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RWH/CL

P.L. 2020, CHAPTER 42, *approved June 26, 2020*
Senate, No. 2437 (*First Reprint*)

1 AN ACT limiting certain third-party food takeout and delivery
2 application service fees charged to restaurants and
3 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. The Legislature finds and declares that due to the current
9 state of emergency declared in response to the COVID-19
10 pandemic, restaurants have been prohibited from offering dine-in
11 service and limited to delivery and takeout offerings only, which
12 has placed a sudden and severe financial strain on many restaurants.
13 This emergency has also resulted in an increased use of third-party
14 food takeout and delivery service applications to place orders with
15 restaurants for food takeout or delivery. While some companies
16 have provided meaningful support to the restaurant community,
17 other companies offering third-party food takeout and delivery
18 services may charge restaurants a service fee exceeding 30 percent
19 of the individual order price, thereby compounding the current
20 financial strain on restaurants. Restaurants that are also small
21 businesses, in particular, may have limited bargaining power to
22 negotiate lower fees. The Legislature finds that it is in the public
23 interest to take action to maximize restaurant revenue from takeout
24 and delivery orders to enable restaurants to survive this crisis¹ **[** and
25 any similar future crisis, **]**¹ and remain sources of employment and
26 community vitality in this State.
27

28 2. a. It shall be an unlawful practice and a violation of
29 P.L.1960, c.39 (C.56:8-1 et seq.) for any third-party food takeout
30 and delivery service application or Internet website, during ¹**[a]**
31 and until the first day of the third month following any¹ state of
32 emergency ¹**[**of seven days or more **]** declared by the Governor in
33 response to COVID-19 that restricts restaurant dine-in service to
34 less than 25 percent of the maximum capacity allowed by law¹, to
35 charge a service fee to a restaurant for food take-out or delivery
36 orders that is:

37 (1) greater than 20 percent of the cost of the individual order; or

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted May 11, 2020.

1 (2) greater than 10 percent of the cost of the individual order,
2 when the order is delivered by an employee of the restaurant or an
3 independent contractor with whom the restaurant has contracted
4 directly.

5 The provisions of this section shall not be construed to limit the
6 ability of any restaurant to choose to pay up to 25 percent¹ of the
7 cost of the individual order to access additional advertising or other
8 products and services offered by any third-party food takeout and
9 delivery service application or Internet website. However, any
10 restaurant that chooses to pay a service fee that is greater than the
11 fee set forth in the provisions of this section shall be required to
12 affirmatively elect to pay that fee regardless of any contract that is
13 in effect on the effective date of this act unless the contract was
14 entered into prior to the state of emergency declared by the
15 Governor pursuant to Executive Order No. 103 of 2020.¹

16 b. The provisions of this section shall supersede and preempt
17 any county or municipal law, ordinance, resolution, or regulation
18 concerning the relationship between third-party food takeout and
19 delivery service applications or Internet websites and any restaurant
20 utilizing its services.

21 c. As used in this section, “third-party food takeout and
22 delivery service application or Internet website” means any online
23 food ordering and delivery service that allows a consumer to place
24 an order for takeout or delivery from a restaurant.

25

26 3. This act shall take effect immediately.

27

28

29

30

31 Limits service fees charged to restaurants by third-party food
32 takeout and delivery applications during COVID-19 state of
33 emergency.

SENATE, No. 2437

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:
Senator VIN GOPAL
District 11 (Monmouth)

