This Document can be made available
in alternative formats upon request

State of Minnesota

Printed
Page No. **284**

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. **3438**

02/12/2024   Authored by Greenman; Rehm; Olson, L.; Frederick; Noor and others
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy
03/13/2024   Adoption of Report: Placed on the General Register as Amended
Read for the Second Time

1.1   A bill for an act

1.2   relating to consumer protection; adding the failure to disclose mandatory fees in
1.3   advertising as a deceptive trade practice; amending Minnesota Statutes 2022,
1.4   sections 325D.43, by adding a subdivision; 325D.44, by adding subdivisions.

1.5   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6   Section 1. Minnesota Statutes 2022, section 325D.43, is amended by adding a subdivision

1.7   to read:

1.8   Subd. 5a. **Person.** "Person" means any individual, corporation, firm, partnership,

1.9   incorporated and unincorporated association, or any other legal or commercial entity.

1.10   Sec. 2. Minnesota Statutes 2022, section 325D.44, is amended by adding a subdivision to

1.11   read:

1.12   Subd. 1a. **Advertisements, displays, or offers.** (a) A person engages in a deceptive

1.13   trade practice when, in the course of business, vocation, or occupation, the person advertises,

1.14   displays, or offers a price for goods or services that does not include all mandatory fees or

1.15   surcharges. If the person that disseminates an advertisement is independent of the advertiser,

1.16   then that person shall not be liable for the content of the advertisement.

1.17   (b) For purposes of this subdivision, "mandatory fee" includes but is not limited to a fee

1.18   or surcharge that:

1.19   (1) must be paid in order to purchase the goods or services being advertised;

1.20   (2) is not reasonably avoidable by the consumer; or

2.1   (3) a reasonable person would expect to be included in the purchase of the goods or

2.2   services being advertised.

2.3   For the purposes of this subdivision, mandatory fee does not include taxes imposed by a

2.4   government entity.

2.5   (c) In order to comply with this subdivision, a food delivery platform must ensure that:

2.6   (1) prior to a consumer viewing and selecting menu items for purchase, a food delivery

2.7   platform must display in a clear and conspicuous manner that an additional fee to the price

2.8   of the menu items will be charged. The disclosure must include the additional fee amount.

2.9   A consumer must acknowledge the disclosure before proceeding to the menu; and

2.10   (2) after a consumer selects menu items for purchase, a food delivery platform must

2.11   display a subtotal page that itemizes the price of the menu items and the additional fee that

2.12   will be included in the total cost.

2.13   (d) A person may charge a reasonable postage or shipping fee that will be actually

2.14   incurred by a consumer who has purchased a good that requires shipping.

2.15   (e) Nothing in this subdivision shall prevent a person from offering goods or services

2.16   at a discounted price from the advertised, displayed, or offered price.

2.17   (f) A person offering goods or services in an auction where consumers can place bids

2.18   on the goods or services and the total cost is indeterminable must disclose in a clear and

2.19   conspicuous manner any mandatory fees associated with the transaction and that the total

2.20   cost of the goods or services may vary.

2.21   (g) This subdivision is enforceable to the extent permitted by federal law.

2.22   Sec. 3. Minnesota Statutes 2022, section 325D.44, is amended by adding a subdivision to

2.23   read:

2.24   Subd. 4. **Automatic gratuity.** A food service establishment shall be deemed compliant

2.25   with this section if, in every offer or advertisement for the purchase or lease of a good or

2.26   service that includes pricing information, the total price of the good or service being offered

2.27   or advertised includes a clear and conspicuous disclosure of the percentage of any automatic

2.28   and mandatory gratuities to be charged.