
Assembly Committee on Commerce and Labor

This measure may be considered for action during today's work session.

SENATE BILL 320 (R1)

**Enacts various provisions relating to food delivery service platforms.
(BDR 52-591)**

Sponsored By: Senator Neal
Date Heard: April 30, 2021
Fiscal Notes: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

Senate Bill 320 requires a food delivery service platform provider to enter into a written agreement with a food dispensing establishment before facilitating an online food order. The bill prohibits a food delivery service platform provider from using a food dispensing establishment's likeness, registered trademark, or intellectual property without written consent. A food dispensing establishment may at any time submit a written request for removal from the food delivery service platform. A food delivery service platform must disclose to a user in a conspicuous manner certain information associated with the online food order, as well as on the receipt provided for an online food order. A person who knowingly violates the requirement to disclose certain information is deemed to have committed a deceptive trade practice.

The bill provides that a food delivery service platform that violates certain provisions is subject to a daily \$500 civil penalty. In addition, the bill authorizes a food dispensing establishment to bring an action if their likeness, registered trademark, or intellectual property was used in violation of the prohibition. Finally, during the period in which the Declaration of Emergency for the Coronavirus Disease of 2019 is in effect, a food delivery service platform is prohibited, with certain exceptions, from charging a food dispensing establishment a fee or combination of fees for an online food order that exceed 20 percent of the food purchase price.

Amendments:

Senator Neal, proposes the following amendments (attached):

1. Amend the definition "food delivery service platform" in Section 4 of the bill.
2. Amend subsection 1(c) of Section 16 of the bill to delete the requirement that the specified statement include a disclosure of the average commission.
3. Amend Section 19 of the bill to: (1) lower the limit on the maximum commission that may be charged by a food delivery service platform provider from 20 percent to 15 percent; (2) provide that the limitation on the maximum commission that may be charged is effective only in a county in which a declaration of emergency is in effect, which includes social distancing or other occupancy limitations on capacity in a food dispensing establishment; and (3) provide that the provisions of the section do not preempt any local ordinance which places limits on the maximum commission that may be charged, so long as such ordinance was in effect before April 30, 2021.
4. Amend the effective date of the bill to upon passage and approval.

SUMMARY—Enacts various provisions relating to food delivery service platforms. (BDR 52-591)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: Yes.

AN ACT relating to trade practices; prohibiting a food delivery service platform provider from engaging in certain activities; requiring a food delivery service platform provider to remove a food dispensing establishment from the food delivery service platform of the provider upon request; requiring a food delivery service platform provider to make certain disclosures concerning online food orders; prohibiting a food delivery service platform provider from charging a food dispensing establishment any fees over a certain amount during the period in which the Declaration of Emergency for COVID-19 issued by the Governor remains in effect; establishing certain practices as deceptive trade practices; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

This bill enacts various provisions relating to a food delivery service platform, which is defined in **section 4** of this bill to mean an Internet website, online service or mobile application which allows users to purchase food from multiple food dispensing establishments and arrange for the same-day delivery or same-day pickup of such food. **Section 5** of this bill defines “food delivery service platform provider” as a person who operates a food delivery service platform.

Section 12 of this bill prohibits a food delivery service platform provider from facilitating an online food order involving a food dispensing establishment unless the provider has entered into an agreement with the food dispensing establishment that expressly authorizes the provider to engage in such activities. **Section 13** of this bill requires a food delivery service platform provider to remove a food dispensing establishment from the food delivery service platform of the provider upon the receipt of a written request from the food dispensing establishment. **Section 13** provides that a food delivery service platform provider that violates that requirement is subject to a civil penalty of \$500 per day of the violation.

Section 14 of this bill prohibits a food delivery service platform provider from using the likeness, registered trademark or intellectual property of a food dispensing establishment without first obtaining the written consent of the food dispensing establishment. **Section 14** provides that a food delivery service platform provider that violates that prohibition is subject to a civil penalty of \$500 per day of the violation. **Section 15** of this bill authorizes a food dispensing establishment whose likeness, registered trademark or intellectual property was used by a food delivery service platform provider in violation of **section 14** to bring an action against the provider.

Section 16 of this bill requires a food delivery service platform provider to disclose certain information to a user of the platform who engages in an online food order. Among the information required to be disclosed by **section 16** is any commission associated with the online food order. **Section 3** of this bill defines “commission,” in general, to mean any fee charged by a food delivery service platform provider to a food dispensing establishment for the use of the services of the provider in effectuating online food orders. **Section 17** of this bill sets forth the manner in which such commissions are required to be disclosed.

