

House File 2408 - Reprinted

HOUSE FILE 2408
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 688)

(As Amended and Passed by the House March 2, 2022)

A BILL FOR

1 An Act relating to the delivery of restaurant food pursuant to
2 a food delivery platform, providing civil penalties, and
3 including applicability provisions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 137G.1 Definitions.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "*Consent*" means a mutual acknowledgment by a restaurant
5 and a food delivery platform, which may be obtained
6 electronically.

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

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

16 4. "*Mark*" means a trademark or service mark, regardless of
17 whether the trademark or service mark is actually registered
18 with the state or other entity.

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

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

25 Sec. 2. NEW SECTION. 137G.2 Restaurant and food delivery
26 platform — requirements — penalties.

27 1. A food delivery platform shall be prohibited from all of
28 the following:

29 a. Using a restaurant's likeness without the consent of the
30 restaurant owner or the owner's designee in a manner that could
31 be reasonably interpreted to falsely suggest sponsorship or
32 endorsement by the restaurant.

33 b. Taking and arranging for the delivery or pickup of an
34 order from a restaurant without the consent of the restaurant
35 owner or the owner's designee.

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

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

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

11 *a.* Clearly provide to the consumer a mechanism to express
12 concerns regarding an order directly to the food delivery
13 platform.

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

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

21 *a.* Authorization for the food delivery platform to take
22 and arrange for the delivery and pickup of orders from the
23 restaurant.

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

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

35 5. *a.* A provision of an agreement between a food delivery

1 platform and a restaurant, or the obtaining of consent, that is
2 contrary to this chapter is void and unenforceable.

3 *b.* An aggrieved restaurant or the attorney general may seek
4 judicial enforcement of the requirements of this chapter in an
5 action brought against a food delivery platform in the county
6 in which the violation occurred. The following civil penalties
7 shall be imposed for a violation of this chapter:

8 (1) A one thousand dollar penalty for a first violation.

9 (2) A two thousand five hundred dollar penalty for a second
10 violation.

11 (3) A ten thousand dollar penalty for a third and subsequent
12 violation.

13 6. *a.* The attorney general or a restaurant may, in addition
14 to penalties imposed pursuant to subsection 5, bring an action
15 to enjoin a violation of this chapter. If the court finds a
16 violation of this chapter, the court shall issue an injunction
17 against a food delivery platform and may require the platform
18 to pay to the injured restaurant all profits derived from, or
19 damages resulting from, the wrongful acts and order that the
20 wrongful acts be terminated.

21 *b.* If the court finds that the food delivery platform
22 committed a wrongful act in bad faith in violation of this
23 chapter by not entering into an agreement or obtaining consent,
24 the court, in the court's discretion, shall:

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

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

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

29 1. Orders delivered through a food delivery platform shall
30 be transported in a manner that meets all of the following
31 requirements:

32 *a.* The order shall be maintained at a holding temperature
33 necessary to prevent spoilage.

34 *b.* All bags or containers in which orders are being
35 transported or delivered from a restaurant to a customer shall

1 be closed or sealed by the restaurant with a tamper-resistant
2 method.

3 *c.* The individual delivering orders shall not have any
4 passengers, including animals or children when orders for
5 delivery are being transported in the vehicle, except for
6 one adult passenger not engaging in payment for ride-share
7 services.

8 *d.* Smoking or vaping in the vehicle while orders are in the
9 vehicle shall be prohibited.

10 2. A food delivery platform transporting orders shall be
11 liable for any harm or injury caused by a failure by the food
12 delivery platform to meet the requirements of this chapter.

13 Sec. 4. APPLICABILITY. This Act applies to agreements
14 entered into between a restaurant and a food delivery platform
15 on or after the effective date of this Act.