

STATE OF NEW YORK

4651

2021-2022 Regular Sessions

IN ASSEMBLY

February 4, 2021

Introduced by M. of A. ABBATE, McDONALD -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to third-party delivery services

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general business law is amended by adding a new section
2 391-v to read as follows:

3 § 391-v. Third-party food delivery agreements. 1. For the purposes of
4 this section, the following terms shall have the following meanings:

5 (a) "Agreement" means a written contractual agreement between a food
6 service establishment and a third-party food delivery service authoriz-
7 ing the inclusion of the food service establishment's products on the
8 third-party food delivery platform.

9 (b) "Food service establishment" means a place where food is provided
10 for individual portion service directly to the consumer whether such
11 food is provided free of charge or sold, and whether consumption occurs
12 on or off the premises or is provided from a pushcart, stand or vehicle.

13 (c) "Third-party food delivery service" means any website, mobile
14 application or other internet service that offers or arranges for the
15 sale or delivery of food and beverages prepared by, and the same-day
16 delivery or same-day pickup of food and beverage from, a food service
17 establishment located in the state.

18 (d) "Third-party food delivery platform" means the online or mobile
19 platform of the third-party food delivery service on which a consumer
20 can view products available for sale and place an order for a food
21 service establishment's products.

22 2. (a) A third-party food delivery service shall not list, advertise,
23 promote, or sell a food service establishment's products, or arrange for
24 the delivery of an order of such products, on a third-party food deliv-

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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1 ery platform without a valid agreement with the food service establish-
2 ment authorizing the inclusion of their products on such platform.

3 (b) An agreement executed in accordance with this section shall not
4 include a provision, clause, or covenant that requires a food service
5 establishment to indemnify a third-party food delivery service, any
6 independent contractor acting on behalf of the third-party food delivery
7 service, or any registered agent of the third-party food delivery
8 service, for any damages or harm by an act or omission occurring after
9 the food service establishment's product leaves the place of business of
10 the food service establishment. To the extent an agreement contains such
11 a provision, such provision shall be deemed void and unenforceable.

12 (c) A food service establishment included on a third-party food deliv-
13 ery platform in violation of this section shall have the right to bring
14 an action in a court of competent jurisdiction for damages, penalties as
15 set forth in this section, and injunctive relief. Such court, in its
16 discretion, may also award reasonable court costs and attorneys' fees.

17 (d) Any person that violates any provision of this section shall be
18 subject to a civil penalty of up to one thousand dollars per violation.
19 Each day a food service establishment is included on a third-party food
20 delivery platform and each food service establishment included on a
21 third-party food delivery platform shall be considered a separate
22 violation.

23 § 2. This act shall take effect on the sixtieth day after it shall
24 have become a law.