

# STATE OF NEW YORK

2411

2021-2022 Regular Sessions

## IN ASSEMBLY

January 19, 2021

Introduced by M. of A. FAHY, WOERNER, BUTTENSCHON, BARRON, GOTTFRIED, GALEF, 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:

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

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

(a) "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. The term does not include any other fee that may be charged by a third-party food delivery service to a food service establishment, such as 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.

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

(c) "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 a telephone order.

(d) "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. Such term does not include taxes, gratuities and any other fees that may make up the total cost to the customer of an online order.

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

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

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

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

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

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

40 § 2. This act shall take effect immediately.