

## MINUTES

### MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By SENATOR TOM KEATING, on March 16, 1995, at  
at 3:00 p.m.

#### ROLL CALL

##### Members Present:

Sen. Thomas F. Keating, Chairman (R)  
Sen. Gary C. Aklestad, Vice Chairman (R)  
Sen. Steve Benedict (R)  
Sen. Larry L. Baer (R)  
Sen. James H. "Jim" Burnett (R)  
Sen. C.A. Casey Emerson (R)  
Sen. Sue Bartlett (D)  
Sen. Fred R. Van Valkenburg (D)  
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Eddye McClure, Legislative Council  
Mary Florence Erving, Committee Secretary

Please Note: These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

##### Committee Business Summary:

Hearing: None.  
Executive Action: HB 272

#### EXECUTIVE ACTION ON HB 272

##### Discussion:

CHAIRMAN TOM KEATING stated he received a letter from the Billings Petroleum Club, explaining the club had a 15 % service charge added automatically to every dinner and banquet meal. The 15% service charge is divided between the help and no money is retained by management. CHAIRMAN KEATING stated he does not have information concerning the Montana Club, Helena, MT.

SENATOR EMERSON asked about the testimony of Ms. Sullivan, one of the ladies who testified March 11, 1995. She had worked at the Billings Petroleum Club, but had not received any tips or gratuity. CHAIRMAN KEATING explained Ms. Sullivan received tips, according to the testimony, but only received 5% of the total

15%. The tip income had been reduced to 5%, or one third of the total 15%. The suspicion was that management was keeping the other 10%. Certainly, Representative Mill was upset. **CHAIRMAN KEATING** stated he did not request the letter from the Petroleum Club, but the Petroleum Club's management was quick to reply that they were not retaining money for administrative purposes. All monies went to the employees. The club divided the total amount between the bus people, the cooks, and the other staff. The letter did not specify whether or not supervisors were included.

**SENATOR BENEDICT** asked **CHAIRMAN KEATING** if he would give the committee an update about what work was accomplished at the meeting. **CHAIRMAN KEATING** stated **Stuart Doggett, Melissa Case, John Andrews, Eddy McClure, and Representative Stovall** met in **CHAIRMAN KEATING's** office. The scope of the discussion dealt with notification concerns, and the Delaware legislation was discussed. John Andrews, Department of Labor, stated he requested a Department of Labor staff person to research the Delaware Law (**EXHIBIT 1**). The staff person contacted state employees in Delaware and inquired how the law was working, what have the employers and employees thought about of the law. The response was the law has been on the books for approximately 4 or 5 years, and there have been no real problems. In part, the problemless situation occurred because Delaware is such a small state. The population was informed about the law almost immediately. Employers were concerned about the cost of posting notices. Employers and employees thought the law has been workable. The state of Delaware did not adopt administrative rules to deal with the legislation because the law was clearly written. No rules were necessary, and the legislation has functioned with only one problem. The particular claim was handled by a telephone call.

**CHAIRMAN KEATING** asked the people attending the meeting to produce a workable amendment. The sponsor suggested that a compromise amendment would be wise, although no compromise was actually reached at the meeting. Nonetheless, the Restaurant Association submitted an amendment. The amendment embraces the theme of the Delaware language. The Department of Labor made other contributions, as well (**EXHIBIT 2**).

**Motion:**

**SENATOR STEVE BENEDICT** moved to adopt the Keating amendments to HB 272.

**Discussion:**

**SENATOR EMERSON** asked if the Keating amendment was in sync with the Delaware legislation. **CHAIRMAN KEATING** stated the amendment is similar to one section of the Delaware law. That section requires the customer be notified in print, large enough to be conspicuous. If management does not want to fool with the service charge, they can put the service charge on. If they do

not notify the customers, then the service charge goes to the servers, no one else. When management wants the service charge and wants to declare how the service charge is being distributed, or that part of the service charge is going to the management, the management will have to declare. However, if the customer knows that it is not a tip or gratuity, management can distribute the 15% in whatever manner they wish. **SENATOR AKLESTAD** asked if the service charge went directly to the server. Would it be possible to make sure some of the tip went to other workers.

