

118TH CONGRESS
1ST SESSION

S. 3161

To require third-party delivery platforms to follow certain pricing practices,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 30, 2023

Mr. LUJÁN introduced the following bill; which was read twice and referred
to the Committee on Commerce, Science, and Transportation

A BILL

To require third-party delivery platforms to follow certain
pricing practices, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Promoting Real-time
5 Information on Cost Expenditure Act” or the “PRICE
6 Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) COMMISSION.—The term “Commission”
10 means the Federal Trade Commission.

1 (2) DELIVERY FEE.—The term “delivery fee”
2 means any fee imposed by a third-party delivery
3 platform on a user of the platform with respect to
4 an order placed through the platform of items from
5 a retail establishment that is in addition to any
6 charge that the retail establishment would impose on
7 the sale of the same items if they were purchased by
8 an individual who is physically present in such estab-
9 lishment. In the case of a retail establishment that
10 does not offer items for sale to individuals who are
11 physically present in such establishment, such term
12 shall include any fee imposed by a third-party deliv-
13 ery platform that is in addition to the menu or retail
14 price for the items ordered.

15 (3) RETAIL ESTABLISHMENT.—The term “re-
16 tail establishment” means a physical establishment
17 (including a restaurant) where items (including food,
18 beverages, or other goods) are offered for sale to in-
19 dividuals who—

20 (A) are physically present in such estab-
21 lishment; or

22 (B) place orders through a third-party de-
23 livery platform.

24 (4) THIRD-PARTY DELIVERY PLATFORM.—The
25 term “third-party delivery platform” means any

1 website, mobile application, or other internet service
2 that—

3 (A) as its primary function, offers or ar-
4 ranges for the sale and same-day delivery of
5 items (including food beverages, or other goods)
6 from a retail establishment; and

7 (B) is not owned by, under common owner-
8 ship with, operated by, or a subsidiary of the
9 retail establishment.

10 **SEC. 3. PRICING REQUIREMENTS FOR THIRD-PARTY DELIV-**
11 **ERY PLATFORMS.**

12 (a) IN GENERAL.—Beginning 90 days after the date
13 of enactment of this Act, it shall be unlawful to operate
14 a third-party delivery platform unless such platform satis-
15 fies the requirements described in subsection (b).

16 (b) PRICING REQUIREMENTS.—The requirements de-
17 scribed in this subsection, with respect to a third-party
18 delivery platform, are the following:

19 (1) If the third-party delivery platform charges
20 1 or more delivery fees for an order from a retail es-
21 tablishment, any such delivery fee shall be—

22 (A) calculated using a methodology that is
23 determined no later than the time the user plac-
24 ing the order selects the retail establishment

1 and may not change once the user has begun
2 their order from the retail establishment; and

3 (B) based solely on—

4 (i) the total price charged by the re-
5 tail establishment for items ordered by the
6 user, excluding any taxes and any fees im-
7 posed by the third-party delivery platform;
8 and

9 (ii) other factors related to the deliv-
10 ery of the items ordered from the retail es-
11 tablishment, including the delivery dis-
12 tance, but excluding—

13 (I) any other factor related to the
14 user who placed the order; and

15 (II) any factor related to an ar-
16 rangement negotiated between the
17 third-party delivery platform and the
18 retail establishment.

19 (2) Whenever a user selects an item to order
20 from a retail establishment through the third-party
21 delivery platform, the third-party delivery platform
22 shall prominently display—

23 (A) the price charged by the retail estab-
24 lishment for such item, excluding any taxes;
25 and

1 (B) if applicable, any delivery fees imposed
2 with respect to such item by the third-party de-
3 livery platform.

4 (3) Throughout the ordering process, the third-
5 party delivery platform shall prominently display the
6 ongoing total amount to be charged to the user for
7 the order that includes every item and service that
8 the user has selected up to that point. Such total
9 amount shall include the cost of each item selected,
10 applicable taxes, and any applicable fees.

11 (4) Prior to requesting payment for an order,
12 the third-party delivery platform shall provide the
13 user with an explanation, in a clear, conspicuous,
14 and not misleading manner, of each delivery fee im-
15 posed on the user by the platform and what the fee
16 is for. Such explanation shall include the amount of
17 the delivery fee, the item or service that the delivery
18 fee relates to, whether the delivery fee is refundable,
19 and such other information as the Commission may
20 specify.

21 (c) RULE OF CONSTRUCTION REGARDING GRATU-
22 ITIES.—Nothing in this section shall be construed to pre-
23 vent a third-party delivery platform from allowing a user
24 to add a gratuity to their order.

