

2179--E

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

---

Introduced by M. of A. GOLDFEDER, MONTESANO, WEPRIN, COOK, CLARK, RYAN, TITUS, AUBRY, SCARBOROUGH, LAVINE, BRAUNSTEIN, CUSICK, MILLER, SCHIMEL, WEISENBERG, BROOK-KRASNY, DenDEKKER, SIMANOWITZ, BRINDISI, SIMONTAS, CYMBROWITZ, THIELE, BENEDETTO, KIM, MORELLE, SALADINO, RAIA -- Multi-Sponsored by -- M. of A. McDONALD, RA, SANTABARBARA -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- 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:

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: (A) THE CHARGE IS CONSPICUOUSLY  
5 DISCLOSED TO THE CUSTOMER BEFORE FOOD OR BEVERAGE IS ORDERED; AND (B) NO  
6 EMPLOYER OR HIS AGENT OR AN OFFICER OR AGENT OF ANY CORPORATION, SHALL  
7 RETAIN ANY PORTION OF SUCH GRATUITY. THE DISCLOSURE SHALL USE ORDINARY  
8 LANGUAGE READILY UNDERSTOOD AND SHALL APPEAR IN A TYPE SIZE SIMILAR TO  
9 SURROUNDING TEXT.

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

LBD00028-13-4

1 2. No employer or his agent or an officer or agent of any corporation,  
2 or any other person shall demand or accept, directly or indirectly, any  
3 part of the gratuities, received by an employee, or retain any part of a  
4 gratuity or of any charge purported to be a gratuity for an employee.  
5 This provision shall not apply to the checking of hats, coats or other  
6 apparel. Nothing in this subdivision shall be construed as affecting the  
7 allowances from the minimum wage for gratuities in the amount determined  
8 in accordance with the provisions of article nineteen of this chapter  
9 nor as affecting practices in connection with banquets and other special  
10 functions where a fixed percentage of the patron's bill is added for  
11 gratuities which are distributed to employees, nor to the sharing of  
12 tips by a waiter with a busboy or similar employee. AN EMPLOYER THAT  
13 IMPOSES A MANDATORY SERVICE CHARGE, ADMINISTRATIVE FEE, OR ANY OTHER  
14 SIMILAR CHARGE WHICH IS NOT DISTRIBUTED TO EMPLOYEES AS GRATUITIES MUST  
15 PROVIDE WRITTEN NOTICE TO CUSTOMERS IN THE CONTRACT OR AGREEMENT FOR  
16 SERVICES AND ON THE CHECK OR INVOICE THAT THE CHARGE IS NOT A GRATUITY  
17 AND WILL NOT BE DISTRIBUTED TO EMPLOYEES WHO PROVIDED SERVICE TO GUESTS,  
18 OR IF ONLY A PORTION OF THE CHARGE IS DISTRIBUTED AS GRATUITIES, THE  
19 PORTION DISTRIBUTED AS GRATUITIES MUST BE IDENTIFIED. THE WRITTEN  
20 NOTICE TO CUSTOMERS IN THE CONTRACT OR AGREEMENT FOR SERVICES SHALL  
21 APPEAR IN A TYPE SIZE NO SMALLER THAN TWELVE POINT TYPE. THE STATEMENTS  
22 IN THE CHECK OR INVOICE SHALL USE ORDINARY LANGUAGE READILY UNDERSTOOD  
23 AND SHALL APPEAR IN A TYPE SIZE SIMILAR TO SURROUNDING TEXT.

24 3. NOTWITHSTANDING THE FOREGOING, THERE SHALL BE NO LIABILITY TO ANY  
25 ACTION ALLEGING THAT ANY SERVICE CHARGE, ADMINISTRATIVE FEE, OR ANY  
26 OTHER SIMILAR CHARGE IMPOSED AS PART OF A BANQUET HELD PRIOR TO JANUARY  
27 FIRST, TWO THOUSAND ELEVEN WAS A GRATUITY, IF THE EMPLOYER PROVES AS AN  
28 AFFIRMATIVE DEFENSE THAT ALL OF THE FOLLOWING CONDITIONS WERE MET: (A)  
29 THE EMPLOYER OR EMPLOYER'S AGENT DID NOT EXPRESSLY REPRESENT TO THE  
30 CUSTOMER THAT THE CHARGE WAS A GRATUITY; (B) THE EMPLOYER CHARGED SALES  
31 TAX IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF THE TAX LAW ON THE  
32 CHARGE; (C) THE EMPLOYER INCLUDED THE CHARGE AS PART OF ITS GROSS  
33 RECEIPTS, UPON WHICH INCOME TAX WAS CALCULATED; AND (D) THE EMPLOYER  
34 PAID FOOD SERVICE WORKERS WAGES SET FORTH IN SECTION SIX HUNDRED FIFTY-  
35 TWO OF THIS CHAPTER.

36 S 2. This act shall take effect immediately.