**SENATOR AKLESTAD** stated he did not want the legislature to become involved in managing restaurants, but, he wanted to correct the problem that just the servers get the tips and the other banquet people get nothing. **SENATOR BENEDICT** explained, as he interpreted the amendment, the term "preparing" is not just about the cook, but could be everyone who works the banquet. **John Andrews** questioned the interpretation. In a banquet setting, depending how the banquet was set up, buffet style or otherwise, the cook could be in the buffet line helping the guests select the entrees. Would they meet the criteria of being a server? Arguably, they would meet the criteria. There are the people who haul the food back and forth from the kitchen. These people would meet the criteria. **Mr. Andrews** said he does not know how to come up with "everything" to include every category of employee, management and non-management. If there is a tip pool agreement in place, those people who would normally be involved in the tip pool agreement, would share in the distribution.

**Ms.. McClure** asked **Mr. Andrews** about the word, "prepare". Does the word mean the person preparing the food or can it mean the set up people, as well. **Mr. Andrew** explained there is a real possibility, if when the state enforces the law, the state would ask the business if they had some sort of current agreement in place. The state would ask who are the people who would normally be involved in the distribution of the tip pool/gratuity/service charge monies.

**SENATOR BAER** stated he has problems with the amendment language. He does not like the idea of excluding people who do a lot of the work at the banquets, like setting up, taking down and cleaning up afterwards. If there is not a tip pool agreement, then there is a chance all the gratuities will go just to the people who prepare and serve the food. **SENATOR BAER** asked for the committee to insert "heading up" after the word "employees". If that is an acceptable jargon phrase. (No action was taken on the proposed phrase.) **Mr. Andrews** remarked if the legislation goes through, the department will have to enforce the law. Could it be possible for the department staff to discuss the dynamics of the proposed legislation in order to come to such a consensus. There are many categories of worker's classifications involved. For the businesses that do not have a tip pool arrangement, it may be possible for the department to discuss the dynamics of the proposed legislation. In doing so, the department could identify what categories would be involved. So if there was not a firm tip pool agreement, the administrative rule could identify the

categories and split the money evenly. The procedure could help avoid any kind of "fight over money". (No decision was made on Mr. Andrews suggestion) Concerning language on the first paragraph, third line from the bottom, **SENATOR AKLESTAD** asked if it was possible to use new language after the word "employees". Insert "distributed proportionately in a prearranged agreement by the employees or is distributed pursuant to a tip pool agreement." (No action was taken on **SENATOR AKLESTAD'S** question.)

**SENATOR BENEDICT** stated he was worried about the very low paid employees, such as dishwashers, bus people, etc. The idea of adding tip money proportionate to salaries is an alternative method. If a cook is making \$8.00 an hour and receives "x" amount of tip, and the dishwasher is making \$4.25 an hour. The cook could conceivably end up making \$10.00 an hour and the dishwasher will end up making approximately \$4.75 an hour. The language considered is "other employees, other than management, involved in the service or preparation". The new phrase would be, "if the notice is not provided and the employer keeps all or any portion of the service charge, and the undistributed portion of the service charge is the property of the employees preparing or serving the food or beverage or other employees, other than management involved in the service or preparation is distributed pursuant to a tip pool...". **CHAIRMAN KEATING** stated after the word "beverage", the words, "other non-management" are added. **SENATOR AKLESTAD** asked if there has to be a tip pool agreement in place before the language would be satisfactory. **CHAIRMAN KEATING** stated no, the words "or is distributed to a tip pool agreement" should clarify **SENATOR AKLESTAD'S** question. **Mr. Andrews** suggested rather than "equally distributed", perhaps "distributed proportionate to the employees regular rate of compensation". In other words, if a cook makes \$6.00 an hour, then they would share proportionately with someone who is making \$5.00 an hour.

