

# STATE OF NEW YORK

363--A

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## IN SENATE

(Prefiled)

January 8, 2025

Introduced by Sens. GIANARIS, SKOUFIS, BRISPORT, COMRIE, FERNANDEZ, GONZALEZ, GOUNARDES, HOYLMAN-SIGAL, JACKSON, KRUEGER, MAY, RAMOS, SEPULVEDA, WEBB -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- 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:

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

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

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1 assessment fee of a government-created special district, including busi-  
2 ness improvement districts and tourism improvement districts;

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

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

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

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

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

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

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

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

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

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

49 (i) actual damages;

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

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

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

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

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

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

10 4. (a) A person, firm, partnership, association, or corporation that  
11 provides broadband internet access service on its own or as part of a  
12 bundle, as defined in section 8.1(b) of title 47 of the code of federal  
13 regulations, and is in compliance with the broadband consumer label  
14 requirements adopted by the federal communications commission in FCC  
15 22-86 on November fourteenth, two thousand twenty-two, codified in  
16 section 8.1(a) of title 47 of the code of federal regulations, shall be  
17 deemed in compliance with this section. Provided, however, that if such  
18 federal broadband consumer label requirements are no longer applicable,  
19 a person, firm, partnership, association, or corporation providing  
20 broadband internet access service shall comply with the provisions of  
21 this section.

22 (b) A person, firm, partnership, association, or corporation providing  
23 cable service, as defined in section 522(6) of title 47 of the United  
24 States code, whether on a standalone basis or as part of a bundle, that  
25 complies with the truth in billing and advertising requirements adopted  
26 by the federal communications commission, as codified in section 76.310  
27 of title 47 of the code of federal regulations, shall be deemed in  
28 compliance with this section. Provided, however, that if such truth in  
29 billing requirements are no longer applicable, a person, firm, partner-  
30 ship, association, or corporation providing cable service shall comply  
31 with the provisions of this section.

32 (c) A financial institution that is required to provide disclosures in  
33 compliance with any of the following federal or state acts or regu-  
34 lations with respect to a financial transaction is exempt from this  
35 section for purposes of such financial transaction:

36 (i) the federal truth in savings act;

37 (ii) the federal electronic fund transfer act;

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

39 (iv) the federal truth in lending act;

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

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

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

44 For purposes of this paragraph, "financial institution" shall have the  
45 same meaning as defined in section eight hundred one of the financial  
46 services law.

47 (d) Compliance with the notice requirements of section five hundred  
48 eighteen of the general business law by a person, firm, partnership,  
49 association, or corporation imposing a surcharge on any sales trans-  
50 action where a consumer elects to use a credit card in lieu of payment  
51 by cash, check, or similar means, shall be deemed compliance with this  
52 section.

53 (e) A food service establishment as defined in paragraph (b) of subdi-  
54 vision one of section three hundred ninety-one-v of this article shall  
55 be deemed compliant with this section if, in every offer or advertise-  
56 ment for the purchase or lease of a good or service that includes pric-

1 ing information, the total price of the good or service being offered or  
2 advertised includes a clear and conspicuous disclosure of the percentage  
3 of any automatic and mandatory gratuity to be charged.

4 (f) A person, firm, partnership, association, or corporation offering  
5 services for which the total price of the service cannot reasonably be  
6 known at the time of the offer due to factors that determine the total  
7 price that are beyond the control of such person or entity offering the  
8 service, including factors that are determined by consumer selections or  
9 preferences or that relate to distance or time, is compliant with this  
10 section if such person or entity offering the service clearly and  
11 conspicuously discloses:

12 (i) the factors that determine the total price;

13 (ii) any mandatory fees associated with the transaction; and

14 (iii) that the total price of the services may vary.

15 (g) It is not intended to be a violation of this section to advertise,  
16 display, or offer the current bid in an ongoing auction provided that  
17 the bid clearly and conspicuously discloses:

18 (i) all amounts that the buyer would be required to pay, other than  
19 those amounts listed under subparagraph (ii) of paragraph (a) of subdi-  
20 vision one of this section; and

21 (ii) that the total price of the goods or services may vary.

22 (h) It is not intended to be a violation of this section to advertise,  
23 display, or offer multiple total prices in one advertisement as long as  
24 each total price corresponds to one good or service in the advertise-  
25 ment.

26 (i) Offers or advertisements for short-term lodging, including tempo-  
27 rary sleeping accommodations at a hotel, motel, inn, short-term rental,  
28 vacation rental, or other place of lodging that are in compliance with  
29 part 464 of chapter I of title 16 of the code of federal regulations  
30 shall be deemed in compliance with this section. Provided, however, that  
31 if such regulations are no longer applicable, a person, firm, partner-  
32 ship, association, or corporation offering short-term lodging shall  
33 comply with the provisions of this section.

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

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

40 § 3. Severability. If any clause, sentence, paragraph, section or part  
41 of this act shall be adjudged by any court of competent jurisdiction to  
42 be invalid and after exhaustion of all further judicial review, the  
43 judgment shall not affect, impair or invalidate the remainder thereof,  
44 but shall be confined in its operation to the clause, sentence, para-  
45 graph, section or part of this act directly involved in the controversy  
46 in which the judgment shall have been rendered.

47 § 4. This act shall take effect on the first of January next succeed-  
48 ing the date on which it shall have become a law.