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Introduced by Sens. GIANARIS, SKOUFIS, BRISPORT, BROUK, COMRIE, FERNANDEZ, GONZALEZ, GOUNARDES, 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 -- 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 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 article 22-C  
4 to read as follows:

### ARTICLE 22-C

#### JUNK FEE PREVENTION ACT

##### Section 350-j. Definitions.

##### 350-k. Total price disclosure.

##### 350-l. Enforcement.

##### 350-m. Compliance.

11 § 350-j. Definitions. For the purposes of this article, the following  
12 definitions shall apply:

13 1. (a) "Mandatory fee" includes any fee or surcharge, additional to  
14 the price of a good or service, that:

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

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1 (i) a consumer is required to pay to purchase or lease any good or  
2 service being advertised;

3 (ii) is not reasonably avoidable to complete the purchase or lease of  
4 any good or service being advertised;

5 (iii) a reasonable consumer would expect to be included with the  
6 purchase or lease of the good or service being advertised; or

7 (iv) is added by default for the consumer, by the seller or automat-  
8 ically, and requires action by the consumer to remove it.

9 (b) "Mandatory fee" shall not include:

10 (i) any tax, duty, fee or custom levied by any local, state, federal,  
11 or other governmental or quasi-governmental entity, or any assessment  
12 fee of a government-created special district, including business  
13 improvement districts and tourism improvement districts;

14 (ii) any fee covering the cost of delivering goods, the amount of  
15 which is based upon the delivery method selected by the consumer,  
16 provided that such amount is disclosed to the consumer prior to collect-  
17 ing payment information;

18 (iii) any nominal fee for the purpose of pre-authorizing a transaction  
19 that is immediately refunded or removed upon the charge of the full  
20 purchase amount; or

21 (iv) any optional vehicle add-ons or add-on product or service not  
22 provided to the consumer or installed on a vehicle by a motor vehicle  
23 manufacturer and for which the motor vehicle dealer, directly or indi-  
24 rectly, charges a consumer in connection with a vehicle sale, lease, or  
25 financing transaction, insofar as the dealer discloses that the add-on  
26 is not required and the consumer can purchase or lease the vehicle with-  
27 out the add-on, if true.

28 2. "Total price" shall mean the full price of a good or service that a  
29 consumer must pay, including any and all mandatory fees associated with  
30 the transaction, in order to complete the purchase or lease of a good or  
31 service.

32 § 350-k. Total price disclosure. 1. Any person, firm, partnership,  
33 association, corporation or other entity, or any agent or employee ther-  
34 eof, who solicits or facilitates the purchase or lease of any good or  
35 service directly to a consumer in this state shall clearly and conspicu-  
36 ously:

37 (a) disclose to the consumer, in every offer or advertisement for the  
38 purchase or lease of a good or service that includes pricing informa-  
39 tion, the total price of the good or service being offered or adver-  
40 tised, except, where the total price of the good or service is to be  
41 derived from a variable fee and is indeterminable at the time of the  
42 offer or advertisement, disclose such variable fee along with the reason  
43 for the variable nature of the fee, and any and all mandatory fees asso-  
44 ciated with the transaction; and

45 (b) disclose to the consumer, prior to accepting payment, any tax,  
46 duty, custom, or fee amounts covered under subparagraph (i) of paragraph  
47 (b) of subdivision one of section three hundred fifty-j of this article.

48 2. Disclosures of the total price, fees, charges or any component of  
49 the total price shall not be false or misleading, and must by their  
50 font, size, contrast, location, the length of time they appear, and  
51 other characteristics, be presented prominently and stand out from any  
52 accompanying text or other visual elements so that they are easily  
53 noticed, read, and understood.

54 § 350-l. Enforcement. 1. For every violation of this article, an  
55 application may be made by the attorney general in a court of competent  
56 jurisdiction to issue an injunction, and upon notice to the defendant of

1 not less than five days, to enjoin and restrain the continuance of such  
2 violation. If it shall appear to the satisfaction of the court that the  
3 defendant is, in fact, in violation of this article, an injunction may  
4 be issued by such court, enjoining and restraining such action or  
5 violation, without requiring proof that any person has, in fact, been  
6 misled or deceived or otherwise damaged thereby.

7 2. The attorney general, or any person adversely affected by a  
8 violation of this article, may bring an action against the person or  
9 entity in violation of this article to recover the greater of:

10 (a) actual damages; or

11 (b) up to one thousand dollars for each violation of this article.

12 3. In an action brought pursuant to subdivision two of this section,  
13 the court may award costs of the action together with reasonable attor-  
14 neys' fees to a prevailing plaintiff.

15 4. Any action taken under this article pleading a violation of this  
16 article shall be exempt from any pre-dispute arbitration clauses that  
17 may bind a consumer who is adversely affected by a violation of this  
18 article.

19 5. Any agreement relating to the waiver of any provision within this  
20 article shall be deemed null and void.

21 6. Nothing in this article shall in any way limit rights or remedies  
22 which are otherwise available under law to the attorney general or any  
23 other person authorized to bring an action under this article.

24 § 350-m. Compliance. 1. A person, firm, partnership, association,  
25 corporation or other entity providing broadband internet access service  
26 on its own or as part of a bundle, as defined in section 8.1(b) of title  
27 47 of the code of federal regulations, that complies with the broadband  
28 consumer label requirements adopted by the federal communications  
29 commission in FCC 22-86 on November fourteenth, two thousand twenty-two,  
30 codified in section 8.1(a) of title 47 of the code of federal regu-  
31 lations, shall be deemed in compliance with this article; provided,  
32 however, that if such federal broadband consumer label requirements are  
33 no longer applicable, such person, firm, partnership, association,  
34 corporation or other entity providing broadband internet access service  
35 shall comply with the provisions of this article.