SYNOPSIS

Limits service fees charged to restaurants by third-party food takeout and delivery applications during certain states of emergency.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT limiting certain third-party food takeout and delivery
2 application service fees charged to restaurants and
3 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. The Legislature finds and declares that due to the current
9 state of emergency declared in response to the COVID-19
10 pandemic, restaurants have been prohibited from offering dine-in
11 service and limited to delivery and takeout offerings only, which
12 has placed a sudden and severe financial strain on many restaurants.
13 This emergency has also resulted in an increased use of third-party
14 food takeout and delivery service applications to place orders with
15 restaurants for food takeout or delivery. While some companies
16 have provided meaningful support to the restaurant community,
17 other companies offering third-party food takeout and delivery
18 services may charge restaurants a service fee exceeding 30 percent
19 of the individual order price, thereby compounding the current
20 financial strain on restaurants. Restaurants that are also small
21 businesses, in particular, may have limited bargaining power to
22 negotiate lower fees. The Legislature finds that it is in the public
23 interest to take action to maximize restaurant revenue from takeout
24 and delivery orders to enable restaurants to survive this crisis, and
25 any similar future crisis, and remain sources of employment and
26 community vitality in this State.
27

28 2. a. It shall be an unlawful practice and a violation of
29 P.L.1960, c.39 (C.56:8-1 et seq.) for any third-party food takeout
30 and delivery service application or Internet website, during a state
31 of emergency of seven days or more, to charge a service fee to a
32 restaurant for food take-out or delivery orders that is:

- 33 (1) greater than 20 percent of the cost of the individual order; or
34 (2) greater than 10 percent of the cost of the individual order,
35 when the order is delivered by an employee of the restaurant or an
36 independent contractor with whom the restaurant has contracted
37 directly.

38 The provisions of this section shall not be construed to limit the
39 ability of any restaurant to choose to pay a greater percentage of the
40 cost of the individual order to access additional advertising or other
41 products and services offered by any third-party food takeout and
42 delivery service application or Internet website.

43 b. The provisions of this section shall supersede and preempt
44 any county or municipal law, ordinance, resolution, or regulation
45 concerning the relationship between third-party food takeout and
46 delivery service applications or Internet websites and any restaurant
47 utilizing its services.

1 c. As used in this section, “third-party food takeout and
2 delivery service application or Internet website” means any online
3 food ordering and delivery service that allows a consumer to place
4 an order for takeout or delivery from a restaurant.

5
6 3. This act shall take effect immediately.

7
8
9 STATEMENT

10
11 This bill regulates the service fees that third-party food takeout
12 and delivery service applications or websites may charge during a
13 state of emergency lasting longer than seven days.

14 Due to the current state of emergency declared in response to the
15 COVID-19 pandemic, restaurants have been prohibited from
16 offering dine-in service and limited to delivery and takeout
17 offerings only, which has placed a sudden and severe financial
18 strain on many restaurants. This emergency has also resulted in an
19 increased use of third-party food takeout and delivery service
20 applications and websites, such as DoorDash, Grubhub, and Uber
21 Eats, to place an order with restaurants for takeout or delivery.
22 While some companies have provided meaningful support to the
23 restaurant community, other companies offering third-party food
24 takeout or delivery services may charge restaurants a service fee
25 exceeding 30 percent of the order price, thereby compounding the
26 current financial strain on restaurants. High service fees
27 particularly hurt small businesses. Restaurants that are also small
28 businesses, in particular, may have limited bargaining power to
29 negotiate lower fees. It is in the public interest to take action to
30 maximize restaurant revenue from takeout and delivery orders to
31 enable restaurants to survive this crisis, and any similar future
32 crisis, and remain sources of employment and community vitality in
33 this State.

34 Under the provisions of this bill, it would be an unlawful practice
35 for any third-party food takeout and delivery service application or
36 website, during a state of emergency lasting longer than seven days,
37 to charge a service fee to a restaurant that is: 1) greater than 20
38 percent of the cost of the individual order; or 2) greater than 10
39 percent of the cost of the individual order, when the order is
40 delivered by an employee of the restaurant or an independent
41 contractor with whom the restaurant has contracted directly.
42 However, this bill does not limit the ability of any restaurant to
43 choose to pay a greater percentage of the cost of the individual
44 order to access additional advertising or other products and services
45 offered by the third-party application or website.

46 In addition, this bill is to supersede and preempt any county or
47 municipal law, ordinance, resolution, or regulation concerning the
48 relationship between third-party food takeout and delivery service

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1 applications or Internet websites and any restaurants utilizing its
2 services.

