

STATE OF NEW YORK

4119

2023-2024 Regular Sessions

IN ASSEMBLY

February 9, 2023

Introduced by M. of A. FAHY, WOERNER, BUTTENSCHON, TAYLOR, LUPARDO --
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 Assem-
bly, do enact as follows:

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

3 § 391-w. 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-
22 lishment where such order is placed. Such term does not include taxes,
23 gratuities and any other fees that may make up the total cost to the
24 customer of an online order.

25 (e) "Third-party food delivery service" means any website, mobile
26 application or other internet service that offers or arranges for the
27 sale of food and beverages prepared by, and the same-day delivery or

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

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1 same-day pickup of food and beverages from, no fewer than twenty food
2 service establishments located in the state that are owned and operated
3 by different persons.

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

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

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

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

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

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

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

54 § 2. This act shall take effect immediately.