

6299--B

Cal. No. 530

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

3 S 196-d. Gratuities. 1. AN EMPLOYER SHALL NOT BE PROHIBITED FROM
4 ADDING A MANDATORY GRATUITY AS LONG AS: (I) THE CHARGE IS CONSPICUOUSLY
5 DISCLOSED TO THE CUSTOMER BEFORE FOOD OR BEVERAGE IS ORDERED; AND (II)
6 NO EMPLOYER OR HIS AGENT OR AN OFFICER OR AGENT OF ANY CORPORATION,
7 SHALL RETAIN ANY PORTION OF SUCH GRATUITY. THE DISCLOSURE SHALL USE
8 ORDINARY LANGUAGE READILY UNDERSTOOD AND SHALL APPEAR IN A TYPE SIZE
9 SIMILAR TO SURROUNDING TEXT.

10 2. No employer or his agent or an officer or agent of any corporation,
11 or any other person shall demand or accept, directly or indirectly, any
12 part of the gratuities, received by an employee, or retain any part of a
13 gratuity or of any charge purported to be a gratuity for an employee.
14 This provision shall not apply to the checking of hats, coats or other
15 apparel. Nothing in this subdivision shall be construed as affecting the
16 allowances from the minimum wage for gratuities in the amount determined
17 in accordance with the provisions of article nineteen of this chapter
18 nor as affecting practices in connection with banquets and other special
19 functions where a fixed percentage of the patron's bill is added for
20 gratuities which are distributed to employees, nor to the sharing of
21 tips by a waiter with a busboy or similar employee. AN EMPLOYER THAT
22 IMPOSES A MANDATORY SERVICE CHARGE, ADMINISTRATIVE FEE, OR ANY OTHER
23 SIMILAR CHARGE WHICH IS NOT DISTRIBUTED TO EMPLOYEES AS GRATUITIES MUST

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

LBD14113-06-2

1 PROVIDE WRITTEN NOTICE TO CUSTOMERS IN THE CONTRACT OR AGREEMENT FOR
2 SERVICES AND ON THE CHECK OR INVOICE THAT THE CHARGE IS NOT A GRATUITY
3 AND WILL NOT BE DISTRIBUTED TO EMPLOYEES WHO PROVIDED SERVICE TO GUESTS,
4 OR IF ONLY A PORTION OF THE CHARGE IS DISTRIBUTED AS GRATUITIES, THE
5 PORTION DISTRIBUTED AS GRATUITIES MUST BE IDENTIFIED. THE WRITTEN
6 NOTICE TO CUSTOMERS IN THE CONTRACT OR AGREEMENT FOR SERVICES SHALL
7 APPEAR IN A TYPE SIZE NO SMALLER THAN TWELVE POINT TYPE. THE STATEMENTS
8 IN THE CHECK OR INVOICE SHALL USE ORDINARY LANGUAGE READILY UNDERSTOOD
9 AND SHALL APPEAR IN A TYPE SIZE SIMILAR TO SURROUNDING TEXT. NOTWITH-
10 STANDING THE FOREGOING, PRIOR TO THE EFFECTIVE DATE OF A CHAPTER OF THE
11 LAWS OF TWO THOUSAND TWELVE THAT AMENDED THIS SECTION, ANY MANDATORY
12 SERVICE OR ADMINISTRATIVE CHARGE, OR ANY MANDATORY FEE, IMPOSED BY AN
13 EMPLOYER AS PART OF A BANQUET SERVING TWENTY OR MORE GUESTS SHALL NOT BE
14 DEEMED A GRATUITY OR CHARGE PURPORTED TO BE A GRATUITY, AND SHALL NOT
15 FORM THE BASIS OF ANY LIABILITY UNDER THIS SECTION, ANY OTHER PROVISION
16 OF THIS CHAPTER OR ANY REGULATIONS IMPLEMENTED PURSUANT TO THIS CHAPTER
17 DESPITE THE ABSENCE OF SUCH DISCLOSURE OR AS A RESULT OF ANY REPRESENTATION
18 MADE BY ANY EMPLOYER OR HIS AGENT UNLESS SUCH MANDATORY SERVICE
19 OR ADMINISTRATIVE CHARGE, OR ANY MANDATORY FEE, WAS SPECIFICALLY REPRESENTED
20 IN WRITING TO BE A GRATUITY PAID TO A FOOD SERVICE WORKER, AS
21 DEFINED IN 12 N.Y.C.R.R. 146-3.4, BY THE EMPLOYER OR HIS AGENT.
22 S 2. This act shall take effect on the thirtieth day after it shall
23 have become a law.