3 The bill defines “third-party food takeout and delivery service
4 application or Internet website” to mean any online food order or
5 delivery service that allows a consumer to place an order for takeout
6 or delivery from a restaurant.

7 An unlawful practice under the consumer fraud act, P.L.1960,
8 c.39 (C.56:8-1 et seq.), is punishable by a monetary penalty of not
9 more than \$10,000 for first offense and not more than \$20,000 for
10 any subsequent offense. In addition, a violation can result in cease
11 and desist order issued by the Attorney General, the assessment of
12 punitive damages, and the awarding of treble damages and costs to
13 the injured.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2437

STATE OF NEW JERSEY

DATED: JUNE 16, 2020

The Assembly Budget Committee reports favorably Senate Bill No. 2437 (1R).

This bill regulates the service fees that third-party food takeout and delivery service applications or websites may charge during a state of emergency declared in response to COVID-19.

Under the amended bill, it would be an unlawful practice for any third-party food takeout and delivery service application or website, during a state of emergency declared in response to COVID-19, to charge a service fee to a restaurant that is: 1) greater than 20 percent of the cost of the individual order; or 2) greater than 10 percent of the cost of the individual order, when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly.

This bill does not limit the ability of any restaurant to choose to pay up to 25 percent of the cost of the individual order to access additional advertising or other products and services offered by the third-party application or website. However, any restaurant that chooses to pay a service fee that is greater than that set forth by the provisions of this bill is required to affirmatively elect to do so regardless of any contract that is in effect on the bill's effective date unless the contract was entered into prior to the state of emergency declared by the Governor pursuant to Executive Order No. 103 of 2020.

The provisions of this bill are to repeatedly take effect anytime the Governor restricts dine-in service to less than 25 percent of the maximum capacity allowed by law during any state of emergency declared in response to COVID-19.

In addition, this bill is to supersede and preempt any county or municipal law, ordinance, resolution, or regulation concerning the relationship between third-party food takeout and delivery service applications or Internet websites and any restaurants utilizing its services.

The bill defines "third-party food takeout and delivery service application or Internet website" to mean any online food order or delivery service that allows a consumer to place an order for takeout or delivery from a restaurant.

An unlawful practice under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), is punishable by a monetary penalty of not more than \$10,000 for first offense and not more than \$20,000 for any subsequent offense. In addition, a violation can result in cease and desist order issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured.

As reported by the committee, Senate Bill No. 2437 (1R) is identical to Assembly Bill No. 3978 (1R), which also was reported by the committee on this date.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 2437

STATE OF NEW JERSEY

DATED: JUNE 15, 2020

The Assembly Labor Committee reports favorably Senate Bill No. 2437 (1R).

This bill regulates the service fees that third-party food takeout and delivery service applications or websites may charge during a state of emergency declared in response to COVID-19.

Under the bill, it would be an unlawful practice for any third-party food takeout and delivery service application or website, during a state of emergency declared in response to COVID-19, to charge a service fee to a restaurant that is: 1) greater than 20 percent of the cost of the individual order; or 2) greater than 10 percent of the cost of the individual order, when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly.

This bill does not limit the ability of any restaurant to choose to pay up to 25 percent of the cost of the individual order to access additional advertising or other products and services offered by the third-party application or website. However, any restaurant that chooses to pay a service fee that is greater than that set forth by the provisions of this bill is required to affirmatively elect to do so regardless of any contract that is in effect on the bill's effective date unless the contract was entered into prior to the state of emergency declared by the Governor pursuant to Executive Order No. 103 of 2020.

The provisions of this bill are to repeatedly take effect anytime the Governor restricts dine-in service to less than 25 percent of the maximum capacity allowed by law during any state of emergency declared in response to COVID-19.

In addition, this bill is to supersede and preempt any county or municipal law, ordinance, resolution, or regulation concerning the relationship between third-party food takeout and delivery service applications or Internet websites and any restaurants utilizing its services.

