STATE OF NEW YORK

363--A

Cal. No. 203

2025-2026 Regular Sessions

IN SENATE

(Prefiled)

January 8, 2025

Introduced by Sens. GIANARIS, SKOUFIS, BRISPORT, COMRIE, FERNANDEZ, GONZALEZ, GOUNARDES, HOYLMAN-SIGAL, JACKSON, KRUEGER, MAY, RAMOS, SEPULVEDA, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business law, in relation to clear and conspicuous pricing practices regarding mandatory junk fees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York junk fee prevention act".

§ 2. The general business law is amended by adding a new section 396-yy to read as follows:

§ 396-yy. Junk fee prevention. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) (i) "Mandatory fee" includes any fee or surcharge, additional to the price of a good or service, that:

(A) a consumer is required to pay to purchase or lease any good or service being advertised;

(B) is not reasonably avoidable to complete the purchase or lease of any good or service being advertised;

(C) a reasonable consumer would expect to be included with the purchase or lease of the good or service being advertised; or

(D) is added by default for the consumer, by the seller or automatically, and requires action by the consumer to remove it;

(ii) "Mandatory fee" shall not include:

(A) any tax, duty, fee or custom levied by any local, state, federal, or other governmental or quasi-governmental entity, as well as any

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

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assessment fee of a government-created special district, including business improvement districts and tourism improvement districts;

(B) any fee covering the cost of delivering goods, the amount of which is based upon the delivery method selected by the consumer, provided that such amount is disclosed to the consumer prior to collecting payment information;

(C) any nominal fee for the purpose of pre-authorizing a transaction that is immediately refunded or removed upon the charge of the full purchase amount; or

(D) any optional add-ons or add-on product or service as defined by 16 CFR part 463(a).

(b) "Total price" shall mean the full price of a good or service that a consumer must pay, including any and all mandatory fees associated with the transaction, but not including any exemptions to mandatory fees pursuant to subdivision one of this section, in order to complete the purchase or lease of a good or service.

2. (a) Any person, firm, partnership, association, corporation or any agent or employee who solicits or facilitates a purchase directly from a consumer, or lease of any good or service directly to a consumer, in the state, shall clearly and conspicuously:

(i) disclose to the consumer in every offer or advertisement for the purchase or lease of a good or service that includes pricing information, the total price of the good or service being offered or advertised, except where the total price of the good or service is to be derived from a variable fee and is indeterminable at the time of the offer or advertisement, disclose such variable fee along with any and all mandatory fees associated with the transaction; and

(ii) disclose to the consumer any tax, duty, custom, or fee amounts under subparagraph (ii) of paragraph (a) of subdivision one of this section, prior to accepting payment.

(b) Disclosures of the total price, fees, charges or any component of the total price shall not be false or misleading, and must by their font, size, contrast, location, the length of time they appear, and other characteristics, be presented prominently and stand out from any accompanying text or other visual elements so that they are easily noticed, read, and understood.

3. (a) For every violation of this section, an application may be made by the attorney general in a court of competent jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation. If it shall appear to the satisfaction of the court that the defendant is, in fact, in violation of this section, an injunction may be issued by such court, enjoining and restraining such action or violation, without requiring proof that any person has, in fact, been misled or deceived or otherwise damaged thereby.

(b) The attorney general, or any person adversely affected by a violation of this section, may bring an action against the person or entity in violation of this section to recover the greater of:

(i) actual damages;

(ii) up to five hundred dollars for each unintentional violation of this section; or

(iii) up to one thousand dollars for each intentional, knowing, or willful violation of this section.

(c) In an action brought pursuant to paragraph (b) of this subdivision, the court may award costs of the action together with reasonable attorneys' fees to a prevailing plaintiff.

(d) Any action taken under this section pleading a violation of this section shall be exempt from any pre-dispute arbitration clauses that may bind a consumer who is adversely affected by a violation of this section.

(e) Any agreement relating to the waiver of any provision within this section shall be deemed void.

(f) Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general or any other person authorized to bring an action under this section.

