S T A T E O F N E W Y O R K

6299--A

I N S E N A T E

January 24, 2012

Introduced by Sen. MARTINS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to requiring notice from employers to customers of service charges and administration fees that are not distributed to employees as gratuities

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 196-d of the labor law, as added by chapter 1007 of the laws of 1968, is amended to read as follows:

S 196-d. Gratuities. No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee. This provision shall not apply to the checking of hats, coats or other apparel. Nothing in this subdivision shall be construed as affecting the allowances from the minimum wage for gratuities in the amount determined in accordance with the provisions of article nineteen of this chapter nor as affecting practices in connection with banquets and other special functions where a fixed percentage of the patron's bill is added for gratuities which are distributed to employees, nor to the sharing of tips by a waiter with a busboy or similar employee. AN EMPLOYER THAT IMPOSES A MANDATORY SERVICE CHARGE, ADMINISTRATIVE FEE, OR ANY OTHER SIMILAR CHARGE WHICH IS NOT DISTRIBUTED TO EMPLOYEES AS GRATUITIES MUST PROVIDE WRITTEN NOTICE TO CUSTOMERS ON THE CHECK OR INVOICE THAT THE CHARGE IS NOT A GRATUITY AND WILL NOT BE DISTRIBUTED TO EMPLOYEES WHO PROVIDED SERVICE TO GUESTS, OR IF ONLY A PORTION OF THE CHARGE IS DISTRIBUTED AS GRATUITIES, THE PORTION DISTRIBUTED AS GRATUITIES MUST BE IDENTIFIED. THE STATEMENTS SHALL USE ORDINARY LANGUAGE READILY UNDERSTOOD AND SHALL APPEAR IN A TYPE SIZE SIMILAR TO SURROUNDING TEXT, BUT NO SMALLER THAN TWELVE POINT TYPE. NOTWITHSTANDING THE FOREGOING, PRIOR TO THE EFFECTIVE DATE OF THIS SENTENCE, ANY MANDATORY SERVICE OR ADMINISTRATIVE CHARGE, OR ANY MANDATORY FEE,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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IMPOSED BY AN EMPLOYER AS PART OF A BANQUET SERVING TWENTY OR MORE GUESTS SHALL NOT BE DEEMED A GRATUITY OR CHARGE PURPORTED TO BE A GRATUITY, AND SHALL NOT FORM THE BASIS OF ANY LIABILITY UNDER THIS SECTION, ANY OTHER PROVISION OF THIS CHAPTER OR ANY REGULATIONS IMPLEMENTED DESPITE THE ABSENCE OF SUCH DISCLOSURE OR AS A RESULT OF ANY REPRESENTATION MADE BY ANY EMPLOYER OR HIS AGENT UNLESS SUCH MANDATORY SERVICE OR ADMINISTRATIVE CHARGE, OR ANY MANDATORY FEE, WAS SPECIFICALLY REPRESENTED IN WRITING TO BE A GRATUITY PAID TO A FOOD SERVICE WORKER, AS DEFINED IN 12 N.Y.C.R.R. 146-3.4, BY THE EMPLOYER OR HIS AGENT. A BANQUET IS AN OCCASION WHERE FOOD OR BEVERAGE IS SERVED.

S 2. This act shall take effect on the thirtieth day after it shall have become a law.