

STATE OF NEW YORK

7783--B

Cal. No. 113

2023-2024 Regular Sessions

IN SENATE

December 1, 2023

Introduced by Sens. GIANARIS, SKOUFIS, CHU, COMRIE, FERNANDEZ, GOUNARDES, HOYLMAN-SIGAL, JACKSON, MAY, RAMOS, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

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

5 § 396-yy. Junk fee prevention. 1. For the purposes of this section,
6 the following terms shall have the following meanings:

7 (a) (i) "Mandatory fee" includes any fee or surcharge, additional to
8 the price of a good or service, that:

9 (A) a consumer is required to pay to purchase or lease any good or
10 service being advertised;

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

13 (C) a reasonable consumer would expect to be included with the
14 purchase or lease of the good or service being advertised; or

15 (D) is added by default for the consumer, by the seller or automat-
16 ically, and requires action by the consumer to remove it;

17 (ii) "Mandatory fee" shall not include:

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

LBD13717-04-4

1 (A) any tax, duty, fee or custom levied by any local, state, federal,
2 or other governmental or quasi-governmental entity, as well as any
3 assessment fee of a government-created special district, including busi-
4 ness improvement districts and tourism improvement districts;

5 (B) any fee covering the cost of delivering goods, the amount of which
6 is based upon the delivery method selected by the consumer, provided
7 that such amount is disclosed to the consumer prior to collecting
8 payment information;

9 (C) any nominal fee for the purpose of pre-authorizing a transaction
10 that is immediately refunded or removed upon the charge of the full
11 purchase amount; or

12 (D) any optional add-ons or add-on product or service as defined by 16
13 CFR part 463(a).

14 (b) "Total price" shall mean the full price of a good or service that
15 a consumer must pay, including any and all mandatory fees associated
16 with the transaction, but not including any exemptions to mandatory fees
17 pursuant to subdivision one of this section, in order to complete the
18 purchase or lease of a good or service.

19 2. (a) Any person, firm, partnership, association, corporation or any
20 agent or employee who solicits or facilitates a purchase directly from a
21 consumer, or lease of any good or service directly to a consumer, in the
22 state, shall clearly and conspicuously:

23 (i) disclose to the consumer in every offer or advertisement for the
24 purchase or lease of a good or service that includes pricing informa-
25 tion, the total price of the good or service being offered or adver-
26 tised, except where the total price of the good or service is to be
27 derived from a variable rate and is indeterminable at the time of the
28 offer or advertisement, disclose such variable rate along with any and
29 all mandatory fees associated with the transaction; and

30 (ii) disclose to the consumer any tax, duty, custom, or fee amounts
31 under subparagraph (ii) of paragraph (a) of subdivision one of this
32 section, prior to accepting payment.

33 (b) Disclosures of the total price, fees, charges or any component of
34 the total price shall not be false or misleading, and must by their
35 font, size, contrast, location, the length of time they appear, and
36 other characteristics, be presented prominently and stand out from any
37 accompanying text or other visual elements so that they are easily
38 noticed, read, and understood.

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

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

51 (i) actual damages;

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

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

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

4 (d) Any action taken under this section pleading a violation of this
5 section shall be exempt from any pre-dispute arbitration clauses that
6 may bind a consumer who is adversely affected by a violation of this
7 section.

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

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

13 4. (a) Compliance by a person, firm, partnership, association, or
14 corporation providing broadband internet access service on its own or as
15 part of a bundle, as defined in section 8.1(b) of title 47 of the code
16 of federal regulations, with the broadband consumer label requirements
17 adopted by the federal communications commission in FCC 22-86 on Novem-
18 ber fourteenth, two thousand twenty-two, codified in section 8.1(a) of
19 title 47 of the code of federal regulations, shall be deemed in compli-
20 ance with this section.

21 (b) For purposes of this paragraph, "financial institution" shall have
22 the same meaning as defined in section eight hundred one of the finan-
23 cial services law. A financial institution that is required to provide
24 disclosures in compliance with any of the following federal or state
25 acts or regulations with respect to a financial transaction is exempt
26 from this section for purposes of such financial transaction:

27 (i) the federal truth in savings act;

28 (ii) the federal electronic fund transfer act;

29 (iii) section 19 of the federal reserve act;

30 (iv) the federal truth in lending act;

31 (v) the federal real estate settlement procedures act;

32 (vi) the federal home ownership and equity protection act; or

33 (vii) any regulation adopted pursuant to any of the federal acts in
34 subparagraphs (i) through (vi) of this paragraph, inclusive.

35 (c) Compliance with the notice requirements of section five hundred
36 eighteen of the general business law by a person, firm, partnership,
37 association, or corporation imposing a surcharge on any sales trans-
38 action where a consumer elects to use a credit card in lieu of payment
39 by cash, check, or similar means, shall be deemed compliance with this
40 section.

41 (d) A food service establishment as defined in paragraph (b) of subdi-
42 vision one of section three hundred ninety-one-v of this article shall
43 be deemed compliant with this section if, in every offer or advertise-
44 ment for the purchase or lease of a good or service that includes pric-
45 ing information, the total price of the good or service being offered or
46 advertised includes a clear and conspicuous disclosure of the percentage
47 of any automatic and mandatory gratuity to be charged.

48 5. (a) Entities subject to subdivision four of section 25.07 of the
49 arts and cultural affairs law shall not be subject to the provisions of
50 this section.

51 (b) The provisions of this section shall not apply to air transporta-
52 tion provided by air carriers, as those terms are used in section 41713
53 of title 49 of the United States code.

54 § 3. This act shall take effect on the first of January next succeed-
55 ing the date on which it shall have become a law.