

SENATE BILL NO. 574

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR GANNON.

2691S.01H

ADRIANE D. CROUSE, Secretary

AN ACT

To amend chapter 196, RSMo, by adding thereto one new section relating to food delivery, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 196, RSMo, is amended by adding thereto one new section, to be known as section 196.276, to read as follows:

196.276. 1. As used in this section, the following terms mean:

(1) "Food delivery platform", a business that acts as a third-party intermediary by arranging for the delivery or pickup of orders from multiple restaurants for ultimate consumers. The term does not include delivery or pickup orders placed directly with, and fulfilled by, a restaurant;

(2) "Likeness", a "mark" or "trade name" defined as:

(a) "Mark", includes a trademark or service mark, regardless of whether the trademark or service mark is actually registered;

(b) "Trade name", a name used by a person to identify the person's business or vocation;

(3) "Restaurant", a business in the state that:

(a) Operates its own permanent food service facilities with commercial cooking equipment on its premises; and

(b) Prepares and offers to sell multiple entrees for consumption on or off the premises.

19 2. (1) A food delivery platform shall not offer to
20 arrange for the delivery or pickup of an order from a
21 restaurant in this state unless such food delivery platform
22 has filed a certificate of formation or registration with
23 the secretary of state.

24 (2) A food delivery platform shall:

25 (a) Not use a restaurant's likeness in a manner that
26 could reasonably be interpreted to falsely suggest
27 sponsorship or endorsement by the restaurant;

28 (b) Not, without a prior written agreement with the
29 relevant restaurant, inflate or alter a restaurant's
30 pricing, although other charges may be assessed to the
31 ultimate consumer if they are noted separately to the
32 consumer; and

33 (c) Clearly provide to the ultimate consumer a real-
34 time mechanism to express order concerns directly to the
35 food delivery platform.

36 (3) Where there is no agreement or written consent
37 from the restaurant for food delivery by a food delivery
38 platform, a food delivery platform shall not:

39 (a) Make any offer to a consumer to arrange for the
40 delivery or pickup of an order from a restaurant;

41 (b) Attempt to charge the restaurant, or expect the
42 restaurant to pay or absorb, any fee, commission, or charge;

43 (c) Include the restaurant in the food delivery
44 platform's services; or

45 (d) Use any of the restaurant's likeness in any of the
46 food delivery platform's materials, including its digital
47 presence.

48 (4) Where there is only written consent by the
49 restaurant for food delivery by a food delivery platform, a

50 food delivery platform offering to arrange for the delivery
51 or pickup of an order from a restaurant shall:

52 (a) Not charge the restaurant, or expect the
53 restaurant to pay or absorb, any fee, commission, or charge;

54 (b) Not inflate or alter a restaurant's pricing,
55 although other charges may be assessed to the ultimate
56 consumer if they are noted separately to the consumer; and

57 (c) Remove a restaurant from the food delivery
58 platform's services within ten days of receiving the
59 restaurant's request for removal.

60 (5) Any agreement between a food delivery platform and
61 a restaurant to make offers to consumers to arrange for the
62 delivery or pickup of orders shall:

63 (a) Be in writing and expressly authorize the food
64 delivery platform to offer to arrange for the delivery or
65 pickup of orders from the restaurant;

66 (b) Clearly identify any fee, commission, or charge
67 that the restaurant will be required to pay or absorb;

68 (c) Not include a provision, clause, or covenant that
69 requires a restaurant to indemnify a food delivery platform,
70 or any employee or independent contractor or agent of the
71 food delivery platform, for any damages or harm caused by
72 the actions or omissions of the food delivery platform, or
73 any employee, independent contractor, or agent of the food
74 delivery platform;

75 (6) Any provision in an agreement between a food
76 delivery platform and a restaurant, or in a written consent,
77 that is contrary to subdivision (5) of this subsection is
78 void and unenforceable.

79 3. (1) A restaurant may bring an action to enjoin a
80 violation of this section. If the court finds a violation,
81 the court shall issue an injunction and may:

82 (a) Subject to subdivision (2) of this subsection,
83 require the violator to pay to the injured party all profits
84 derived from or damages resulting from the wrongful acts; and

85 (b) Order that the wrongful act be terminated.

86 (2) If the court finds that the food delivery platform
87 committed the wrongful act in bad faith, in violation of
88 this section by not having an agreement or written consent,
89 or otherwise as according to the circumstances of the case,
90 the court, in the court's discretion, may:

91 (a) Enter judgment in an amount not to exceed three
92 times the amount of profits and damages; and

93 (b) Award reasonable attorney's fees to the restaurant.

Section B. Section A of this act shall become
2 effective on January 1, 2022.

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