The bill defines "third-party food takeout and delivery service application or Internet website" to mean any online food order or delivery service that allows a consumer to place an order for takeout or delivery from a restaurant.

An unlawful practice under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), is punishable by a monetary penalty of not more than \$10,000 for first offense and not more than \$20,000 for any subsequent offense. In addition, a violation can result in cease and desist order issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured.

This bill is identical to Assembly Bill No. 3978 (1R) of the 2020-2021 session.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2437

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 12, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2437, with amendments.

As amended and reported by the committee, this bill regulates the service fees that third-party food takeout and delivery service applications or websites may charge during a state of emergency declared in response to COVID-19.

Under the amended bill, it would be an unlawful practice for any third-party food takeout and delivery service application or website, during a state of emergency declared in response to COVID-19, to charge a service fee to a restaurant that is: 1) greater than 20 percent of the cost of the individual order; or 2) greater than 10 percent of the cost of the individual order, when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly.

This bill does not limit the ability of any restaurant to choose to pay up to 25 percent of the cost of the individual order to access additional advertising or other products and services offered by the third-party application or website. However, any restaurant that chooses to pay a service fee that is greater than that set forth by the provisions of this bill is required to affirmatively elect to do so regardless of any contract that is in effect on the bill's effective date unless the contract was entered into prior to the state of emergency declared by the Governor pursuant to Executive Order No. 103 of 2020.

The provisions of this bill are to repeatedly take effect anytime the Governor restricts dine-in service to less than 25 percent of the maximum capacity allowed by law during any state of emergency declared in response to COVID-19.

In addition, this bill is to supersede and preempt any county or municipal law, ordinance, resolution, or regulation concerning the relationship between third-party food takeout and delivery service applications or Internet websites and any restaurants utilizing its services.

The bill defines "third-party food takeout and delivery service application or Internet website" to mean any online food order or

delivery service that allows a consumer to place an order for takeout or delivery from a restaurant.

An unlawful practice under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), is punishable by a monetary penalty of not more than \$10,000 for first offense and not more than \$20,000 for any subsequent offense. In addition, a violation can result in cease and desist order issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1) apply only during a state of emergency declared in response to COVID-19;

2) expire on the first day of the third month following the date on which the Governor allows restaurants to operate dine-in service at 25 percent of the maximum capacity allowed by law or greater; except that the provisions of the bill would take effect again if dine-in service is later restricted to less than 25 percent capacity during a state of emergency declared in response to COVID-19;

3) provide that any restaurant may choose to pay up to 25 percent of the cost of the individual order to access additional advertising or other products and services; and

4) provide that any restaurant that chooses to pay a service fee that is greater than the fee set forth in the provisions of this bill is required to affirmatively elect to pay that fee regardless of any contract that is in effect on the effective date of this act unless the contract was entered into prior to the state of emergency declared by the Governor pursuant to Executive Order No. 103 of 2020.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

ASSEMBLY, No. 3978

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 4, 2020

Sponsored by:

Assemblywoman SERENA DIMASO

District 13 (Monmouth)

Assemblywoman ANNETTE QUIJANO

District 20 (Union)

Assemblywoman AURA K. DUNN

District 25 (Morris and Somerset)

SYNOPSIS

Limits service fees charged to restaurants by third-party food takeout and delivery applications during certain states of emergency.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/1/2020)

1 AN ACT limiting certain third-party food takeout and delivery
2 application service fees charged to restaurants and
3 supplementing P.L.1960, c.39 (C.56:8-1 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. The Legislature finds and declares that due to the current
9 state of emergency declared in response to the COVID-19
10 pandemic, restaurants have been prohibited from offering dine-in
11 service and limited to delivery and takeout offerings only, which
12 has placed a sudden and severe financial strain on many restaurants.
13 This emergency has also resulted in an increased use of third-party
14 food takeout and delivery applications to place orders with
15 restaurants for food takeout or delivery. Companies offering third-
16 party takeout and delivery services may charge restaurants a service
17 fee exceeding 30 percent of the individual order price, thereby
18 compounding the current financial strain on restaurants. Restaurants
19 that are also small businesses, in particular, may have limited
20 bargaining power to negotiate lower fees. The Legislature finds
21 that it is in the public interest to take action to maximize restaurant
22 revenue from takeout and delivery orders to enable restaurants to
23 survive this crisis, and any similar future crisis, and remain sources
24 of employment and community vitality in this State.
25

