

STATE OF NEW YORK

9192

IN ASSEMBLY

February 12, 2024

Introduced by M. of A. LEE -- read once and referred to the Committee on Consumer Affairs and Protection

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:

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

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

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

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

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

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

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

12 (i) disclose to the consumer in every offer or advertisement for the
13 purchase or lease of a good or service that includes pricing informa-
14 tion, the total price of the good or service being offered or adver-
15 tised, except where the total price of the good or service is to be
16 derived from a variable rate and is indeterminable at the time of the
17 offer or advertisement, disclose such variable rate along with any and
18 all mandatory fees associated with the transaction; and

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

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

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

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

40 (i) actual damages;

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

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

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

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

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

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

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

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

15 (i) the federal truth in savings act;

16 (ii) the federal electronic fund transfer act;

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

18 (iv) the federal truth in lending act;

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

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

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

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

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

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

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

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