On March 12, 2020, Governor Steve Sisolak issued a Declaration of Emergency due to the outbreak of the disease identified by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services as COVID-19. (Declaration of Emergency for COVID-19 (March 12, 2020)) **Section 19** of this bill prohibits, for the period during which the Declaration of Emergency for COVID-19 remains in effect, a food delivery service platform provider from charging a food dispensing establishment any fees for an online food order that exceed a certain amount.

Existing law defines various activities involving businesses and occupations that constitute deceptive trade practices. (NRS 598.0915-598.0925) If a person knowingly engages in a deceptive trade practice, the person may be subject to restraint by injunction and the imposition of civil and criminal penalties. (NRS 598.0979, 598.0985, 598.0999) **Sections 18 and 19** of this bill provide that a violation of the provisions of **section 16, 17 or 19** of this bill constitutes a deceptive trade practice.

Sections 3-11 of this bill define words and terms for the purposes of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. *As used in sections 2 to 18, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. 1. *“Commission” means any fee or other payment of money that is charged by a food delivery service platform provider to a food dispensing establishment for the use of the services of the food delivery service platform provider in effectuating online food orders.*

2. *The term includes, without limitation, any annual fee charged to a food dispensing establishment for the use of the services described in subsection 1.*

3. *The term does include any fee that is charged by a food delivery service platform provider for services provided as a general or indirect cost of doing business, including, without limitation, fees for the processing of credit cards or for advertising in a restaurant directory.*

Sec. 4. 1. *“Food delivery service platform” means an Internet website, online service or mobile application which allows users to purchase food from multiple food dispensing establishments and arrange for the same-day delivery or same-day pickup of such food.*

2. *Food delivery service platform does not include websites, mobile applications or other electronic services that do not post food place menus, logos or pricing information on their platforms and that do not assess any commission or other charge to a food place in connection with a delivery of its menu items.*

Sec. 5. *“Food delivery service platform provider” means a person who operates a food delivery service platform.*

Sec. 6. 1. *“Food dispensing establishment” means a food establishment that prepares and serves food intended for immediate consumption. The term includes, without limitation, a restaurant.*

2. *As used in this section, “food establishment” has the meaning ascribed to it in NRS 446.020.*

Sec. 7. *“Food purchase price” means the portion of the total online food order price that is attributable to the amount charged by the food dispensing establishment for the food.*

Sec. 8. *“Likeness” means any identifiable symbol attributed and easily identified as belonging to a specific food dispensing establishment.*

Sec. 9. *“Online food order” means a transaction in which a user, through a food delivery service platform, purchases food from a food dispensing establishment and arranges for the same-day delivery or same-day pickup of such food.*

Sec. 10. *“Total online food order price” means the total amount paid or to be paid by a user as a result of an online food order.*

Sec. 11. *“User” means a person who uses a food delivery service platform to engage in an online food order.*

Sec. 12. *A food delivery service platform provider shall not facilitate an online food order involving a food dispensing establishment, including, without limitation, arranging for the same-day delivery or same-day pickup of food prepared by a food dispensing establishment,*

*unless the food delivery service platform provider has entered into a **written** agreement with the food*

dispensing establishment that expressly authorizes the food delivery service platform provider to engage in such activities.

Sec. 13. 1. A food dispensing establishment may, at any time, submit a written request to a food delivery service platform provider directing the provider to remove the food dispensing establishment from the food delivery service platform. If the food delivery service platform has appointed a registered agent located in this State, the request must be submitted to the registered agent.

*~~2.~~ A food delivery service platform provider that receives a request submitted pursuant to subsection 1 shall confirm receipt of the request and **immediately** ~~promptly~~ **within forty-eight hours shall** remove the food dispensing establishment from the food delivery service platform. ~~consistent with the terms of any agreement between the food delivery service platform and the food dispensing establishment.~~*

~~3.~~ A food delivery service platform provider who violates the provisions of subsection 2 is subject to a civil penalty of \$500 per day of the violation, and each day's continuance of the violation constitutes a separate and distinct violation.

Sec. 14. 1. A food delivery service platform provider shall not use the likeness, registered trademark or intellectual property of a food dispensing establishment unless the food delivery service platform provider first obtains the written consent of the food dispensing establishment.

2. A food delivery service platform provider who violates the provisions of subsection 1 is subject to a civil penalty of \$500 per day of the violation, and each day's continuance of the violation constitutes a separate and distinct violation.

Sec. 15. 1. *A food dispensing establishment whose likeness, registered trademark or intellectual property was used by a food delivery service platform provider in violation of section*

14 of this act may bring an action against the food delivery service platform provider in any court of competent jurisdiction and may recover the sum of \$5,000 or the amount of actual damages sustained, whichever is greater.

2. If the food dispensing establishment prevails in the action, the court may award such punitive damages and equitable relief as the court determines to be proper.

