

STATE OF NEW YORK

9046

IN SENATE

October 13, 2020

Introduced by Sen. SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to third-party food delivery service charges during COVID-19; and providing for the repeal of such provisions upon the expiration thereof

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

1 Section 1. Legislative findings and intent. The legislature hereby
2 finds that on March 7, 2020, the governor of New York declared a state
3 of emergency related to the COVID-19 pandemic; and has issued various
4 emergency directives related to the COVID-19 pandemic that have
5 restricted the ability of restaurants and other food providers to fully
6 operate their businesses.

7 These social distancing measures required to mitigate the spread of
8 COVID-19 means that delivery and take-out options from restaurants and
9 other food establishments are critical to the public's accessibility of
10 food and addressing any community food insecurity.

11 Restaurants and other food establishments are restricted in their
12 ability to fully utilize their dine-in capabilities and the resultant
13 reliance on take-out and delivery service places a sudden and severe
14 financial strain on many establishments, particularly those that are
15 small, independently owned or minority-owned businesses that already
16 operate on thin margins. Adding to financial pressures in the industry
17 that predate the current public health crisis, it is in the public
18 interest to take action to maximize restaurant revenue from delivery and
19 pick-up orders to enable these businesses to survive the impacts of the
20 COVID-19 pandemic and continue supporting a diverse workforce and
21 contributing to the vitality of our community.

22 Therefore, it is the intent of the legislature to create a statewide
23 policy and fee structure for third-party food delivery services during
24 the state declared COVID-19 emergency while food service establishments
25 have capacity restrictions.

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

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

LBD17385-02-0

1 § 391-v. Third-party food delivery service charges during COVID-19. 1.
2 Definitions. For purposes of this section, the following terms shall
3 have the following meanings:

4 (a) "Declared emergency" means the period during which a state disas-
5 ter emergency has been declared by the governor that results in limita-
6 tions on on-premises dining for restaurants as a result of the COVID-19
7 pandemic.

8 (b) "Delivery fee" means a fee charged by a third-party food delivery
9 service for providing a food service establishment with a service that
10 delivers food from such establishment to customers. Delivery fee shall
11 not include any other fee that may be charged by a third-party food
12 delivery service to a food service establishment, including but not
13 limited to, fees for listing or advertising the food service establish-
14 ment on the third-party food delivery service platform or fees related
15 to processing the online order.

16 (c) "Food service establishment" means a place where food is prepared
17 and intended for individual portion service and includes the site at
18 which such individual portions are provided, whether consumption occurs
19 on or off the premises. Food service establishment shall not include
20 food processing establishments, retail food stores, private homes where
21 food is prepared or served for family consumption, and food service
22 operations where a distinct group mutually provides, prepares, serves
23 and consumes the food, including but not limited to, a covered-dish
24 supper limited to a congregation, club or fraternal organization.

25 (d) "Online order" means any order placed by a customer through, or
26 with the assistance of, a platform provided by a third-party food deliv-
27 ery service, including but not limited to, a telephone order.

28 (e) "Purchase price" means the total price of the items contained in
29 an online order that are listed on the menu of the food service estab-
30 lishment where such order is placed. Purchase price shall not include
31 taxes, gratuities and any other fees that may make up the total cost to
32 the customer of an online order.

33 (f) "Third-party food delivery service" means any website, mobile
34 application or other internet service that offers or arranges for the
35 sale and same-day delivery or same-day pickup of food and beverages
36 prepared by no fewer than twenty food service establishments located in
37 the state that are owned and operated by different persons.

38 2. Fee limits during declared emergencies. (a) No third-party food
39 delivery service shall charge a food service establishment any combina-
40 tion of fees, commissions or costs, including a delivery fee, for such
41 third-party food delivery service's services that total more than twenty
42 percent of the purchase price of an online order plus credit card proc-
43 essing fees.

44 (b) No third-party food delivery service shall charge a food service
45 establishment a delivery fee that totals more than fifteen percent of
46 the purchase price of an online order.

47 (c) No third-party food delivery service shall reduce the compen-
48 sation, including but not limited to, any tip or gratuity, paid to any
49 worker as a result of fees charged during the declared emergency.

50 3. Penalties and enforcement. Whenever there shall be a violation of
51 this section, an application may be made by the attorney general in the
52 name of the people of the state of New York to a court or justice having
53 jurisdiction to issue an injunction to enjoin and restrain the contin-
54 uance of such violation; and if it shall appear to the satisfaction of
55 the court or justice that the defendant has, in fact, violated this
56 section, an injunction may be issued by such court or justice, enjoining

1 and restraining any further violation, without requiring proof that any
2 person has, in fact, been injured or damaged thereby. In any such
3 proceeding, the court may make allowances to the attorney general and
4 direct restitution of an amount not to exceed the amount of fees
5 collected in violation of this section by a third-party food delivery
6 service, attorneys' fees, and such other remedies as the court may deem
7 appropriate. Whenever the court shall determine that a violation of this
8 section has occurred, the court may impose a civil penalty of not more
9 than one thousand dollars for each violation. Each day a violation of
10 this section is continued and each food service establishment charged a
11 fee in violation of this section shall constitute a separate violation.
12 In connection with any such proposed application the attorney general is
13 authorized to take proof and make a determination of the relevant facts
14 and to issue subpoenas in accordance with the civil practice law and
15 rules.

16 4. Preemption. At all times, whether or not a declared emergency is
17 in effect, the provisions of this section shall supersede and preempt
18 any county or municipal or other local law, ordinance, resolution, or
19 regulation concerning the relationship between a third-party food deliv-
20 ery service and any food service establishment utilizing its services.

21 § 3. This act shall take effect seven days after it shall have become
22 a law provided that the provisions of this act shall expire and be
23 deemed repealed upon the expiration of the declared state of emergency
24 relating to the novel coronavirus (COVID-19); and provided, further,
25 that the superintendent of financial services shall notify the legisla-
26 tive bill drafting commission upon occurrence of the expiration of the
27 state disaster emergency declared by executive order number 202 and any
28 further amendments or modifications, and as may be further extended
29 pursuant to section 28 of the executive law, in order that the commis-
30 sion may maintain an accurate and timely effective data base of the
31 official text of the laws of the state of New York in furtherance of
32 effectuating the provisions of section 44 of the legislative law and
33 section 70-b of the public officers law.