

Senate Commerce Committee

Aaron Jones 271-2609

SB 416, relative to the pooling and sharing of tips among tipped employees.

Hearing Date: February 3, 2026

Time Opened: 10:09 a.m.

Time Closed: 10:54 a.m.

Members of the Committee Present: Senators Innis, Murphy, McGough, Fenton and Reardon

Members of the Committee Absent : Senator Ricciardi

Bill Analysis: This bill replaces the state restriction on tip pooling with the federal Fair Labor Standards Act rules governing the pooling and sharing of tips.

Sponsors:

Sen. McGough

Sen. Innis

Sen. Murphy

Sen. Pearl

Sen. Ricciardi

Rep. Labrie

Rep. Seaworth

Who supports the bill: 36 individuals were in support. Full sign in sheets are available upon request by contacting the Legislative Aide, Aaron Jones (aaron.jones@gc.nh.gov).

Who opposes the bill: 87 individuals were in opposition. Full sign in sheets are available upon request by contacting the Legislative Aide, Aaron Jones (aaron.jones@gc.nh.gov).

Who is neutral on the bill: 1 individual was neutral. Full sign in sheets are available upon request by contacting the Legislative Aide, Aaron Jones (aaron.jones@gc.nh.gov).

Summary of testimony presented in support:

Senator Tim McGough

- Senator McGough said this bill would make it easier for restaurant owners to do business.
- This issue was brought forward by industry stakeholders who encompass up to \$5 billion of the state's economy. This industry consists of 4,500 establishments with about 9,000 tipped employees and 68,000 jobs in total.

- Currently, tip-related rules are ambiguous because they are open to changing interpretations by the Department of Labor. These interpretations do not align with federal tip rules.
- Restaurant owners must deal with overlapping definitions and state-specific requirements that differ from federal standards. This has created confusion and an increased risk of unintentional noncompliance, especially for small locally owned and operated establishments.
- Senator McGough said federal tipping law was simpler, and it had a clear and consistent framework. Right now, business owners and employees encounter a different policy from shift to shift and day to day.

Mike Somers, President and CEO, New Hampshire Lodging and Restaurant Association

- Mr. Somers said this had been an enormous issue for the industry for many years.
- The current tipping law was adopted in 2007. Since then, Mr. Somers said it has been impossible for small businesses to fully comply.
- Mr. Somers said coercion has created countless violations and penalties despite business owners trying to do the right thing.
- Previous legislative fixes have been unsuccessful, or they have made no difference.
- Mr. Somers said this issue had a coercion and voluntary piece. Coercion has been problematic because the Department can have two different interpretations.
- Many businesses have legitimately retained counsel, and they have worked with the Department to receive approval in writing on policies and procedures. These businesses have begun receiving letters that they are not in compliance, and they need to make changes to what they are doing.
- Mr. Somers said they worked with stakeholders and attorneys to fix the existing statute; however, the Department believed they were making it worse. This is why they have decided to defer to the Fair Labor Standards Act (FLSA), which has seen minimal changes since 1938. He said this default has worked in 47 other states.

Amy LaBelle, Owner, LaBelle Winery

- When participation in a tip pool is voluntary, it can change from moment to moment. Before every event, a staff meeting is required with no manager present where employees determine how they would like to be tipped and how the tip pool is shared.
- Since it is voluntary, however, employees can change their minds. Ms. LaBelle said this can further complicate their assessment of how to apply the law.
- Even if they have policies that are approved and adopted, differing interpretations from the Department can result in violations.
- In 2020, Ms. LaBelle said they spent a lot of money to go to the Department for a written interpretation to ensure they were complying with the law. They

implemented numerous changes, including written policies that were signed by their employees.

- Previously, they distributed tips based on the number of hours an employee worked at an event. Ms. LaBelle said it was easy for their employees to understand and for their financial team to administer. Under the current Department administration, however, this has not been allowed and she has faced fines. Ms. LaBelle said employees who have signed and operated under this policy for years are subject to disruption and upheaval in the way they are paid
- Under the current interpretation, Ms. LaBelle said she could have 6 events on her property with 6 different interpretations on how tips should be pooled. This interpretation would go to her financial team, and they would have to unravel how to administer it. She said the opportunity for errors was incredible.
- Ms. LaBelle said if they moved to a different system, employees would make less per hour. In this environment, she said it was already difficult to find employees.

Jim Reidy, Partner and Chair of the Labor and Employment Group, Sheehan Phinney

- Mr. Reidy said the current tip sharing law has caused confusion, disputes, and acrimony among team members.
- Only 3 states, including New Hampshire, have an opt-in and opt-out system. Like New Hampshire, Minnesota and Kentucky have encountered similar problems with interpretation and enforcement of their statutes.
- In comparison, at least 45 other states follow the federal government. Mr. Reidy said FLSA provided better clarity, and it has had few changes since 1938.
- Under federal standards, there are protections in place for tipped employees.
- A few years ago, Mr. Reidy said there were restaurant owners who were sharing tips with managers and supervisors, which was not permitted under federal law. Federal law defines who managers are, and there is no question who can participate in the system.
- A tip pool is among similarly situated employees whereas tip share is when tipped employees share with non-tipped employees.
- Under federal standards, notices are required during the onboarding process regarding the mandatory tip pool; recordkeeping is required, and if it is not accurate, there can be fines; and tips must be paid on an employee's next regular payroll.
- Mr. Reidy said aligning with federal law made sense, and there was precedent for it with minimum wage and overtime exemptions.
- Even if New Hampshire defaulted to the federal standards, there would be protections under state law if employees were not paid the amount they were owed.

