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NOTICE OF INCLUDED GRATUITY OR SERVICE CHARGE

House Bill 5056 (Substitute H-4) First Analysis (2-24-98)

Sponsor: Rep. Raymond Basham
First Committee: Health Policy
Second Committee: Consumer Protection

THE APPARENT PROBLEM:

Leaving a tip for food service staff is an expected part of dining out for most people. Since tipped employees may be paid less than the minimum wage rate, many people willingly leave a tip for the server and other staff equaling between 15 and 20 percent of the cost of the meal. In fact, because tipping is so commonplace the increasing practice of food service establishments to automatically include a gratuity or fee for service in a customer's bill has gone relatively unnoticed. Unfortunately, this practice has led to two problems. First, not all restaurants and other food service establishments are equally diligent about making certain that the customer is informed of the fact that an automatic gratuity has been included in his or her bill, and secondly, not all food service establishments pass all or even some of the alleged gratuity on to the staff, even though most patrons probably assume that all of the gratuity would go to the staff.

An example of the type of abuse of the gratuity or service charge was described as follows: An establishment was contracted with to provide food and drinks for a wedding reception. The bill included an 18 percent gratuity that amounted to \$1,683.90. Since nine servers worked for four hours each during the reception, that should have meant that each server would receive approximately \$187 from the gratuity. Instead, the caterer paid each of the servers \$40 and kept the remaining \$1,323.90 for itself.

In light of this practice of including automatic gratuities and the problems that have arisen, legislation has been introduced to require that restaurants and other food service establishments notify their customers of the amount of any automatic service charge or gratuity that they are being charged and how much of that amount will be retained by the establishment rather than be given to the staff.

House Bill 5056 would amend the Public Health Code to require that notice of the amount of any compulsory gratuity or service charge be placed on a customer's bill. Specifically, a food service establishment that charged a compulsory gratuity or service charge, or both, would have to include, at least, a notice indicating the amount charged, either as a fixed amount or as a percentage of the customer's bill. The notice would have to be printed in a size and format that was conspicuous and easily readable. If the establishment imposed a service charge where only a portion of the money would be distributed to the staff, the establishment would also have to include the percentage of the service charge that was retained by the establishment in the notice.

Failure to provide the required notice would subject the establishment to licensure sanctions, injunction, and criminal penalty (misdemeanor) as allowed under the code.

A compulsory gratuity would be money required in addition to the price of a meal, drinks or other products that was given to the staff in recognition for service provided to a customer or group of customers. A service charge would be a charge that was imposed by a food service establishment and was not related to a specific service or product.

MCL 333.12917

FISCAL IMPLICATIONS:

Fiscal information is not available.

THE CONTENT OF THE BILL:

ARGUMENTS:**For:**

As increasing numbers of restaurants and other food service establishments, such as caterers, automatically include fees for service or gratuities in their bills, it seems reasonable to require those establishments to be up-front, not only about the amount being charged, but also about how the money that is collected will be distributed. Some food service establishments include an automatic additional charge described as a gratuity or service charge but do not pay any (or pay only a portion) of the money to the staff. This is deceiving to the patrons, who rightfully assume that any add-on in the bill described as a gratuity or service charge is analogous to the tip for service they might normally leave and do not leave more money as a tip. The deception is also unfair to the staff, who are denied payment that the customer actually intended for them and as a result they are less able to fill the gap between their wages and the minimum wage.

The bill does not prohibit the practice of collecting gratuities or service charges; a restaurant or caterer could continue to include such charges in its bills and distribute them in whatever fashion it deems fit. However, under the bill, the establishment would at least be required to be open and honest with its customers about how much is being added and who will get the money.

Adding on or collecting gratuities or service charges automatically, in and of itself, is inoffensive. However, most patrons assume that when such a charge is included in the bill, a tip for the staff is unnecessary. Unfortunately, this is not always the case. This bill is needed to force some food service establishments to be honest about where money collected under the guise of a service charge or gratuity is going.

Against:

There is no need for a law to require businesses to tell people about how much is being charged or how those charges are distributed. A food service establishment that charges customers fees or for gratuities without informing them will not last long, nor will too many people want to work as a server for an establishment that doesn't allow them to make or keep any tip money, unless the business pays them wages that make up for the loss of tip income.

The bill raises a number of questions. What about private clubs where the members are already aware of how much of a gratuity is included? Why should they have to provide such information to their membership when the members are undoubtedly aware of and probably voted on the amount that would be collected?

What about the potential cost of printing new receipts that would include the required information? Without printed forms, an establishment could find itself responsible for a violation where a staff person forgot to write the information on the bill. To be safe an establishment would have to print up new forms that included the required information. Unless an effective date were included in the bill allowing enough lead time for establishments to use up their current supply of receipts and order new ones meeting the bill's requirements, the bill would cause a significant amount of wasteful expense for business that made a serious effort to comply.

How would the bill's provisions be enforced? Wouldn't the provisions be better placed in the Consumer Protection Act? That is where a reasonable person would expect to look for a law like this.

Response:

The enforcement of the bill would be done by the local health department or the prosecuting attorney or the attorney general. For example, the licensure sanctions would be enforced by the health department; the bill's provisions would be enforced in the same way the laws requiring smoke free areas are enforced. The bill's provisions would simply be another requirement that an establishment would have to meet to maintain its license. The criminal and injunction penalties would be enforced by the attorney general or the local prosecuting attorney.

POSITIONS:

The Michigan Consumer Federation supports the bill. (2-18-98)

The Hotel Employees and Restaurant Employees Union - Local 24 supports the bill. (2-18-98)

The Michigan State AFL-CIO supports the bill. (2-18-98)

The Michigan Restaurant Association has no position on the bill. (2-18-98)

The National Federation of Independent Business opposes the bill. (2-18-98)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.