STATE OF NEW YORK

7783

2023-2024 Regular Sessions

IN SENATE

December 1, 2023

Introduced by Sens. GIANARIS, SKOUFIS, HOYLMAN-SIGAL, MAY, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to clear and conspicuous pricing practices regarding mandatory junk fees

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York junk fee prevention act".

§ 2. The general business law is amended by adding a new section 396-yy to read as follows:

§ 396-yy. Junk fee prevention. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) (i) "Mandatory fee" includes:

(A) any fee or surcharge that a consumer is required to pay to purchase or lease any good or service being advertised;

(B) any fee or surcharge that is not reasonably avoidable to complete the purchase or lease of any good or service being advertised;

(C) any fee or surcharge for any good or service that a reasonable consumer would expect to be included with the purchase or lease of the good or service being advertised; and

(D) any other fee or surcharge determined appropriate by the attorney general.

(ii) "Mandatory fee" shall not include:

(A) any tax, duty, or custom levied by any local, state, federal, or other governmental entity; and

(B) any fee covering the cost of delivering goods, the amount of which is based upon the delivery method selected by the consumer, provided that such amount is disclosed to the consumer prior to accepting payment.

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

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(b) "Total price" shall mean the full price that a consumer must pay, including any and all mandatory fees associated with the transaction, in order to complete the purchase or lease of a good or service.

2. Clear and conspicuous pricing. Any person, firm, partnership, association, or corporation doing business in the state, or any agent or employee thereof, shall clearly and conspicuously display, in every offer and advertisement for the sale or lease of a good or service, the total price of the good or service being offered or advertised.

3. Enforcement. (a) For every violation of this section, an application may be made by the attorney general in a court of competent jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violation. If it shall appear to the satisfaction of the court that the defendant is, in fact, in violation of this section, an injunction may be issued by such court, enjoining and restraining such action or violation, without requiring proof that any person has, in fact, been misled or deceived or otherwise damaged thereby.

(b) The attorney general, or any person adversely affected by a violation of this section, may bring an action against the person or entity in violation of this section to recover the greater of:

(i) actual damages;

(ii) up to five hundred dollars for each unintentional violation of this section; or

(iii) up to one thousand dollars for each intentional, knowing, or willful violation of this section.

(c) In an action brought pursuant to paragraph (b) of this subdivision, the court may award costs of the action together with reasonable attorneys' fees to a prevailing plaintiff.

(d) The right of action available under this subdivision is exempt from any pre-dispute arbitration clauses that may bind a consumer who is adversely affected by a violation of this section.

(e) Any agreement relating to the waiver of any provision within this section shall be deemed void.

(f) Nothing in this section shall in any way limit rights or remedies which are otherwise available under law to the attorney general or any other person authorized to bring an action under this section.

§ 3. The general business law is amended by adding a new section 349-g to read as follows:

§ 349-g. Deceptive pricing methods. The following pricing methods which result in the sale or lease of any good or service shall be deemed a deceptive practice pursuant to section three hundred forty-nine of this article:

1. Advertising or otherwise displaying the price of a good or service without clearly and conspicuously displaying the total price of such good or service, including any and all mandatory fees associated with the transaction;

2. Selling a good or service, or displaying a good or service being sold by a third party, without clearly and conspicuously disclosing the portion of the purchase price that represents a mandatory fee prior to accepting payment for such good or service;

3. Leasing a good or service, or displaying a good or service being leased by a third party, without clearly and conspicuously disclosing the portion of the leasing price that represents a mandatory fee prior to accepting payment for such good or service;

4. Making a false or misleading disclosure of subtotals, fees, charges, or any other component of the total price of a good or service;

5. Presenting subtotals, fees, charges, or other components of the total price of the good or service less prominently or in a font size that is smaller than the font size used to present the total price of the good or service; and

6. Increasing the price of a good or service after a consumer has selected the good or service for purchase or lease.

§ 4. This act shall take effect on the sixtieth day after it shall have become a law.