Sec. 16. 1. *Before an online food order is consummated with a user, the food delivery service platform provider must disclose to the user the following information in plain language and in a conspicuous manner:*

(a) The total online food order price;

(b) Each portion of the total online food order price that is attributable to:

(1) The food purchase price;

(2) Any sales tax or other tax;

(3) Any delivery fee or service fee charged to the user by the food delivery service platform provider or food dispensing establishment; and

(4) Any gratuity to be paid to the person who delivers the food;

~~*(e) Any commission associated with the online food order in accordance with section 17 of this act; and*~~

~~*(d) If a commission is disclosed pursuant to paragraph (e), a statement that indicates that a commission is to be paid by the food dispensing establishment in connection with the online food order, including the highest Commission, expressed as a percentage of the food purchase price, charged by the food delivery service platform provider to any food dispensing establishment in Nevada.*~~

2. If, after the consummation of an online food order, the user is provided with a receipt for the online food order, the information required to be disclosed pursuant to subsection 1 (a) and (b) must be set forth on the receipt in plain language and in a conspicuous manner.

~~Sec. 17.1. Except as otherwise provided in subsection 4, a commission disclosed pursuant to section 16 of this act must be presented as a single aggregate number that is determined and expressed in accordance with subsection 2 or 3, as applicable.~~

~~2. If it is feasible for a food delivery service platform provider to determine the total of all commissions actually attributable to the particular online food order for which the food delivery service platform provider is making the disclosure, the single aggregate number described in subsection 1 must:~~

~~(a) — Represent the total of all commissions charged to the food dispensing establishment that are actually attributable to the particular online food order for which the provider is making the disclosure, and~~

~~(b) — Be expressed in a dollar amount or as a percentage of the total online food order price or any portion thereof.~~

~~3. If it is not feasible for a food delivery service platform provider to determine the total of all commissions actually attributable to the particular online food order for which the food delivery service platform provider is making the disclosure, the single aggregate number described in subsection 1 must:~~

~~(a) — Represent a good faith estimate of the total of all commissions attributable to the particular online food order for which the provider is making the disclosure; and~~

~~(b) — Be expressed in a dollar amount, a percentage of the total online order price or any portion thereof or a range of percentages based on previous commissions charged to the food dispensing establishment.~~

4. ~~If a food delivery service platform provider determines that it is not feasible to disclose information ~~commissions~~ pursuant to section 16 of this act in the manner provided in this section, the provider may submit a request to the Commissioner of Consumer Affairs to disclose this information ~~commissions~~ in an alternative manner. Such a request must include, without limitation, a proposal for an alternative manner in which to disclose ~~commissions and~~ any other information the Commissioner deems necessary. If the Commissioner approves the request, the food delivery service platform provider may disclose ~~information ~~commissions~~~~ pursuant to section 16 of this act in the manner set forth in the approved request.~~

Sec. 18. ~~A person who knowingly violates section 16 or 17 of this act is deemed to have committed a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.~~

Sec. 19. 1. During the period in which ~~a the~~ Declaration of Emergency issued by the ~~Honorable Steve Sisolak,~~ ~~a county of the state of Nevada which includes social distancing or other occupancy limitations on capacity in a food dispensing establishment,~~ ~~Governor of the State of Nevada, on March 12, 2020,~~ remains in effect, a food delivery service platform provider shall not charge a food dispensing establishment ~~in that county~~ any ~~fee or combination of fees~~ ~~Commission~~ for an online food order that exceeds ~~20~~ 15 percent of the food purchase price of the online food order, ~~plus a credit card processing fee.~~ ~~Nothing in this section shall be construed to override a local ordinance imposing commission limits on food delivery service platforms~~

provided that the local ordinance was in effect prior to April 30, 2021. A food dispensing establishment may agree in writing to pay a food delivery service platform provider a commission that exceeds the limit in this subsection to obtain optional products or services, including, but not limited to, advertising, marketing, or access to customer subscription programs.

2. A food delivery service platform provider shall not reduce the compensation rates paid to any person who delivers food for the provider or garnish the gratuities of such a person as a result of this section.

Sec. 20. This act shall become effective upon passage and approval.

3. A person who knowingly violates this section is deemed to have committed a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

4. As used in this section:

(a) “Food delivery service platform provider” has the meaning ascribed to it in section 5 of this act.

(b) “Food dispensing establishment” has the meaning ascribed to it in section 6 of this act, **but does not include a grocery or convenience store.**

(c) ascribed to it in section 6 of this act, but does not include a grocery or convenience store

(d) “Food purchase price” has the meaning ascribed to it in section 7 of this act.

(e) “Online food order” has the meaning ascribed to it in section 9 of this act.