

SERVICE GRATUITY AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karen Mayne

House Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Service Industry Transparency Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires an employer to provide patrons with a written disclosure if the employer retains or collects any portion of a service charge or gratuity;
- ▶ requires an employer to provide each prospective employee with a written disclosure if the employer will retain or collect any portion of a service charge or gratuity;
- ▶ establishes enforcement procedures and penalties for violation of the provisions of this bill; and
- ▶ grants rulemaking authority to the Labor Commission.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

34-40a-101, Utah Code Annotated 1953



- 28 [34-40a-102](#), Utah Code Annotated 1953
- 29 [34-40a-201](#), Utah Code Annotated 1953
- 30 [34-40a-202](#), Utah Code Annotated 1953
- 31 [34-40a-203](#), Utah Code Annotated 1953
- 32 [34-40a-301](#), Utah Code Annotated 1953
- 33 [34-40a-302](#), Utah Code Annotated 1953
- 34 [34-40a-303](#), Utah Code Annotated 1953
- 35 [34-40a-304](#), Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section [34-40a-101](#) is enacted to read:

CHAPTER 40a. SERVICE INDUSTRY TRANSPARENCY ACT

Part 1. General Provisions

34-40a-101. Title.

(1) This chapter is known as the "Service Industry Transparency Act."

(2) This part is known as "General Provisions."

Section 2. Section [34-40a-102](#) is enacted to read:

34-40a-102. Definitions.

As used in this chapter:

(1) "Commission" means the Labor Commission created in Section [34A-1-103](#).

(2) "Employee" means a service employee or a service bartender in the service of an employer for compensation.

(3) "Employer" means a person who employs one or more service employees or service bartenders under a contract of hire, express or implied, oral or written.

(4) "Gratuity" means a sum of money that:

(a) a patron pays or gives to an employee;

(b) is given as an acknowledgment of service performed by an employee;

(c) is in addition to the actual amount due for services rendered or for food, drink, or other goods sold or served to the patron; and

(d) is voluntary.

(5) "Patron" means an individual who is served by a service employee at the service

59 employee's place of employment.

60 (6) "Service bartender" means an individual who prepares alcoholic or nonalcoholic
61 beverages for patrons to be served by another employee.

62 (7) "Service charge" means an amount charged by an employer to a patron that:

63 (a) is in addition to the charge for food, drink, or other goods; and

64 (b) a patron would reasonably expect to be given to an employee in lieu of, or in
65 addition to, a gratuity.

66 (8) "Service employee" means an individual, including a waitperson, bus person, and
67 counter staff, who:

68 (a) (i) serves beverages or prepared food to patrons;

69 (ii) clears tables; or

70 (iii) provides service directly to a patron;

71 (b) works in a place where prepared food or beverages are served;

72 (c) customarily receives gratuities; and

73 (d) has no managerial responsibility.

74 Section 3. Section **34-40a-201** is enacted to read:

75 **Part 2. Gratuity and Service Charge Disclosure Requirements**

76 **34-40a-201. Title.**

77 This part is known as "Gratuity and Service Charge Disclosure Requirements."

78 Section 4. Section **34-40a-202** is enacted to read:

79 **34-40a-202. Disclosure to patron.**

80 (1) If an employer retains any portion of a service charge or a gratuity or requires an
81 employee to remit to the employer any portion of a service charge or a gratuity, the employer
82 shall make a written disclosure to each patron that:

83 (a) states:

84 (i) that the employer will keep a portion of the service charge or the gratuity; and

85 (ii) the amount of the service charge or the gratuity, expressed either as a fixed dollar
86 amount or as a percentage, that will be paid to or retained by the employer; and

87 (b) is conspicuously displayed on each bill, each menu, or on a poster displayed in the
88 service area.

89 (2) Subsection (1) does not apply to an employer that retains or collects a portion of a

90 service charge or a gratuity if the entire amount retained or collected by the employer is
91 redistributed to employees as part of a pooling or sharing arrangement.

92 Section 5. Section **34-40a-203** is enacted to read:

93 **34-40a-203. Disclosure to employee.**

94 If an employer will retain any portion of a service charge or a gratuity or will require an
95 employee to remit to the employer any portion of a service charge or a gratuity, before the
96 employer hires a prospective employee, the employer shall:

97 (1) give the prospective employee a written disclosure that states:

98 (a) that the employer will keep a portion of each service charge or gratuity; and

99 (b) the amount of each service charge or gratuity, expressed either as a fixed dollar

100 amount or as a percentage, that will be paid to or retained by the employer;

101 (2) have the prospective employee sign the written disclosure described in Subsection

102 (1); and

103 (3) give the prospective employee a copy of the signed disclosure.

104 Section 6. Section **34-40a-301** is enacted to read:

105 **Part 3. Administration and Enforcement**

106 **34-40a-301. Title.**

107 This part is known as "Administration and Enforcement."

108 Section 7. Section **34-40a-302** is enacted to read:

109 **34-40a-302. Investigations -- Adjudications.**

110 (1) The commission may investigate an alleged violation of this chapter.

111 (2) (a) An individual aggrieved by an employer's violation of this chapter may file a
112 request for agency action with the commission.

113 (b) Upon receipt of a request for agency action under Subsection (2)(a), the
114 commission shall proceed in accordance with Title 63G, Chapter 4, Administrative Procedures
115 Act, to determine whether the alleged violation occurred.

116 Section 8. Section **34-40a-303** is enacted to read:

117 **34-40a-303. Penalty.**

118 (1) If, in a proceeding under Section [34-40a-302](#), the commission determines that an
119 employer violated a provision of this chapter, the commission shall comply with Subsections
120 (2) and (3), as applicable.

121 (2) (a) If the employer has not been found in violation of a provision of this chapter in
122 the one-year period immediately preceding the day on which the violation is found, the
123 commission shall issue an order requiring the employer to cease and desist any violation of this
124 chapter.

125 (b) Thirty days after the day on which the commission issues an order under Subsection
126 (2)(a), the commission shall follow up with the employer to ensure that the employer has
127 complied with the order.

128 (c) If, at the 30-day follow-up described in Subsection (2)(b), the employer is in
129 violation of this chapter, the employer is subject to a fine of \$50 per violation, not to exceed
130 \$500 per day, regardless of the number of violations.

131 (3) If the employer has been found in violation of a provision of this chapter at least
132 once in the one-year period immediately preceding the day on which a violation is found, the
133 employer is subject to a fine of \$50 per violation, not to exceed \$500 per day, regardless of the
134 number of violations.

135 Section 9. Section **34-40a-304** is enacted to read:

136 **34-40a-304. Rulemaking.**

137 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
138 consistent with this chapter, the commission may make rules governing:

- 139 (1) the process for filing a request for agency action with the commission; and
140 (2) procedures for enforcing the provisions of this chapter.

Legislative Review Note
as of 11-6-13 5:04 PM

Office of Legislative Research and General Counsel