Mary MacDonald

- Ms. MacDonald said she has been in the hospitality industry for 25 years, and she provided personal stories of how the tip pooling process was problematic.
- When she worked for the Bank of NH Pavilion, the Department would examine their hiring practices and policies on tipping. She said their policy on tipping was not coercive, and they never received complaints about it.
- In 2021, they were fined thousands of dollars by the Department for their practices. They are now required to meet as a team, agree whether to pool, fill out a form, and provide it to payroll.
- At the end of the night, management would calculate how much each team made because it is required under law that employees know the amount before leaving. When they received their checks, it would be different because some employees would notify the employer afterwards that they did not want to pool.
- Ms. MacDonald said morale has decreased and some seasonal employees have left venues because it has become cutthroat.

Summary of testimony presented in opposition:

Reverend Dr. Gail Kinney, Economic Justice Ministry, New Hampshire Conference United Church of Christ

- Over the years, changes to the law have been made, specifically in 2007, 2012, 2017, and 2023.
- Reverend Kinney said state law provided additional protections to workers within this industry.
- While the federal government can set standards, states can enhance them. When protections are added, Reverend Kinney said an employer must comply with the standard that is most protective of employees.
- Reverend Kinney said past members of the Legislature had determined that it was important to add additional protections for employees.
- When individuals tip an employee, Reverend Kinney said they believed it was going to them instead of being spread to others. Currently, tips shall be retained by an employee unless they voluntarily agree to participate in tip pooling.
- Reverend Kinney asked the Committee to not take away rights from workers without hearing from them.

Tina Kelley

- Ms. Kelley said she had difficulties finding 531.42 under the Fair Labor Standards Act. She said changes should be straightforward to allow the average individual working in the industry to find and understand them.
- Ms. Kelley said the tips she earned were based on her skills and the amount of care she showed her customers. She said it was not fair to give her employer control over her tips, and it would place every waiter and waitress at a

disadvantage in the workplace. Managers and supervisors already provide preferential treatment to family members and friends.

- Most full-time workers in the industry tend to earn between \$34,000 and \$42,000.
- If an employer chooses to pay an employee \$7.25 an hour, they may impose a tip pooling arrangement that includes dishwashers and cooks. This would only happen if tipped employees were paid the minimum wage and employers did not take a tip credit. Ms. Kelley said this was unfair because it gave employers the ability to use waitstaff to balance salaries.
- **Senator Innis** asked where a tip would go if he picked up takeout. He asked if it would go to the individual at the wait stand, or the individual who provided the actual service.
 - **Ms. Kelley** said it would be the individual who took the order.
- **Senator Murphy** asked how many individuals worked with her on a Saturday evening.
 - **Ms. Kelley** said she worked at Gunstock on Saturday and Sunday. On a typical shift, there are 4 waitstaff, 2 bartenders, and an occasional busser.
- **Senator Murphy** asked what if an employer hired an individual to wait tables, but they said they would not tip the bartender.
 - **Ms. Kelley** said that does happen, but employers do not necessarily have to schedule that individual to work.
- **Senator Murphy** said that was coercion under the law, and it was technically illegal, which is what the bill was trying to address.
 - **Ms. Kelley** said perhaps this was a good definition of coercion, but it is done already.
- **Senator McGough** said with the Superbowl coming up, pizza places will be busy. He asked if the individual cashing the customer out should get the tip, or if the individual working out back should receive a piece as well.
 - **Ms. Kelley** believed it should be the front-of-house. She said wages for cooks have gone up, and she has seen \$18 to \$20 dollars for general cooks.
- **Senator McGough** asked if the prep workers should not get a piece because they have higher wages, and the people in the front who are answering the phones should keep it all.
 - **Ms. Kelley** said it was a difficult situation to figure out, and perhaps there was a way to put those situations into law. Pizza places, however, have a different dynamic than a restaurant with tables.

Neutral Information Presented:

John Garrigan, General Counsel, New Hampshire Department of Labor

- Based on their interpretation of the bill, Attorney Garrigan said tip pooling, tip sharing, and any issues arising under it would fall under the jurisdiction of the U.S. Department of Labor.

- The Department would still be able to make wage adjustments, and employees could still file wage claims for direct tips, which are not pooled or shared, if tips were not provided or paid correctly.
- Attorney Garrigan said there were discrepancies between state and federal law. The Department has worked hard to engage and educate employers, restaurants, and event spaces on these differences. However, he recognized that employers have had tremendous difficulty complying with both laws and the differences between them.
- **Senator Fenton** asked if this bill would defer to federal law now and forever.
 - **Attorney Garrigan** said until the law was changed, that was correct.
- **Senator Fenton** asked what if federal protections got weaker. He said New Hampshire would be bound by federal law until the Legislature could pass another piece of legislation.
 - **Attorney Garrigan** said the federal government and Congress would have the ability to change those laws without input from the New Hampshire Legislature.

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Date Hearing Report completed: February 9, 2026