26 2. It shall be an unlawful practice and a violation of
27 P.L.1960, c.39 (C.56:8-1 et seq.) for any third-party food takeout
28 and delivery service application or Internet website, during a state
29 of emergency of seven days or more, to charge a service fee to a
30 restaurant for food take-out or delivery orders that is greater than 15
31 percent of the cost of the individual order. The provisions of this
32 section shall not be construed to limit the ability of any restaurant to
33 choose to pay greater than 15 percent of the cost of the individual
34 order to access additional advertising or other products and services
35 offered by any third-party food takeout and delivery service
36 application or Internet website.

37 As used in this section, "third-party food takeout and delivery
38 service application or Internet website" means any online food
39 ordering and delivery service that allows a consumer to place an
40 order for takeout or delivery from a restaurant.
41

42 3. This act shall take effect immediately.
43

44 STATEMENT
45

46 This bill makes it an unlawful practice for third-party food
47 takeout and delivery applications or websites to charge a service fee
48 to a restaurant that is greater than 15 percent of the cost of the

1 individual order during a state of emergency lasting longer than
2 seven days.

3 Due to the current state of emergency declared in response to the
4 COVID-19 pandemic, restaurants have been prohibited from
5 offering dine-in service and limited to delivery and takeout
6 offerings only, which has placed a sudden and severe financial
7 strain on many restaurants. This emergency has also resulted in an
8 increased use of third-party food takeout and delivery applications
9 and websites, such as DoorDash, Grubhub, and Uber Eats, to place
10 an order with restaurants for takeout or delivery. Companies
11 offering third-party takeout or delivery services may charge
12 restaurants a service fee exceeding 30 percent of the order price,
13 thereby compounding the current financial strain on restaurants.
14 Restaurants that are also small businesses, in particular, may have
15 limited bargaining power to negotiate lower fees. It is in the public
16 interest to take action to maximize restaurant revenue from takeout
17 and delivery orders to enable restaurants to survive this crisis, and
18 any similar future crisis, and remain sources of employment and
19 community vitality in this State.

20 Under the provisions of this bill, it would be an unlawful practice
21 for any third-party food takeout and delivery application or Internet
22 website, during a state of emergency lasting longer than seven days,
23 to charge a service fee to a restaurant that is higher than 15 percent
24 of the cost of the individual order. However, this bill does not limit
25 the ability of any restaurant to pay greater than 15 percent of the
26 cost of the individual order to access additional advertising or other
27 products and services offered by the third-party application or
28 website.

29 The bill defines “third-party food takeout and delivery
30 application or Internet website” to mean any online food order or
31 delivery service that allows a consumer to place an order for takeout
32 or delivery from a restaurant.

33 An unlawful practice under the consumer fraud act,
34 P.L.1960, c.39 (C.56:8-1 et seq.), is punishable by a monetary
35 penalty of not more than \$10,000 for first offense and not more than
36 \$20,000 for any subsequent offense. In addition, a violation can
37 result in cease and desist order issued by the Attorney General, the
38 assessment of punitive damages, and the awarding of treble
39 damages and costs to the injured.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3978

STATE OF NEW JERSEY

DATED: JUNE 16, 2020

The Assembly Budget Committee reports favorably Assembly Bill No. 3978 (1R).

This bill regulates the service fees that third-party food takeout and delivery service applications or websites may charge during a state of emergency declared in response to COVID-19.

Under the amended bill, it would be an unlawful practice for any third-party food takeout and delivery service application or website, during a state of emergency declared in response to COVID-19, to charge a service fee to a restaurant that is: 1) greater than 20 percent of the cost of the individual order; or 2) greater than 10 percent of the cost of the individual order, when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly.

