

# STATE OF NEW YORK

1554--C

2021-2022 Regular Sessions

## IN SENATE

January 13, 2021

Introduced by Sens. KAVANAGH, BIAGGI, BORRELLO, BROUK, COONEY, HOYLMAN, JACKSON, KRUEGER, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- 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

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-z to read as follows:

3 § 391-z. 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.

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

LBD06555-12-2

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

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

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

15 (f) "Transaction fee" means a charge for the processing of a payment  
16 for an online order.

17 2. Notwithstanding any other law, rule or regulation:

18 (a) No third-party food delivery service shall charge a food service  
19 establishment a delivery fee that totals more than fifteen percent of  
20 the purchase price of each online order;

21 (b) It shall be unlawful for a third-party food delivery service to  
22 charge a food service establishment any fee or fees, other than a deliv-  
23 ery fee permitted under paragraph (a) of this subdivision, for the use  
24 of services provided by such third-party delivery service that is great-  
25 er than five percent of the purchase price of each online order,  
26 provided that such cap shall not apply to a transaction fee for use of  
27 their service. It shall further be unlawful for a third-party food  
28 delivery service to charge a food service establishment a transaction  
29 fee that totals more than three percent of the purchase price of each  
30 online order, provided however that a third-party food delivery service  
31 may charge a food service establishment a transaction fee of more than  
32 three percent of the purchase price of an online order if: (i) such  
33 transaction fee is charged to the food service establishment in the same  
34 amount as the charge imposed upon the third-party food delivery service  
35 for such online order, and (ii) such third-party food delivery service  
36 can provide proof of such charge imposed upon it to both the attorney  
37 general and the relevant food service establishment upon request.

38 (c) Any fee or other charges from a third-party food delivery service  
39 to a food service establishment beyond such maximum five percent fee per  
40 order and a transaction fee pursuant to paragraph (b) of this subdivi-  
41 sion, and a delivery fee collected pursuant to paragraph (a) of this  
42 subdivision, shall be unlawful; and

43 (d) No third-party food delivery service shall reduce the compen-  
44 sation, including but not limited to, any tip or gratuity, paid to any  
45 worker, as a result of compliance with the provisions of this section.

46 3. Whenever there shall be a violation of this section, an application  
47 may be made by the attorney general in the name of the people of the  
48 state of New York to a court or justice having jurisdiction to issue an  
49 injunction to enjoin and restrain the continuance of such violation; and  
50 if it shall appear to the satisfaction of the court or justice that the  
51 defendant has, in fact, violated this section, an injunction may be  
52 issued by such court or justice, enjoining and restraining any further  
53 violation, without requiring proof that any person has, in fact, been  
54 injured or damaged thereby. In any such proceeding, the court may make  
55 allowances to the attorney general and direct restitution of an amount  
56 not to exceed the amount of fees collected in violation of this section

1 by a third-party food delivery service, attorneys' fees, and such other  
2 remedies as the court may deem appropriate. Whenever the court shall  
3 determine that a violation of this section has occurred, the court may  
4 impose a civil penalty of not more than one thousand dollars for each  
5 violation. Each day a violation of this section is continued and each  
6 food service establishment charged a fee in violation of this section  
7 shall constitute a separate violation. In connection with any such  
8 proposed application the attorney general is authorized to take proof  
9 and make a determination of the relevant facts and to issue subpoenas in  
10 accordance with the civil practice law and rules.

11 4. This section shall not annul, alter, impair or affect the laws,  
12 ordinances, regulations or rules of local governments that have adopted  
13 or amended local laws, ordinances, regulations or rules not inconsistent  
14 with this section, including without limitation cities with a population  
15 of one million or more, while such local laws, ordinances, regulations  
16 or rules remain in effect.

17 § 2. This act shall take effect immediately.