**SENATOR BAER** offered an alternative solution. After the language "service charge is the property of the employees" insert "other than management", strike "preparing or serving the food or beverage or is". Then, leave "distributed pursuant to a tip pool agreement". The alternative solution would imply that a tip pool agreement would have to be in place. All employees would have a chance to get involved and decide the equitable distribution of the gratuity. The people who would make the decision would not be management. The solution would solve another problem, which is management taking the lion's share of gratuity.

**SENATOR VAN VALKENBURG** asked **Melissa Case** to speak about the extent the tip pool agreement exist in the industry and how the amendment effects the current tip pool agreements. What is involved in getting businesses to reach a tip pool agreement. **Ms.. Case** replied she understands most businesses have tip pool agreements in place. They may or may not be equitable or just, but the agreements do exist. There are couple of problems with the amendments created by the members that met in **CHAIRMAN**

**KEATING's** office. **Ms. Case** stated she would not address the conceptual amendment discussed in today's hearing. The problem is the employers who have already negotiated a successful tip pool agreement with management. If the business decided the business would keep 5% of the tip pool, the employees would suffer because they would not comply to the current arrangements. All the information would have to be disclosed. The amendment will effect the collective bargaining agreements, already in place, by forcing employers to disclose information. Up to disclosure, the employers of these businesses have been the "good" employers. It is only in the cases when the employers have taken all of the tip pool that the employees have felt violated. The problem is disclosure, rather than going back to the original system. There is no punishment for people who distributed the tip pool successfully in the past. The fact is that tip pool agreements are negotiated in collective bargaining agreements. Other employers have successfully negotiated tip pools, regardless of the fact that is supposedly illegal. Management cannot negotiate tip pools, but when they can do it successfully, it has worth and everyone benefits. The amendment would punish those people. There is also a severe problem about equal distribution. In a lot of restaurants, cooks are paid substantially more than other employees, especially the dishwashers. Therefore, if the tip would be allocated proportionately, there would be a huge disparity between the cook, the waitresses/waiters, and the dishwasher. **Ms. Case** stated it is not an intention to exclude dishwashers or anyone else. If **SENATOR BAER's** language can be broadened so that management is excluded. It would negate the problems of managers taking all. **Ms. Case** asked the committee to broaden the language and to use the original bill. She would accept **SENATOR BAER'S** amendments.

**CHAIRMAN KEATING** stated, on page 2, line 2, the amendment language is similar to language offered in the original bill, regarding the funds being distributed, either directly to the employee preparing the food or beverage or pursuant to a tip pool agreement. So, if the bill passes, as is, the either or situation would still apply. **CHAIRMAN KEATING** stated he does not see anything wrong with the either/or situation, as long as the law doesn't try to distribute the percentage of distribution. If just "the service charge is the property of the non-management employees preparing or serving the food or beverage, or is distributed pursuant to a tip pool agreement" language is used, it is up to the personnel to divide the money. **SENATOR BENEDICT** asked who makes the decisions. **CHAIRMAN KEATING** replied the help makes the decisions; it is their money. **SENATOR BENEDICT** asked who are the senior members amongst the employees? They are probably the servers, and they are the ones who will decide who is going to keep the money. They will decide for themselves.

**SENATOR BURNETT** stated he received a different message from the people offering testimony. The problem is the 15% surcharge. It is a truth-in-advertising problem. If management does not say

the amount is a service charge, the price is the price of the meal. Then if management raises the wages, the employees do not get a tip. Management is going to have to do something or they will not have any servers or any employees. **CHAIRMAN KEATING** replied management may be forced to go to a flat price, without the service charge because the banquet business is so competitive. If one restaurant adds a service charge and says the meal is only a certain amount, plus a service charge, the same problem exists. The individual who tries to avoid the tip distribution problem and tries to pay the help the "right" amount and so on, is at a disadvantage in the market place because the price appears higher than other business. **SENATOR BURNETT** stated it is management's decision, which should not be legislated.