This bill does not limit the ability of any restaurant to choose to pay up to 25 percent of the cost of the individual order to access additional advertising or other products and services offered by the third-party application or website. However, any restaurant that chooses to pay a service fee that is greater than that set forth by the provisions of this bill is required to affirmatively elect to do so regardless of any contract that is in effect on the bill's effective date unless the contract was entered into prior to the state of emergency declared by the Governor pursuant to Executive Order No. 103 of 2020.

The provisions of this bill are to repeatedly take effect anytime the Governor restricts dine-in service to less than 25 percent of the maximum capacity allowed by law during any state of emergency declared in response to COVID-19.

In addition, this bill is to supersede and preempt any county or municipal law, ordinance, resolution, or regulation concerning the relationship between third-party food takeout and delivery service applications or Internet websites and any restaurants utilizing its services.

The bill defines "third-party food takeout and delivery service application or Internet website" to mean any online food order or delivery service that allows a consumer to place an order for takeout or delivery from a restaurant.

An unlawful practice under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), is punishable by a monetary penalty of not more than \$10,000 for first offense and not more than \$20,000 for any subsequent offense. In addition, a violation can result in cease and desist order issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured.

As reported by the committee, Assembly Bill No. 3978 (1R) is identical to Senate Bill No. 2437 (1R), which also was reported by the committee on this date.

FISCAL IMPACT:

This bill is not certified as requiring a fiscal note.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3978

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 2020

STATEMENT

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 3978.

As amended and reported by the committee, this bill regulates the service fees that third-party food takeout and delivery service applications or websites may charge during a state of emergency declared in response to COVID-19.

Under the amended bill, it would be an unlawful practice for any third-party food takeout and delivery service application or website, during a state of emergency declared in response to COVID-19, to charge a service fee to a restaurant that is: 1) greater than 20 percent of the cost of the individual order; or 2) greater than 10 percent of the cost of the individual order, when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly.

This bill does not limit the ability of any restaurant to choose to pay up to 25 percent of the cost of the individual order to access additional advertising or other products and services offered by the third-party application or website. However, any restaurant that chooses to pay a service fee that is greater than that set forth by the provisions of this bill is required to affirmatively elect to do so regardless of any contract that is in effect on the bill's effective date unless the contract was entered into prior to the state of emergency declared by the Governor pursuant to Executive Order No. 103 of 2020.

The provisions of this bill are to repeatedly take effect anytime the Governor restricts dine-in service to less than 25 percent of the maximum capacity allowed by law during any state of emergency declared in response to COVID-19.

In addition, this bill is to supersede and preempt any county or municipal law, ordinance, resolution, or regulation concerning the relationship between third-party food takeout and delivery service applications or Internet websites and any restaurants utilizing its services.

The bill defines “third-party food takeout and delivery service application or Internet website” to mean any online food order or delivery service that allows a consumer to place an order for takeout or delivery from a restaurant.

An unlawful practice under the consumer fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), is punishable by a monetary penalty of not more than \$10,000 for first offense and not more than \$20,000 for any subsequent offense. In addition, a violation can result in cease and desist order issued by the Attorney General, the assessment of punitive damages, and the awarding of treble damages and costs to the injured.

As amended and reported, the bill is identical to Senate Bill No. 2437 (1R) of the 2020-2021 session.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1) apply only during a state of emergency declared in response to COVID-19;

2) expire on the first day of the third month following the date on which the Governor allows restaurants to operate dine-in service at 25 percent of the maximum capacity allowed by law or greater; except that the provisions of the bill would take effect again if dine-in service is later restricted to less than 25 percent capacity during a state of emergency declared in response to COVID-19;

3) make it an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) for any third-party food takeout and delivery service application or Internet website, during a state of emergency of seven days or more, to charge a service fee to a restaurant for food take-out or delivery orders that is:

(1) greater than 20 percent of the cost of the individual order; or

(2) greater than 10 percent of the cost of the individual order, when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly.

