

# STATE OF NEW YORK

565

2023-2024 Regular Sessions

## IN SENATE

January 5, 2023

Introduced by Sens. KAVANAGH, BORRELLO, BROUK, COONEY, HOYLMAN, JACKSON, KRUEGER, PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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:

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

3 § 391-z. 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.

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 state that are owned and operated  
6 by different persons.

7 (f) "Transaction fee" means a charge for the processing of a payment  
8 for an online order.

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

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

13 (b) It shall be unlawful for a third-party food delivery service to  
14 charge a food service establishment any fee or fees, other than a deliv-  
15 ery fee permitted under paragraph (a) of this subdivision, for the use  
16 of services provided by such third-party delivery service that is great-  
17 er than five percent of the purchase price of each online order,  
18 provided that such cap shall not apply to a transaction fee for use of  
19 their service. It shall further be unlawful for a third-party food  
20 delivery service to charge a food service establishment a transaction  
21 fee that totals more than three percent of the purchase price of each  
22 online order, provided however that a third-party food delivery service  
23 may charge a food service establishment a transaction fee of more than  
24 three percent of the purchase price of an online order if: (i) such  
25 transaction fee is charged to the food service establishment in the same  
26 amount as the charge imposed upon the third-party food delivery service  
27 for such online order, and (ii) such third-party food delivery service  
28 can provide proof of such charge imposed upon it to both the attorney  
29 general and the relevant food service establishment upon request.

30 (c) Any fee or other charges from a third-party food delivery service  
31 to a food service establishment beyond such maximum five percent fee per  
32 order and a transaction fee pursuant to paragraph (b) of this subdivi-  
33 sion, and a delivery fee collected pursuant to paragraph (a) of this  
34 subdivision, shall be unlawful; and

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

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

1 and make a determination of the relevant facts and to issue subpoenas in  
2 accordance with the civil practice law and rules.

3 4. This section shall not annul, alter, impair or affect the laws,  
4 ordinances, regulations or rules of local governments that have adopted  
5 or amended local laws, ordinances, regulations or rules not inconsistent  
6 with this section, including without limitation cities with a population  
7 of one million or more, while such local laws, ordinances, regulations  
8 or rules remain in effect.

9 § 2. This act shall take effect immediately.