing.

Name/Representing *(please print neatly)*

Rudy Ogden NH Dept. of Labor	Support ☐	Oppose ☐	Speaking?	Yes ☑ No ☐
Mike Somers NHLRA	Support ☑	Oppose ☐	Speaking?	Yes ☑ No ☐
James Reidy Sheehan Phinney	Support ☑	Oppose ☐	Speaking?	Yes ☑ No ☐
Not Known Sheehan Phinney	Support ☑	Oppose ☐	Speaking?	Yes ☐ No ☑
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐
	Support ☐	Oppose ☐	Speaking?	Yes ☐ No ☐

Senate Remote Testify

Commerce Committee Testify List for Bill SB269 on 2023-03-07

Support: 1 Oppose: 2

Name	Title	Representing	Position
Innis, Senator Dan	An Elected Official	Myself	Support
Worthen, Joanne	A Member of the Public	Myself	Oppose
Houser, Kayden	A Member of the Public	Myself	Oppose

Voting Sheets

Senate Commerce Committee
EXECUTIVE SESSION RECORD
2023-2024 Session

Bill # SB 269

Hearing date: 3/7/23

Executive Session date: 3/7/23

Motion of: OTP **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Gannon, Chair			✓	
Sen. Ricciardi, V-Chair		✓	✓	
Sen. Innis			✓	
Sen. Soucy	✓		✓	
Sen. Chandley			✓	

Motion of: Consent **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Gannon, Chair			✓	
Sen. Ricciardi, V-Chair	✓		✓	
Sen. Innis		✓	✓	
Sen. Soucy		✓	✓	
Sen. Chandley			✓	

Motion of: _____ **Vote:** _____

Committee Member	Made by	Second	Yes	No
Sen. Gannon, Chair				
Sen. Ricciardi, V-Chair				
Sen. Innis				
Sen. Soucy				
Sen. Chandley				

Reported out by: Sen. Soucy

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Tuesday, March 7, 2023

THE COMMITTEE ON Commerce

to which was referred **SB 269**

AN ACT relative to tip pooling and sharing.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Donna Soucy
For the Committee

This bill would clarify the responsibilities of those who are involved in tip pooling and its administration. Currently, an employer can establish and administer a policy, suggest a customary and usual tip, and resolve disputes. However, they cannot discuss the idea or concept of tip pooling before it is raised by an employee. Additionally, this bill would resolve an issue where businesses are paying taxes on service charges despite tips or gratuities being the property of an employee.

Aaron Jones 271-2609

FOR THE CONSENT CALENDAR

COMMERCE

SB 269, relative to tip pooling and sharing.
Ought to Pass, Vote 5-0.
Senator Donna Soucy for the committee.

This bill would clarify the responsibilities of those who are involved in tip pooling and its administration. Currently, an employer can establish and administer a policy, suggest a customary and usual tip, and resolve disputes. However, they cannot discuss the idea or concept of tip pooling before it is raised by an employee. Additionally, this bill would resolve an issue where businesses are paying taxes on service charges despite tips or gratuities being the property of an employee.

General Court of New Hampshire - Bill Status System

Docket of SB269

Docket Abbreviations

Bill Title: relative to tip pooling and sharing.

Official Docket of **SB269.:**

Date	Body	Description
2/17/2023	S	**Introduced** 02/14/2023 and Referred to Commerce; **SJ 8**
3/7/2023	S	===ROOM CHANGE=== **Hearing:** 03/07/2023, Room 101, LOB, 09:00 am; **SC 12**
3/7/2023	S	Committee Report: Ought to Pass, 03/16/2023; Vote 5-0; CC; **SC 13**
3/16/2023	S	**Ought to Pass**: MA, VV; OT3rdg; 03/16/2023; **SJ 10**
3/21/2023	H	Introduced (in recess of) 03/16/2023 and referred to Labor, Industrial and Rehabilitative Services
3/23/2023	H	Public Hearing: 04/13/2023 11:00 am LOB 305-307
5/18/2023	H	Executive Session: 05/25/2023 01:00 pm LOB 305-307
6/1/2023	H	Committee Report: Ought to Pass 05/25/2023 **(Vote 20-0; CC)**
6/8/2023	H	**Ought to Pass**: MA VV 06/08/2023 **HJ 15** P. 10
6/30/2023	H	Enrolled (in recess of) 06/29/2023 **HJ 17** P. 16
6/30/2023	S	Enrolled Adopted, VV, (In recess 06/29/2023); **SJ 20**
8/1/2023	S	Signed by the Governor on 07/28/2023; Chapter 0176; Effective 09/26/2023

NH House	NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB 269 **Senate Committee:** Commerce

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

X All Calendar Notices

X Hearing Sign-up sheet(s)

N/A Prepared testimony, presentations, & other submissions handed in at the public hearing

X Hearing Report

N/A Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

N/A - amendment # _____ ____ - amendment # _____

____ - amendment # _____ ____ - amendment # _____

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

____ - amendment # _____ ____ - amendment # _____

____ - amendment # _____ ____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

____ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

____ Enrolled Bill Amendment(s)

____ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

____ as amended by the senate ____ as amended by the house

X final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Aaron Jones 8/10/23

Committee Aide **Date**

Senate Clerk's Office AK