**CHAIRMAN KEATING** acknowledged he is concerned about the statement "if notice is not provided and the employer keeps all or any portion of the service charge, any undistributed portion of the service charge is the property of the employees. The language would be clearer if it was written in this way: "If notice is not provided, the service charge is the property of the non-management personnel, or is distributed pursuant to a tip pool agreement." That puts the leverage on the management. Management will then have to go one way or the other. If management is going to do a service charge, then they have to notify the customer that the service charge is the property of the management. It may or may not be a gratuity. If management decides they want to pay a higher hourly wage for banquet help and keep the service, the decisions is up to management. It means payroll taxes are higher. Whereas, if they left the tip, the payroll taxes would be lower. Payroll tax is paid on part of the tip, not on the full amount. The decision is still management's. If management does not make the decision as how to deal with the service charge, they can still charge a service charge, rather than going to a totally high fee. They can still do the service charge, and let it go to the employees.

**SENATOR BENEDICT** stated he fears that if he was in the restaurant business and was forced by the legislature, after the employees came to the legislature for relief, he would probably stop the service charge completely and try to get by as cheap as he possibly could to bring his cost down. He would forget about any tip or anything else. If the bill goes through, the scenario described is what will happen in a lot of cases. The help will be at \$4.25 and they will get no tips, period, unless someone wants to leave a tip.

**SENATOR KEATING** stated if management made it conspicuous to all of the banquet people on the banquet menu or on the banquet bill/contract that the 15% charge is not a gratuity, the banquet people would leave cash. Cash on the table, under Montana law, belongs to the employee. **SENATOR BENEDICT** stated he fears management will not jump any hoops. Management will tell the employees there is no more 15% gratuity. Management does not want any gratuity. Management is not going to put anything on the

menu or anything. Management will say there is not going to be a service charge on the bill, and people who decided to leave a little gratuity, which most people do not do, will. That is fine. Management will just pay the help. No tips, except for what may be left on the table. **SENATOR VAN VALKENBURG** stated the service will end up being so bad under those circumstances that they will have about one banquet. Nobody will want to come back. **SENATOR BENEDICT** stated there are a lot of people looking for a job.

**SENATOR SUE BARTLETT** stated a menu is not distributed at most of the banquets she has attended. The menu selection has already been made. The member of the organization attending the banquet is not going to know what arrangements were made, especially if a required notice is not available. **SENATOR BARTLETT** stated she would like to see the notice posted in the banquet room, so people would know, or know to ask, whether their service charge was distributed to the employees. If the service charge was not distributed, the guest/customers would have the option to leave a personal tip. **CHAIRMAN KEATING** stated most of the banquets he attends have some sort of a handout, usually it is the agenda, which gives the menu, the food courses, etc. The exception is a breakfast meeting, which usually does not have an agenda. At formal banquets there is some sort of notice at each place setting. If notices were legislated, the banquet menu would be the logical place for notification.

**SENATOR BARTLETT** asked if the organization usually prepare the brochure or does the restaurant or hotel, etc. prepare the menu. **CHAIRMAN KEATING** stated sometimes the facility prepares the program on their printers. **SENATOR BARTLETT** stated she would have no objections if the information was printed in this manner, but that is not the norm, not is the previously described brochure commonly thought of as the banquet menu.

