STATE OF NEW YORK

4127--B

2021-2022 Regular Sessions

IN ASSEMBLY

February 1, 2021

Introduced by M. of A. FAHY, McDONALD, BURDICK -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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; and providing for the repeal of such provisions upon expiration thereof

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 estab-

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

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lishment 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.

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

2. Notwithstanding any other law, rule or regulation:

(a) 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 each online order;

(b) It shall be unlawful for a third-party food delivery service to charge a food service establishment any fee or fees, other than a delivery fee permitted under paragraph (a) of this subdivision, for the use of services provided by such third-party delivery service that is greater than five percent of the purchase price of each online order, provided that such cap shall not apply to a payment processing fee that is charged to the third-party food delivery service and is charged in the same amount by the third-party food delivery service to such food service establishment;

(c) Any fee or other charges from a third-party food delivery service to a food service establishment beyond such maximum five percent fee per order and a payment processing fee pursuant to paragraph (b) of this subdivision, and a delivery fee collected pursuant to paragraph (a) of this subdivision, shall be unlawful. Nothing in this chapter shall prohibit an agreement between a food service establishment and a third-party food delivery service to obtain optional products or services, including, but not limited to, advertising, marketing, or access to customer subscription programs; and

(d) 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 compliance with the provisions of this section.

3. 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. This section shall supersede and preempt all rules, regulations, codes, statutes, or ordinances of all cities, counties, municipalities, and local agencies regarding third-party food delivery service fees until expiration of this section.

§ 2. This act shall take effect immediately, and shall expire and be deemed repealed ninety days after the end of the state disaster emergency declared pursuant to executive order number 202 and any further amendments or modifications, and as may be further extended pursuant to section 28 of the executive law; and provided, further, that the attorney general shall notify the legislative bill drafting commission upon the 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.