

H-8102

1 Amend House File 2408 as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. NEW SECTION. 137G.1 **Definitions.**

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "*Consent*" means a mutual acknowledgment by a restaurant
8 and a food delivery platform, which may be obtained
9 electronically.

10 2. "*Food delivery platform*" or "*platform*" means a business
11 that acts as a third-party intermediary by taking and arranging
12 for the delivery or pickup of orders from multiple restaurants
13 for consumers, not including delivery or pickup orders placed
14 directly with, and fulfilled by, a restaurant. "*Food delivery*
15 *platform*" does not include websites, mobile applications, or
16 other electronic services that do not post restaurant menus,
17 logos, or pricing information on the platform.

18 3. "*Likeness*" means a mark or trade name.

19 4. "*Mark*" means a trademark or service mark, regardless of
20 whether the trademark or service mark is actually registered
21 with the state or other entity.

22 5. "*Restaurant*" means a business in the state that operates
23 its own permanent food service facilities with commercial
24 cooking equipment on its premises and prepares and offers to
25 sell multiple entrees for consumption on or off the premises.

26 6. "*Trade name*" means a name used by a person or entity to
27 identify a person or entity's vocation.

28 Sec. 2. NEW SECTION. 137G.2 **Restaurant and food delivery**
29 **platform — agreement.**

30 1. A food delivery platform shall be prohibited from all of
31 the following:

32 a. Using a restaurant's likeness without the written
33 agreement of the restaurant owner or the owner's designee in a
34 manner that could be reasonably interpreted to falsely suggest
35 sponsorship or endorsement by the restaurant.

1 *b.* Taking and arranging for the delivery or pickup of an
2 order from a restaurant without the consent of the restaurant
3 owner or the owner's designee.

4 *c.* Intentionally inflating or altering a restaurant's
5 pricing without the consent of the restaurant owner or the
6 owner's designee, except that a food delivery platform may
7 charge additional fees to the consumer if the fees are noted
8 separately to the consumer.

9 *d.* Attempting to charge a restaurant, or expecting the
10 restaurant to pay or absorb any fee, commission, or charge
11 without the consent of the restaurant owner or the owner's
12 designee.

13 2. A food delivery platform shall do all of the following:

14 *a.* Clearly provide to the consumer a mechanism to express
15 concerns regarding an order directly to the food delivery
16 platform.

17 *b.* Remove a restaurant from the food delivery platform's
18 services within ten days of receiving the restaurant's request
19 for removal unless an agreement between the food delivery
20 platform and the restaurant states otherwise.

21 3. An agreement between a food delivery platform and a
22 restaurant to take and arrange for the delivery or pickup of
23 orders shall include all of the following:

24 *a.* Authorization for the food delivery platform to take
25 and arrange for the delivery and pickup of orders from the
26 restaurant.

27 *b.* Clear identification of any fee, commission, or charge
28 that the restaurant will be required to pay or absorb.

29 4. An agreement between a food delivery platform and a
30 restaurant to take and arrange for the delivery or pickup of
31 orders shall not include provisions, clauses, or covenants that
32 require a restaurant to indemnify a food delivery platform,
33 or any employee, independent contractor, or agent of the food
34 delivery platform, for any damages or harm caused by the
35 actions or omissions of the food delivery platform or any

1 employee, independent contractor, or agent of the food delivery
2 platform.

3 5. A provision of an agreement between a food delivery
4 platform and a restaurant, or consent, that is contrary to
5 this chapter is void and unenforceable. A violation of the
6 provisions of this chapter shall be punished as a schedule
7 "one" penalty unless otherwise indicated. Violations of a
8 continuing nature shall constitute a separate offense for
9 each violation unless otherwise provided. Upon a court
10 determination the prevailing party shall be awarded court costs
11 and attorney fees. The schedule of violations shall be as
12 follows:

13 a. "Schedule one" means a penalty of one thousand dollars
14 for a first violation.

15 b. "Schedule two" means a penalty of two thousand five
16 hundred dollars for a second violation.

17 c. "Schedule three" means a penalty of ten thousand dollars
18 for a third and subsequent violation.

19 6. a. A restaurant may bring an action to enjoin a
20 violation of this chapter. If the court finds a violation
21 of this chapter, the court shall issue an injunction against
22 a food delivery platform and may require the platform to pay
23 to the injured restaurant all profits derived from, or damages
24 resulting from, the wrongful acts and order that the wrongful
25 acts be terminated.

26 b. If the court finds that the food delivery platform
27 committed a wrongful act in bad faith in violation of this
28 chapter by not entering into an agreement or obtaining written
29 consent, the court, in the court's discretion, shall:

30 (1) Enter a judgment in an amount not to exceed three times
31 the amount of profits and damages.

32 (2) Award reasonable attorney's fees to the restaurant.

33 Sec. 3. NEW SECTION. 137G.3 Food safety — liability.

34 1. Orders delivered through a food delivery platform shall
35 be transported in a manner that meets all of the following

1 requirements:

2 *a.* The order shall be maintained at a holding temperature
3 necessary to prevent spoilage.

4 *b.* All bags or containers in which orders are being
5 transported or delivered from a restaurant to a customer shall
6 be closed or sealed by the restaurant with a tamper-resistant
7 method.

8 *c.* The individual delivering orders shall not have any
9 passengers, including animals or children when orders for
10 delivery are being transported in the vehicle, except for
11 one adult passenger not engaging in payment for ride-share
12 services.

13 *d.* Smoking or vaping in the vehicle while orders are in the
14 vehicle shall be prohibited.

15 2. A food delivery platform transporting orders shall be
16 liable for any harm or injury caused by a failure by the food
17 delivery platform to meet the requirements of this chapter.>

18 2. Title page, line 2, by striking <third-party food
19 delivery service> and inserting <food delivery platform, and
20 providing civil penalties>

NORDMAN of Dallas