

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.

LBD06555-08-1

1 lishment where such order is placed. Such term does not include taxes,
2 gratuities and any other fees that may make up the total cost to the
3 customer of an online order.

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

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

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

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

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

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

35 3. Whenever there shall be a violation of this section, an application
36 may be made by the attorney general in the name of the people of the
37 state of New York to a court or justice having jurisdiction to issue an
38 injunction to enjoin and restrain the continuance of such violation; and
39 if it shall appear to the satisfaction of the court or justice that the
40 defendant has, in fact, violated this section, an injunction may be
41 issued by such court or justice, enjoining and restraining any further
42 violation, without requiring proof that any person has, in fact, been
43 injured or damaged thereby. In any such proceeding, the court may make
44 allowances to the attorney general and direct restitution of an amount
45 not to exceed the amount of fees collected in violation of this section
46 by a third-party food delivery service, attorneys' fees, and such other
47 remedies as the court may deem appropriate. Whenever the court shall
48 determine that a violation of this section has occurred, the court may
49 impose a civil penalty of not more than one thousand dollars for each
50 violation. Each day a violation of this section is continued and each
51 food service establishment charged a fee in violation of this section
52 shall constitute a separate violation. In connection with any such
53 proposed application the attorney general is authorized to take proof
54 and make a determination of the relevant facts and to issue subpoenas in
55 accordance with the civil practice law and rules.

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

5 § 2. This act shall take effect immediately, and shall expire and be
6 deemed repealed ninety days after the end of the state disaster emergen-
7 cy declared pursuant to executive order number 202 and any further
8 amendments or modifications, and as may be further extended pursuant to
9 section 28 of the executive law; and provided, further, that the attor-
10 ney general shall notify the legislative bill drafting commission upon
11 the occurrence of the expiration of the state disaster emergency
12 declared by executive order number 202 and any further amendments or
13 modifications, and as may be further extended pursuant to section 28 of
14 the executive law, in order that the commission may maintain an accurate
15 and timely effective data base of the official text of the laws of the
16 state of New York in furtherance of effectuating the provisions of
17 section 44 of the legislative law and section 70-b of the public offi-
18 cers law.