**SENATOR AKLESTAD** stated he has concerns over **CHAIRMAN KEATING's** language "if notice is not provided, the service charge is the property of the non-management employees preparing or serving the food or beverage or is distributed pursuant to the tip pool agreement." **SENATOR BENEDICT** asked if the committee wanted to use the following language, "involved in service", rather than "the employees preparing or serving the food..." **CHAIRMAN KEATING** agreed to change the language to "non-management employees involved in preparing or serving the food or beverage..." **SENATOR BAER** stated the language puts the legislation back to where the legislation started. **SENATOR BENEDICT** commented that **SENATOR BAER** was not satisfied with the language, as it did not involve the ancillary people. **CHAIRMAN KEATING** proposed another interpretation of the language, "if notice is not provided, the service charge is the property of the non-management employees involved in providing banquet services or is distributed pursuant to a tip pool agreement."

**John Andrews** asked **Ms. McClure** for an interpretation of the phrase, "...may be distributed pursuant...". **Ms. McClure** stated the language should be "...must be distributed pursuant...". If management does not have a tip pool agreement, you do it the other way. If the business has a tip pool, then it must be distributed by the tip pool arrangement. **SENATOR BENEDICT** stated "must" sounds like management must set up a tip pool. **CHAIRMAN KEATING** stated the language read ", or". **SENATOR KEATING** further explained. If there is a tip pool agreement, it must be distributed pursuant to the tip pool agreement. **SENATOR KEATING** stated the amendment is now amended and the wordage goes to both paragraphs.

**SENATOR BARTLETT** stated if it bothers some people to have the notification posted in the room, it should at least be conspicuous. **SENATOR BARTLETT** offered the following language, "stated on the banquet menu or program and the final bill." **SENATOR VAN VALKENBURG** stated the important thing is that the notice is going to be seen by people who are eating the meal, and not just by the people who are paying the banquet bill. The notice has to be written/printed on the banquet menu, the program, and the final bill. **SENATOR BENEDICT** argued that now people are being dragged in who have nothing to do with the banquet. For instance, the Chamber of Commerce prepare their own programs and have no idea what belongs in the law. **CHAIRMAN KEATING** said the Chamber is the entity who entered into the contract. They are the ones that should notify their membership about what is happening to the service charge. Customer notification is the essence of the bill. **SENATOR BENEDICT** stated it is customer notification by the employee, not by everyone else. **SENATOR AKLESTAD** asked, if this was the case, would newspaper notification two weeks before the function also be necessary. **SENATOR BARTLETT** asked **SENATOR BENEDICT** if he would accept having the notices posted in the banquet room. **SENATOR BENEDICT** stated a table motion would be his preference. **CHAIRMAN KEATING** stated if HB 272 is amended and passed, then the bill goes back to the House. If the House members want to add the notification in the Conference Committee, if they want to add the more conspicuous room notice, the amendment could be taken care of at that time. It is important to move along with the bill, if there is still life.

**Motion:**

**SENATOR BARTLETT** moved to amend the Keating amendment to HB 272, to add "or program" after the word "menu".

**Motion:**

**SENATOR BENEDICT** offered a substitute motion to TABLE HB 272. The motion failed with **SENATOR BENEDICT** voting YES.

**CHAIRMAN KEATING** stated the committee is back to the original motion to add "or program". **SENATOR AKLESTAD** stated he did not



like the motion. **CHAIRMAN KEATING** stated the substitute motion to TABLE HB 272 was tabled; therefore the original motion is following the word "menu", add the words "or program".

Vote:

The motion to AMEND HB 272 by adding "or program" FAILED. A roll call vote was taken. SENATORS BAER, BENEDICT, BURNETT, EMERSON, AKLESTAD, AND KEATING voting NO.

Motion:

**CHAIRMAN KEATING** stated the original motion is ready to be voted on. The motion is: amend HB 272 with the original Keating amendment with "non-mangagement" and "involved in" language included.

Motion/Vote:

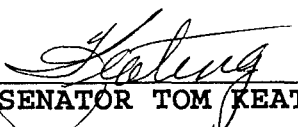
SENATOR AKLESTAD MOVED HB 272 be concurred in as amended. The motion carried with SENATORS BARTLETT, VAN VALKENBURG AND WILSON voting NO.

