

HOUSE REPUBLICAN STAFF ANALYSIS

Bill:	HF2408 (Formerly HSB 688)	House Committee:	PASSED February 14 (23-0)
Committee:	Commerce	House Floor:	
Floor Manager:	Rep. Nordman	Senate Floor:	
Date:	March 2, 2022	Governor:	
Staff:	Ben Gentz (1-3452)		

Third Party Delivery

- Requires an agreement between a restaurant and food delivery service
- Protects the use of a restaurant's menu, likeness, mark, and trade name
- Establishes food safety requirements for third party delivery

Section by Section Analysis

Section 1 – Definitions (137G.1)

New code section- Defines the following terms:

- Consent
- Likeness
- Restaurant
- Food delivery platform or platform
- Mark
- Trade name

Section 2 – Restaurant and food delivery service – agreement (137G.2)

New code section- A food delivery platform is prohibited from doing all of the following:

- Using a restaurant's likeness without consent of the owner or designee in a manner that would falsely suggest sponsorship or endorsement by the restaurant
- Taking and arranging for delivery or pickup from a restaurant without consent of the owner or designee
- Intentionally altering or inflating restaurant pricing without consent of the owner or designee, this does not apply to additional fees itemized separately
- Attempting to charge or expecting the restaurant to pay or absorb any fee, commission, or charge without consent of the owner or designee

Food delivery platform must do all of the following:

- Clearly provide consumer a mechanism to express concerns regarding the order directly to the food delivery platform
- Remove the restaurant from the platform within 10 days of request unless agreement states otherwise

Agreement between food delivery platform and restaurant for delivery or pickup of orders must include all of the following:

- Authorization for the platform to take and arrange for the delivery and pickup of orders from the restaurant
- Clear identification of any fee, commission, or charge that the restaurant will be required to pay or absorb

Agreement between platform and restaurant shall not require a restaurant to indemnify the platform or its agents for any damage or harm caused by the action or omission of the platform or its agents

Any provision of any agreement between an platform and a restaurant that is contrary to this chapter is void and unenforceable. Violations of a continuing nature are separate offenses unless otherwise provided. The prevailing party in court shall be awarded court costs and attorney fees. Violations are subject to the following schedule:

- First offense - \$1,000
- Second offense - \$2,500
- Third and subsequent offenses - \$10,000

A restaurant may bring action to enjoin a violation. If the court finds a violation, it will order an injunction against the platform and may require the payment to the restaurant of profits derived from or damages resulting from the wrongful acts and order that wrongful acts be terminated

If the court finds the platform committed a wrongful act in bad faith by not entering into an agreement or obtaining consent the court may:

- Enter a judgment in an amount not to exceed three times the amount of profits and damages
- Award reasonable attorney fees to the restaurant

Section 3 – Food safety – liability (137G.3)

New code section- Food delivered through a food delivery platform must be transported in a way that meets all of the following requirements:

- Food maintained at temperature to prevent spoilage
- All bags or containers must be closed or sealed by the restaurant with a tamper resistant method
- Delivery person must not have any passengers – people or animals in the vehicle, exception for one adult passenger
- No smoking or vaping in vehicle

Food delivery platform transporting orders is liable for any harm or injury caused by a failure to meet these requirements

Amendment Analysis

H-8102 by Nordman – Strike after amendment. See analysis above.

H-81XX by Nordman – Clarifies means of agreement. Makes applicable to agreements on or after the effective date. Clarifies enforcement of fines