

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>

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NORDMAN of Dallas