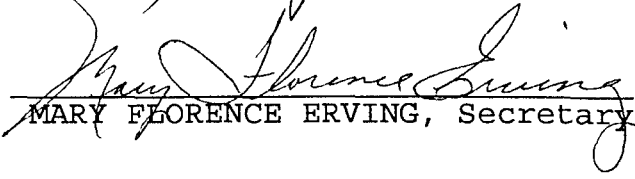
**CHAIRMAN KEATING** introduced Mr. Hunter, Department of Labor. Mr. Hunter stated he prepared comments on HB 68 for floor debate. Mr. Hunter stated he had special instructions to use large print so SENATOR EMERSON could read the information with ease. The committee is to be assured, the print will accommodate the request.

SENATOR BARTLETT asked if there is further business concerning the public contractor's problem. **CHAIRMAN KEATING** stated the problem has been resolved. The contractors went down the hall to the House Taxation Committee, and their request was well received.

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 4:10 p.m. .

  
\_\_\_\_\_  
SENATOR TOM KEATING, Chairman

  
\_\_\_\_\_  
MARY FLORENCE ERVING, Secretary

TK/mfe



SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 17, 1995

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration HB 272 (third reading copy -- blue), respectfully report that HB 272 be amended as follows and as so amended be concurred in.

Signed:   
Senator Thomas F. Keating, Chair

That such amendments read:

1. Title, line 7.

Following: "INDUSTRY;"

Insert: "REQUIRING AN EMPLOYER TO PROVIDE PROPER NOTICE TO A CUSTOMER REGARDING WHO RECEIVES SERVICE CHARGE;"

2. Title, line 8.

Strike: "IMMEDIATE EFFECTIVE"

Insert: "APPLICABILITY"

3. Page 2, lines 1 through 3.

Following: "bill" on line 1

Strike: remainder of line 1 through "agreement" on line 3

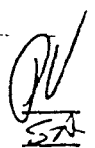
Insert: "and collected by the employer in lieu of a tip. If the employer keeps all or a portion of the service charge, the employer shall give the customer notice. The notice must be clearly and conspicuously stated on the banquet menu and final bill. A written agreement between the customer and the employer must indicate that all or a portion of the service charge is treated as the property of management instead of as a tip or gratuity. For purposes of this section, type that is at least 10-point type or larger on all notices is considered clear and conspicuous. If notice is not provided, the service charge is the property of the nonmanagement employees involved in providing banquet services or must be distributed pursuant to a tip pool agreement."

4. Page 3, lines 1 through 3

Following: "bill" on line 1.

Strike: remainder of line 1 through "agreement" on line 3

Insert: "and collected by the employer in lieu of a tip. If the employer keeps all or a portion of the service charge, the employer shall give the customer notice. The notice must be clearly and conspicuously stated on the banquet menu and final bill. A written agreement between the customer and the employer must indicate that all or a portion of the service

  
Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

HB 272

SENATE

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5. Page 7, line 16.

Following: "5."

Strike: "Effective date"

Insert: "Applicability"

Following: "act]"

Strike: remainder of line 16

Insert: "applies to contracts entered into on or after the [effective date of this act]."

-END-

Citation  
DE ST TI 19 s 902  
19 Del.C. s 902

Copr. (C) West 1995 No claim to orig. U.S. govt. works  
Rank (R) Page (P) Database Mode  
R 1 OF 1 P 1 OF 4 DE-ST TERM

DELAWARE CODE ANNOTATED  
TITLE 19. LABOR  
PART I General Provisions  
CHAPTER 9. MINIMUM WAGE

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Current through Second Sess. of the 137 Del. Gen. Assembly (1994) Ch. 469

s 902 Minimum wage rate.

