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:

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

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

(a) "Agreement" means a written contractual agreement between a food service establishment and a third-party food delivery service authorizing the inclusion of the food service establishment's products on the third-party food delivery platform.

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

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

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

2. (a) A third-party food delivery service shall not list, advertise, promote, or sell a food service establishment's products, or arrange for 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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ery platform without a valid agreement with the food service establishment authorizing the inclusion of their products on such platform.

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

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

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

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