4. (a) A person, firm, partnership, association, or corporation that provides broadband internet access service on its own or as part of a bundle, as defined in section 8.1(b) of title 47 of the code of federal regulations, and is in compliance with the broadband consumer label requirements adopted by the federal communications commission in FCC 22-86 on November fourteenth, two thousand twenty-two, codified in section 8.1(a) of title 47 of the code of federal regulations, shall be deemed in compliance with this section. Provided, however, that if such federal broadband consumer label requirements are no longer applicable, a person, firm, partnership, association, or corporation providing broadband internet access service shall comply with the provisions of this section.

(b) A person, firm, partnership, association, or corporation providing cable service, as defined in section 522(6) of title 47 of the United States code, whether on a standalone basis or as part of a bundle, that complies with the truth in billing and advertising requirements adopted by the federal communications commission, as codified in section 76.310 of title 47 of the code of federal regulations, shall be deemed in compliance with this section. Provided, however, that if such truth in billing requirements are no longer applicable, a person, firm, partnership, association, or corporation providing cable service shall comply with the provisions of this section.

(c) A financial institution that is required to provide disclosures in compliance with any of the following federal or state acts or regulations with respect to a financial transaction is exempt from this section for purposes of such financial transaction:

(i) the federal truth in savings act;

(ii) the federal electronic fund transfer act;

(iii) section 19 of the federal reserve act;

(iv) the federal truth in lending act;

(v) the federal real estate settlement procedures act;

(vi) the federal home ownership and equity protection act; or

(vii) any regulation adopted pursuant to any of the federal acts in subparagraphs (i) through (vi) of this paragraph, inclusive.

For purposes of this paragraph, "financial institution" shall have the same meaning as defined in section eight hundred one of the financial services law.

(d) Compliance with the notice requirements of section five hundred eighteen of the general business law by a person, firm, partnership, association, or corporation imposing a surcharge on any sales transaction where a consumer elects to use a credit card in lieu of payment by cash, check, or similar means, shall be deemed compliance with this section.

(e) A food service establishment as defined in paragraph (b) of subdivision one of section three hundred ninety-one-v of this article shall be deemed compliant with this section if, in every offer or advertisement for the purchase or lease of a good or service that includes pric-

ing information, the total price of the good or service being offered or advertised includes a clear and conspicuous disclosure of the percentage of any automatic and mandatory gratuity to be charged.

(f) A person, firm, partnership, association, or corporation offering services for which the total price of the service cannot reasonably be known at the time of the offer due to factors that determine the total price that are beyond the control of such person or entity offering the service, including factors that are determined by consumer selections or preferences or that relate to distance or time, is compliant with this section if such person or entity offering the service clearly and conspicuously discloses:

(i) the factors that determine the total price;

(ii) any mandatory fees associated with the transaction; and

(iii) that the total price of the services may vary.

(g) It is not intended to be a violation of this section to advertise, display, or offer the current bid in an ongoing auction provided that the bid clearly and conspicuously discloses:

(i) all amounts that the buyer would be required to pay, other than those amounts listed under subparagraph (ii) of paragraph (a) of subdivision one of this section; and

(ii) that the total price of the goods or services may vary.

(h) It is not intended to be a violation of this section to advertise, display, or offer multiple total prices in one advertisement as long as each total price corresponds to one good or service in the advertisement.

(i) Offers or advertisements for short-term lodging, including temporary sleeping accommodations at a hotel, motel, inn, short-term rental, vacation rental, or other place of lodging that are in compliance with part 464 of chapter I of title 16 of the code of federal regulations shall be deemed in compliance with this section. Provided, however, that if such regulations are no longer applicable, a person, firm, partnership, association, or corporation offering short-term lodging shall comply with the provisions of this section.

5. (a) Entities subject to subdivision four of section 25.07 of the arts and cultural affairs law shall not be subject to the provisions of this section.

(b) The provisions of this section shall not apply to air transportation provided by air carriers, as those terms are used in section 41713 of title 49 of the United States code.

§ 3. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.