(a) Every employer shall pay wages at the rate of not less than \$3.35 per hour to every employee in any occupation, except as may be otherwise provided under this chapter, until such time as the minimum wage is set by the United States government at an amount in excess of \$3.35 per hour. Upon the establishment of a federal minimum wage in excess of \$3.35, the minimum wage in this State shall be equal in amount to the federal minimum wage, except as may otherwise be provided under this chapter.

(b) Gratuities received by employees engaged in occupations in which gratuities customarily constitute part of the remuneration may be considered wages for purposes of this chapter in an amount equal to the tip credit percentage, as set by the federal government, of the minimum rate as set forth in subsection (a) of this section. In no event shall the minimum rate, under this subsection, be less than \$2.23 per hour.

(c) For purposes of this section:

(1) An employee engaged in an occupation in which gratuities customarily constitute part of the remuneration shall be any worker engaged in an occupation in which workers customarily and regularly receive more than \$30 per month in tips or gratuities.

(2) "Gratuities" means monetary contributions received directly or indirectly by an employee from a guest, patron or customer for services rendered where the customer is entirely free to determine whether to make any payment at all and, if so, the amount.

(3) A "primary direct service employee" is one who in a given situation performs the main direct service for a customer and is to be considered the recipient of the gratuity.

(4) A "SERVICE CHARGE" is an obligatory sum of money included in the statement of charges. Clear and conspicuous notice must be made on either the menu, placard, the front of the statement of charges or other notice given to the customer indicating that all or part of the SERVICE CHARGE is the property of the management. Such notice must be clearly printed, stamped or written in bold type. A SERVICE CHARGE assessed to customers, patrons or guests without such notice is the property of the primary direct service EMPLOYEE(S). For the purposes of this section, type which is at least 18 point (one-fourth inch) on the placard, or 10 point (one-eighth inch) or larger on all other notices shall be considered clear and conspicuous.

(d) (1) Any gratuity received by an employee, indicated on any receipt as a gratuity, or deposited in or about a place of business for direct services rendered by an employee is the sole property of the primary direct service employee and may not be taken or retained by the employer except as

required by state or federal law.

(2) Employees may establish a system for the sharing or pooling of gratuities among direct service employees, provided that the employer shall not in any fashion require or coerce employees to agree upon such a system. Where more than 1 direct service employee provides personal service to the same customer from whom gratuities are received, the employer may require that such employees establish a tip pooling or sharing system not to exceed 15% of the primary direct service employee's gratuities. The employer shall not, under any circumstances, receive any portion of the gratuities received by the employees.

(3) The Department may require the employer to pay restitution if the employer diverts any gratuities of its employees in the amount of the gratuities diverted. If the records maintained by the employer do not provide sufficient information to determine the exact amount of gratuities diverted, the Department may make a determination of gratuities diverted based on available evidence.

(19 Del. C. 1953, s 902; 55 Del. Laws, c. 18, s 1; 56 Del. Laws, c. 134, s 1; 56 Del. Laws, c. 339; 57 Del. Laws, c. 691; 59 Del. Laws, c. 470, s 1; 64 Del. Laws, c. 84, s 1; 65 Del. Laws, c. 436, s 1; 66 Del. Laws, c. 28, s 1; 67 Del. Laws, c. 141, ss 1, 3, 4.)

19 Del.C. s 902  
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Amendments to House Bill No. 272  
Third Reading CopyRequested by Senator Keating  
For the Senate Committee on Labor and Employment Relations

Prepared by Eddye McClure

March 16, 1995

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charge is treated as the property of management instead of  
as a tip or gratuity. For purposes of this section, type  
that is at least 10-point type or larger on all notices is  
considered clear and conspicuous. If notice is not  
provided, the service charge is the property of the  
nonmanagement employees involved in providing banquet  
services or must be distributed pursuant to a tip pool  
agreement."



5. Page 7, line 16.

Following: "5."

Strike: "Effective date"

Insert: "Applicability"

Following: "act]"

Strike: remainder of line 16

Insert: "applies to contracts entered into on or after the  
[effective date of this act]."