

ASSEMBLY, No. 5751

STATE OF NEW JERSEY

220th LEGISLATURE

INTRODUCED NOVEMBER 30, 2023

Sponsored by:
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)

SYNOPSIS

Limits service fees charged to restaurants by third-party food takeout and delivery applications.

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 amending
3 P.L.2020, c.42.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1 (New section) a. As used in this section, "third-party food
9 takeout and delivery service application or Internet website" means
10 any third-party online food ordering and delivery service that
11 allows a consumer to place an order for takeout or delivery from a
12 restaurant but shall not include any website that is owned,
13 controlled, or managed by the restaurant itself.

14 b. Notwithstanding the provisions of section 2 of P.L.2020,
15 c.42 (C.56:8-226), it shall be an unlawful practice and a violation of
16 P.L.1960, c.39 (C.56:8-1 et seq.) for any third-party food takeout
17 and delivery service application or Internet website to charge a
18 service fee to a restaurant for food take-out or delivery orders that
19 is:

- 20 (1) greater than 20 percent of the cost of the individual order; or
21 (2) greater than 10 percent of the cost of the individual order,
22 when the order is delivered by an employee of the restaurant or an
23 independent contractor with whom the restaurant has contracted
24 directly.

25 The provisions of this section shall not be construed to limit the
26 ability of any restaurant to choose to pay up to 25 percent of the
27 cost of the individual order to access additional advertising or other
28 products and services offered by any third-party food takeout and
29 delivery service application or Internet website.

30 c. The provisions of this section shall supersede and preempt
31 any county or municipal law, ordinance, resolution, or regulation
32 concerning the relationship between third-party food takeout and
33 delivery service applications or Internet websites and any restaurant
34 utilizing its services.

35 d. The provisions of section 2 of P.L.2020, c.42 (C.56:8-226)
36 shall not apply while this section is operational.

37 e. Within 24 months of the effective date of this act, the
38 Director of the Division of Consumer Affairs shall report to the
39 Governor, and to the Legislature pursuant to section 2 of P.L.1991,
40 c.164 (C.52:14-19.1), on the impact of this act on restaurants,
41 consumers, and third-party food takeout and delivery service
42 applications or Internet websites and make a recommendation as to
43 whether this act should be permanently adopted.

44
45 2. Section 2 of P.L.2020, c.42 (C.56:8-226) is amended to read
46 as follows:

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.

2. a. It shall be 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 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 percent of the maximum capacity allowed by law, 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.

The provisions of this section shall not be construed to 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 any third-party food takeout and delivery service application or Internet website. However, any restaurant that chooses to pay a service fee that is greater than the fee set forth in the provisions of this section shall be 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.

b. (1) The provisions of this section shall 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.

(2) The provisions of this section shall not apply while the provisions of section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) are operational.

c. As used in this section, "third-party food takeout and delivery service application or Internet website" means any third-party online food ordering and delivery service that allows a consumer to place an order for takeout or delivery from a restaurant but shall not include any website that is owned, controlled, or managed by the restaurant itself.

(cf: P.L.2020, c.42, s.2)

3. This act shall take effect immediately and shall expire on the first day of the twenty-fifth month following the date of enactment.

STATEMENT

This bill would make it an unlawful practice for any third-party food takeout and delivery service application or website to charge a

1 service fee to a restaurant that is: 1) greater than 20 percent of the cost
2 of the individual order; or 2) greater than 10 percent of the cost of the
3 individual order, when the order is delivered by an employee of the
4 restaurant or an independent contractor with whom the restaurant has
5 contracted directly.

6 This bill does not limit the ability of any restaurant to choose to
7 pay up to 25 percent of the cost of the individual order to access
8 additional advertising or other products and services offered by the
9 third-party application or website.

10 The bill defines “third-party food takeout and delivery service
11 application or Internet website” to mean any third-party online food
12 ordering or delivery service that allows a consumer to place an order
13 for takeout or delivery from a restaurant but does not include any
14 website that is owned, controlled, or managed by the restaurant itself.

15 The provisions of this bill are to take effect immediately and expire
16 on the first day of the twenty-fifth month following the date of
17 enactment. During this time, the Director of the Division of Consumer
18 Affairs is required to report to the Governor and the Legislature on the
19 impact of the bill on restaurants, consumers, and third-party food
20 takeout and delivery service applications or Internet websites and
21 make a recommendation on whether the limit on service fees should be
22 permanently adopted.

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

29 During the COVID-19 pandemic, similar legislation (P.L.2020,
30 c.42, C.56:8-226) was adopted in order to ease the financial burden on
31 restaurants that resulted from the limitations that were placed on
32 indoor dining to help slow the spread of the virus. That legislation
33 became inactive when the state of emergency was lifted in March
34 2022.