

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:

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

§ 391-z. Third-party food delivery service charge. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Delivery fee" means a fee charged by a third-party food delivery service for providing a food service establishment with a service that delivers food from such establishment to customers. The term does not include any other fee that may be charged by a third-party food delivery service to a food service establishment, such as fees for listing or advertising the food service establishment on the third-party food delivery service platform or fees related to processing the online order.

(b) "Food service establishment" means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

(c) "Online order" means any order placed by a customer through or with the assistance of a platform provided by a third-party food delivery service, including a telephone order.

(d) "Purchase price" means the total price of the items contained in an online order that are listed on the menu of the food service establishment where such order is placed. Such term does not include taxes, gratuities and any other fees that may make up the total cost to the 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.