4) provide that any restaurant may choose to pay up to 25 percent of the cost of the individual order to access additional advertising or other products and services;

5) provide that any restaurant that chooses to pay a service fee that is greater than the fee set forth in the provisions of this bill is required to affirmatively elect to pay that fee regardless of any contract that is in effect on the effective date of this act unless the contract was entered into prior to the state of emergency declared by the Governor pursuant to Executive Order No. 103 of 2020; and

6) provide that the provisions of section 2 of the bill will supersede and preempt any county or municipal law, ordinance, resolution, or regulation concerning the relationship between third-party food takeout and delivery service applications or Internet websites and any restaurant utilizing its services.

Governor Phil Murphy

Governor Murphy Signs Legislation to Limit Excessive Third-Party Delivery Service Fees During COVID-19 State of Emergencies

06/26/2020

TRENTON – Governor Phil Murphy today signed legislation (S2437) which places limits on service fees charged to restaurants by third-party delivery applications and websites during state of emergencies declared by the Governor in response to COVID-19. The legislation provides much needed relief to restaurants across New Jersey that have faced excessive fees while being limited to takeout and delivery service.

“By following public health guidelines, restaurants across New Jersey have contributed to flattening the curve and to the enormous progress we have made against COVID-19,” **said Governor Phil Murphy**. “Through this legislation, now law, dining establishments throughout our state will receive much needed relief from excessive service fees if public health necessitates the return of dine-in restrictions.”

The legislation prohibits third-party food takeout and delivery service applications and websites from charging service fees greater than 20 percent of the cost of the individual order or greater than 10 percent of the cost of the individual order, when the order is delivered by an employee of the restaurant or an independent contractor with whom the restaurant has contracted directly. The limits are in effect during a state of emergency and until the first day of the third month following any state of emergency declared by the Governor in response to COVID-19 that restricts restaurant dine-in service to less than 25% of the maximum capacity allowed by law.

Primary sponsors of this legislation include Senators Vin Gopal and Joseph Cryan and Assemblymembers Annette Quijano, Serena DiMaso, and Aura Dunn.

“Some of these so-called service fees for food delivery are just way out of line,” **said Senator Joe Cryan**. “Restaurants have been some of the hardest hit businesses in the shutdown and they face an uphill struggle as we gradually reopen. For now, they are relying on takeout to try to keep their businesses alive. It is unconscionable to take advantage of this crisis by charging them inflated fees for delivery service. We need to support local businesses and work together to get through these hard times.”

“During this crisis, many struggling restaurants have turned to third-party deliveries to make ends meet, but some bad actors have taken advantage of them with unaffordable fees,” **said Senator Vin Gopal**. “I’m proud to sponsor this new law, which will protect these restaurants as they work hard to feed our communities and families while weathering this pandemic.”

“Since the COVID-19 pandemic began, restaurants have been limited to offering takeout and delivery options to customers,” **said Assemblywoman Annette Quijano**. “As a result, customers have been turning to food takeout and delivery apps to simplify the process of ordering food from their favorite restaurant. It’s likely many don’t know that the restaurant they are trying to support is actually paying an enormous fee to the app they’re ordering from. There’s no reason for apps to be charging outlandish fees to restaurants during the middle of a global public health emergency. Apps can be a vital tool in helping restaurants stay in business, but that won’t be the case if they are charging unreasonable fees. It’s time we put a stop to this unfair practice and ensure restaurants will only be responsible for a fair fee per order.”

“It’s a margin killer for many of our Main Street businesses,” **said Assemblywoman Serena DiMaso**. “The keeping 32 percent of the order payment in a restaurant business where margins are maybe 15 or 20 per

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“Third-party services are no longer fringe experiments, but rather a mainstream piece of the restaurant business,” **said Assemblywoman Aura Dunn.** “For all their hard work to keep afloat, this cap helps those restaurants stay in business.”

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