

STATE OF NEW YORK

7783--A

2023-2024 Regular Sessions

IN SENATE

December 1, 2023

Introduced by Sens. GIANARIS, SKOUFIS, CHU, GOUNARDES, HOYLMAN-SIGAL, 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

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. Definitions. For the purposes of
6 this section, the following terms shall have the following meanings:

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

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

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

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

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

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

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

20 (B) any fee covering the cost of delivering goods, the amount of which
21 is based upon the delivery method selected by the consumer, provided

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

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1 that such amount is disclosed to the consumer prior to accepting
2 payment.

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

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

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

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

23 (i) actual damages;

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

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

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

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

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

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

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