

# STATE OF NEW YORK

1554--B

2021-2022 Regular Sessions

## IN SENATE

January 13, 2021

Introduced by Sen. KAVANAGH -- 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

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:

1 Section 1. The general business law is amended by adding a new section  
2 391-v to read as follows:

3 § 391-v. 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.

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

20 (d) "Purchase price" means the total price of the items contained in  
21 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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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 credit card fee that is  
20 charged to the third-party food delivery service and is charged in the  
21 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 credit card fee pursuant to paragraph (b) of this subdivi-  
26 sion, and a delivery fee collected pursuant to paragraph (a) of this  
27 subdivision, shall be unlawful; and

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

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

52 § 2. This act shall take effect immediately, and shall expire and be  
53 deemed repealed ninety days after the end of the state disaster emergen-  
54 cy declared pursuant to executive order number 202 and any further  
55 amendments or modifications, and as may be further extended pursuant to  
56 section 28 of the executive law; and provided, further, that the attor-

1 ney general shall notify the legislative bill drafting commission upon  
2 the occurrence of the expiration of the state disaster emergency  
3 declared by executive order number 202 and any further amendments or  
4 modifications, and as may be further extended pursuant to section 28 of  
5 the executive law, in order that the commission may maintain an accurate  
6 and timely effective data base of the official text of the laws of the  
7 state of New York in furtherance of effectuating the provisions of  
8 section 44 of the legislative law and section 70-b of the public offi-  
9 cers law.