1 **SEC. 4. ENFORCEMENT.**

2 (a) ENFORCEMENT BY THE FEDERAL TRADE COM-
3 MISSION.—

4 (1) UNFAIR AND DECEPTIVE ACTS OR PRAC-
5 TICES.—A violation of this Act shall be treated as
6 a violation of a rule defining an unfair or deceptive
7 act or practice prescribed under section 18(a)(1)(B)
8 of the Federal Trade Commission Act (15 U.S.C.
9 57a(a)(1)(B)).

10 (2) POWERS OF THE COMMISSION.—

11 (A) IN GENERAL.—The Commission shall
12 enforce this Act in the same manner, by the
13 same means, and with the same jurisdiction,
14 powers, and duties as though all applicable
15 terms and provisions of the Federal Trade
16 Commission Act (15 U.S.C. 41 et seq.) were in-
17 corporated into and made a part of this Act.

18 (B) PRIVILEGES AND IMMUNITIES.—Any
19 person that violates this Act shall be subject to
20 the penalties, and entitled to the privileges and
21 immunities, provided in the Federal Trade
22 Commission Act (15 U.S.C. 41 et seq.).

23 (C) REGULATIONS.—The Commission
24 shall, pursuant to section 553 of title 5, United
25 States Code promulgate such regulations as the

1 Commission determines necessary to carry out
2 the provisions of this Act.

3 (D) AUTHORITY PRESERVED.—Nothing in
4 this Act shall be construed to limit the author-
5 ity of the Commission under any other provi-
6 sion of law.

7 (b) ENFORCEMENT BY STATE ATTORNEYS GEN-
8 ERAL.—

9 (1) IN GENERAL.—

10 (A) CIVIL ACTIONS.—In any case in which
11 the attorney general of a State has reason to
12 believe that an interest of the residents of that
13 State has been or is threatened or adversely af-
14 fected by the engagement of any person in a
15 practice that violates this Act, the State, as
16 parens patriae, may bring a civil action on be-
17 half of the residents of the State in a district
18 court of the United States or a State court of
19 appropriate jurisdiction to—

20 (i) enjoin that practice;

21 (ii) enforce compliance with this Act
22 or such regulation;

23 (iii) on behalf of residents of the
24 State, obtain damages, restitution, or other

1 compensation, each of which shall be dis-
2 tributed in accordance with State law; or

3 (iv) obtain such other relief as the
4 court may consider to be appropriate.

5 (B) NOTICE.—

6 (i) IN GENERAL.—Before filing an ac-
7 tion under subparagraph (A), the attorney
8 general of the State involved shall provide
9 to the Commission—

10 (I) written notice of that action;

11 and

12 (II) a copy of the complaint for
13 that action.

14 (ii) EXEMPTION.—

15 (I) IN GENERAL.—Clause (i)
16 shall not apply with respect to the fil-
17 ing of an action by an attorney gen-
18 eral of a State under this paragraph
19 if the attorney general of the State
20 determines that it is not feasible to
21 provide the notice described in that
22 clause before the filing of the action.

23 (II) NOTIFICATION.—In an ac-
24 tion described in subclause (I), the at-
25 torney general of a State shall provide

1 notice and a copy of the complaint to
2 the Commission at the same time as
3 the attorney general files the action.

4 (2) INTERVENTION.—

5 (A) IN GENERAL.—On receiving notice
6 under paragraph (1)(B), the Commission shall
7 have the right to intervene in the action that is
8 the subject of the notice.

9 (B) EFFECT OF INTERVENTION.—If the
10 Commission intervenes in an action under para-
11 graph (1), it shall have the right—

12 (i) to be heard with respect to any
13 matter that arises in that action; and

14 (ii) to file a petition for appeal.

15 (3) CONSTRUCTION.—For purposes of bringing
16 any civil action under paragraph (1), nothing in this
17 Act shall be construed to prevent an attorney gen-
18 eral of a State from exercising the powers conferred
19 on the attorney general by the laws of that State
20 to—

21 (A) conduct investigations;

22 (B) administer oaths or affirmations; or

23 (C) compel the attendance of witnesses or
24 the production of documentary and other evi-
25 dence.

1 (4) ACTIONS BY THE COMMISSION.—In any
2 case in which an action is instituted by or on behalf
3 of the Commission for violation of this Act, no State
4 may, during the pendency of that action, institute a
5 separate action under paragraph (1) against any de-
6 fendant named in the complaint in the action insti-
7 tuted by or on behalf of the Commission for that
8 violation.

9 (5) VENUE; SERVICE OF PROCESS.—

10 (A) VENUE.—Any action brought under
11 paragraph (1) may be brought in—

12 (i) the district court of the United
13 States that meets applicable requirements
14 relating to venue under section 1391 of
15 title 28, United States Code; or

16 (ii) a State court of competent juris-
17 diction.

18 (B) SERVICE OF PROCESS.—In an action
19 brought under paragraph (1) in a district court
20 of the United States, process may be served
21 wherever defendant—

22 (i) is an inhabitant; or

23 (ii) may be found.

○