36 2. A person, firm, partnership, association, corporation or other  
37 entity providing cable service, as defined in section 522(6) of title 47  
38 of the United States code, whether on a standalone basis or as part of a  
39 bundle, that complies with the truth in billing and advertising require-  
40 ments adopted by the federal communications commission, as codified in  
41 section 76.310 of title 47 of the code of federal regulations, shall be  
42 deemed in compliance with this article; provided, however, that if such  
43 truth in billing requirements are no longer applicable, such person,  
44 firm, partnership, association, corporation or other entity providing  
45 cable service shall comply with the provisions of this article.

46 3. A financial institution that is required to provide disclosures in  
47 compliance with any of the following federal or state acts or regu-  
48 lations with respect to a financial transaction shall be deemed in  
49 compliance with this article for purposes of such financial transaction:

50 (a) the federal truth in savings act;

51 (b) the federal electronic fund transfer act;

52 (c) section 19 of the federal reserve act;

53 (d) the federal truth in lending act;

54 (e) the federal real estate settlement procedures act;

55 (f) the federal home ownership and equity protection act; or

1 (g) any regulation adopted pursuant to any of the federal acts in  
2 paragraphs (a) through (f) of this subdivision, inclusive.

3 For purposes of this subdivision, "financial institution" shall have  
4 the same meaning as defined in section eight hundred one of the finan-  
5 cial services law.

6 4. Compliance with the notice requirements of section five hundred  
7 eighteen of this chapter by a person, firm, partnership, association,  
8 corporation or other entity imposing a surcharge on any sales trans-  
9 action where a consumer elects to use a credit card in lieu of payment  
10 by cash, check, or similar means, shall be deemed in compliance with  
11 this article.

12 5. A food service establishment, as defined in paragraph (b) of subdi-  
13 vision one of section three hundred ninety-one-v of this chapter, shall  
14 be deemed in compliance with this article if, in every offer or adver-  
15 tisement for the purchase or lease of a good or service that includes  
16 pricing information, the total price of the good or service being  
17 offered or advertised includes a clear and conspicuous disclosure of the  
18 percentage of any automatic and mandatory gratuity to be charged.

19 6. A person, firm, partnership, association, corporation or other  
20 entity offering services for which the total price of the service cannot  
21 reasonably be known at the time of the offer due to factors that deter-  
22 mine the total price that are beyond the control of such person or enti-  
23 ty offering the service, including factors that are determined by  
24 consumer selections or preferences or that relate to distance or time,  
25 shall be deemed in compliance with this article if such person or entity  
26 offering the service clearly and conspicuously discloses:

27 (a) the factors that determine the total price;

28 (b) any mandatory fees associated with the transaction; and

29 (c) that the total price of the services may vary and the reason or  
30 reasons why it may vary.

31 7. It shall not be a violation of this article to advertise, display,  
32 or offer the current bid in an ongoing auction provided that the bid  
33 clearly and conspicuously discloses:

34 (a) all amounts that the buyer would be required to pay, other than  
35 those amounts listed under paragraph (b) of subdivision one of section  
36 three hundred fifty-j of this article; and

37 (b) that the total price of the goods or services may vary.

38 8. It shall not be a violation of this article to advertise, display,  
39 or offer multiple total prices in one advertisement as long as each  
40 total price corresponds to one good or service in the advertisement.

41 9. Offers or advertisements for short-term lodging, including tempo-  
42 rary sleeping accommodations at a hotel, motel, inn, short-term rental,  
43 vacation rental, or other place of lodging that are in compliance with  
44 part 464 of chapter I of title 16 of the code of federal regulations  
45 shall be deemed in compliance with this article; provided, however, that  
46 if such regulations are no longer applicable, a person, firm, partner-  
47 ship, association, corporation or other entity offering such short-term  
48 lodging shall comply with the provisions of this article.

49 10. Any person, firm, partnership, association, corporation or other  
50 entity offering automatic renewals or continuous services as defined in  
51 section five hundred twenty-seven of this chapter shall be deemed in  
52 compliance with this article if any additional one-time fee associated  
53 with the transaction is displayed separately from the total price that  
54 would be charged on a recurring basis, provided, however, that such  
55 one-time fee shall be clearly and conspicuously displayed in the same  
56 offer or advertisement as the actual recurring total price. Any and all

1 other mandatory fees associated with the transaction shall be included  
2 as part of the actual recurring total price except as otherwise provided  
3 in this article.

4 11. Entities subject to subdivision four of section 25.07 of the arts  
5 and cultural affairs law shall not be subject to the provisions of this  
6 article.

7 12. The provisions of this article shall not apply to air transporta-  
8 tion provided by air carriers, as such terms are used in section 41713  
9 of title 49 of the United States code.

10 § 3. Severability. If any clause, sentence, paragraph, section or part  
11 of this act shall be adjudged by any court of competent jurisdiction to  
12 be invalid and after exhaustion of all further judicial review, the  
13 judgment shall not affect, impair or invalidate the remainder thereof,  
14 but shall be confined in its operation to the clause, sentence, para-  
15 graph, section or part of this act directly involved in the controversy  
16 in which the judgment shall have been rendered.

17 § 4. This act shall take effect on the sixtieth day after it shall  
18 have become a law.