STATE OF NEW YORK

9046--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 certain provisions upon the expiration thereof

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

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

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

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

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

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

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

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

(a) "Declared emergency" means the period during which a state disaster emergency has been declared by the governor that results in limitations on on-premises dining for restaurants as a result of the COVID-19 pandemic.

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

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

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

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

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

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

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

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

3. Penalties and enforcement. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction to enjoin and restrain the continuance of such violation; and if it shall appear to the satisfaction of

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

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

§ 3. This act shall take effect seven days after it shall have become a law provided that section one of this act and subdivisions 1, 2 and 3 of section 391-v of the general business law as added by section two of this act shall expire and be deemed repealed upon the expiration of the declared state of emergency relating to the novel coronavirus (COVID-19); and provided, further, that the superintendent of financial services shall notify the legislative bill drafting commission upon occurrence of the expiration of the state disaster emergency declared by executive order number 202 and any further amendments or modifications, and as may be further extended pursuant to section 28 of the executive law, in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law.