

Legislation Details (With Text)

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On agenda: **Final action:** 11/17/2011

Title: Amending Chapter 9-600 of The Philadelphia Code, entitled "Service and Other Businesses," by adding a new Section regulating an employer's treatment of gratuities left by patrons for employees, including, but not limited to, a requirement that all gratuities be paid over to employees without deduction, including, in the case of a gratuity paid by credit card, any deduction for credit card processing fees; providing penalties for violations; and providing for a private right of action for employees aggrieved by violations of the Section; all under certain terms and conditions.

Sponsors: Councilmember Kenney

Indexes: GRATUITIES

Code sections: 9-600 - Service Businesses

Attachments: 1. CertifiedCopy11034101.pdf

Date	Ver.	Action By	Action	Result	Tally
11/29/2011	1	MAYOR	SIGNED		
11/17/2011	1	CITY COUNCIL	READ		
11/17/2011	1	CITY COUNCIL	PASSED	Pass	14:2
11/3/2011	1	CITY COUNCIL	ORDERED PLACED ON THIS DAY'S FIRST READING CALENDAR		
11/3/2011	1	CITY COUNCIL	SUSPEND THE RULES OF THE COUNCIL	Pass	
11/1/2011	0	Committee on Rules	HEARING NOTICES SENT		
11/1/2011	0	Committee on Rules	HEARING HELD		
11/1/2011	0	Committee on Rules	AMENDED		
11/1/2011	1	Committee on Rules	REPORTED FAVORABLY, RULE SUSPENSION REQUESTED		
5/5/2011	0	CITY COUNCIL	Introduced and Referred	Pass	

Amending Chapter 9-600 of The Philadelphia Code, entitled "Service and Other Businesses," by adding a new Section regulating an employer's treatment of gratuities left by patrons for employees, including, but not limited to, a requirement that all gratuities be paid over to employees without deduction, including, in the case of a gratuity paid by credit card, any deduction for credit card processing fees; providing penalties for violations; and providing for a private right of action for employees aggrieved by violations of the Section; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-600 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 9-600. SERVICE AND OTHER BUSINESSES.

* * *

§9-614. [Reserved.] *Payment of Gratuities to Employees.*

(1) *Definitions.*

(a) “*Gratuity.*” *Money paid or given to or left for an employee by a patron of a business over and above the amount due the business for services rendered to the patron or for goods, food, drink, or articles sold or served to the patron.*

(2) *Required and Prohibited Practices.*

(a) *Every gratuity shall be the sole property of the employee or employees to whom it was paid, given, or left for, and shall be paid over in full to such employee or employees. No employer may deduct any amount from wages due to an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due to the employee from the employer.*

(b) *An employer that permits patrons to pay gratuities by credit card shall pay employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deduction for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.*

(c) *Nothing in this Section shall prohibit an employer from adopting and enforcing a policy under which gratuities are pooled and distributed among all employees who directly provide service to patrons.*

(3) *Enforcement; Private Right of Action.*

(a) *The Mayor’s Office of Labor Standards, or such other office or agency as the Mayor shall designate, shall administer and enforce this Section, and is authorized to receive and investigate reports from any person who believes that a violation of this Section has occurred.*

(b) *With respect to each affected employee, the failure to make payment of gratuities by the time specified in subsection (2)(b) shall constitute a separate violation of this Section. Each subsequent failure to make timely payment to such employee shall constitute a separate violation. Violation of this Section shall be a Class III offense, subject to the fines set forth in Section 1-109.*

(c) *Any employee aggrieved by an employer’s violation of this Section shall have a right of action*

against such employer, and may recover for each such violation:

- (i) Actual damages;*
- (ii) Exemplary damages of \$2,000;*
- (iii) Reasonable attorney's fees and court costs;*
- (iv) Such other relief, including injunctive relief, as the court may deem appropriate.*

(d) Nothing in this subsection shall limit the right of an aggrieved employee to recover damages under any other applicable law or legal theory, nor shall it limit the right of the City to seek fines or other remedies for violations of this Section, except that any fine imposed by the City for a violation of this Section shall be reduced by the amount of exemplary damages, if any, finally awarded pursuant to subsection (3)(c)(ii) for the same violation.

SECTION 2. This ordinance shall become effective 15 days after enactment.

Explanation:

[Brackets] indicate matter deleted.

Italics indicate new matter added.