

# STATE OF NEW YORK

11158

## IN ASSEMBLY

December 4, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Fahy, McDonald, Woerner, Buttenschon, Barron, Gottfried, Galef, Jaffee, Mosley, Cusick, Englebright, Taylor) -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to third-party food delivery service charges

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

1 Section 1. The general business law is amended by adding a new section  
2 391-v to read as follows:

3 § 391-v. Third-party food delivery service charge. 1. For the purposes  
4 of this section, the following terms shall have the following meanings:

5 (a) "Delivery fee" means a fee charged by a third-party food delivery  
6 service for providing a food service establishment with a service that  
7 delivers food from such establishment to customers. The term does not  
8 include any other fee that may be charged by a third-party food delivery  
9 service to a food service establishment, such as fees for listing or  
10 advertising the food service establishment on the third-party food  
11 delivery service platform or fees related to processing the online  
12 order.

13 (b) "Food service establishment" means a place where food is provided  
14 for individual portion service directly to the consumer whether such  
15 food is provided free of charge or sold, and whether consumption occurs  
16 on or off the premises or is provided from a pushcart, stand or vehicle.

17 (c) "Online order" means any order placed by a customer through or  
18 with the assistance of a platform provided by a third-party food deliv-  
19 ery service, including a telephone order.

20 (d) "Purchase price" means the total price of the items contained in  
21 an online order that are listed on the menu of the food service estab-  
22 lishment where such order is placed. Such term does not include taxes,  
23 gratuities and any other fees that may make up the total cost to the  
24 customer of an online order.

25 (e) "Third-party food delivery service" means any website, mobile  
26 application or other internet service that offers or arranges for the

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

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1 sale of food and beverages prepared by, and the same-day delivery or  
2 same-day pickup of food and beverages from, no fewer than twenty food  
3 service establishments located in the city that are owned and operated  
4 by different persons.

5 2. (a) No third-party food delivery service shall charge a food  
6 service establishment a delivery fee that totals more than fifteen  
7 percent of the purchase price of each online order.

8 (b) It shall be unlawful for a third-party food delivery service to  
9 charge a food service establishment any fee or fees, other than a deliv-  
10 ery fee permitted under paragraph (a) of this subdivision, for the use  
11 of such third-party delivery service that is greater than five percent  
12 of the purchase price of each online order.

13 (c) Any fee or other charges from a third-party food delivery service  
14 to a food service establishment beyond such maximum five percent fee per  
15 order, and a delivery fee collected pursuant to paragraph (a) of this  
16 subdivision, are unlawful.

17 3. Whenever there shall be a violation of this section, an application  
18 may be made by the attorney general in the name of the people of the  
19 state of New York to a court or justice having jurisdiction to issue an  
20 injunction to enjoin and restrain the continuance of such violation; and  
21 if it shall appear to the satisfaction of the court or justice that the  
22 defendant has, in fact, violated this section, an injunction may be  
23 issued by such court or justice, enjoining and restraining any further  
24 violation, without requiring proof that any person has, in fact, been  
25 injured or damaged thereby. In any such proceeding, the court may make  
26 allowances to the attorney general and direct restitution of an amount  
27 not to exceed the amount of fees collected in violation of this section  
28 by a third-party food delivery service, attorneys' fees, and such other  
29 remedies as the court may deem appropriate. Whenever the court shall  
30 determine that a violation of this section has occurred, the court may  
31 impose a civil penalty of not more than one thousand dollars for each  
32 violation. Each day a violation of this section is continued and each  
33 food service establishment charged a fee in violation of this section  
34 shall constitute a separate violation. In connection with any such  
35 proposed application the attorney general is authorized to take proof  
36 and make a determination of the relevant facts and to issue subpoenas in  
37 accordance with the civil practice law and rules.

38 § 2. This act shall take effect immediately.