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

3109--A

2013-2014 Regular Sessions

I N S E N A T E

January 30, 2013

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. 1. AN EMPLOYER SHALL NOT BE PROHIBITED FROM ADDING A MANDATORY GRATUITY AS LONG AS: (A) THE CHARGE IS CONSPICUOUSLY DISCLOSED TO THE CUSTOMER BEFORE FOOD OR BEVERAGE IS ORDERED; AND (B) NO EMPLOYER OR HIS AGENT OR AN OFFICER OR AGENT OF ANY CORPORATION, SHALL RETAIN ANY PORTION OF SUCH GRATUITY. THE DISCLOSURE SHALL USE ORDINARY LANGUAGE READILY UNDERSTOOD AND SHALL APPEAR IN A TYPE SIZE SIMILAR TO SURROUNDING TEXT.

2. 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

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

LBD00028-03-3

SIMILAR CHARGE WHICH IS NOT DISTRIBUTED TO EMPLOYEES AS GRATUITIES MUST PROVIDE WRITTEN NOTICE TO CUSTOMERS IN THE CONTRACT OR AGREEMENT FOR SERVICES AND 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 WRITTEN NOTICE TO CUSTOMERS IN THE CONTRACT OR AGREEMENT FOR SERVICES SHALL APPEAR IN A TYPE SIZE NO SMALLER THAN TWELVE POINT TYPE. THE STATEMENTS IN THE CHECK OR INVOICE SHALL USE ORDINARY LANGUAGE READILY UNDERSTOOD AND SHALL APPEAR IN A TYPE SIZE SIMILAR TO SURROUNDING TEXT.

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

S 2. This act shall take effect immediately.