

[First Reprint]

ASSEMBLY, No. 3978

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MAY 4, 2020

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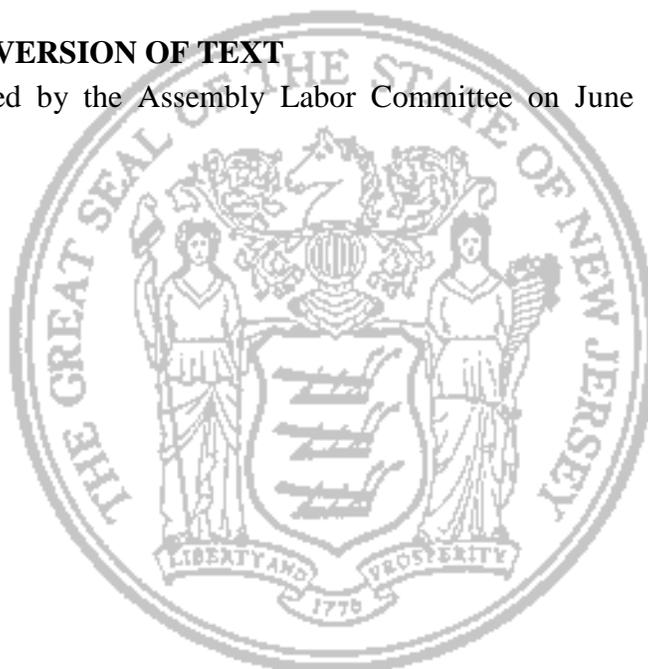
Assemblymen Mejia, Mazzeo, Freiman and Assemblywoman Jimenez

SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Assembly Labor Committee on June 15, 2020, with amendments.



(Sponsorship Updated As Of: 6/18/2020)

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 ¹service¹ applications to place orders
 15 with restaurants for food takeout or delivery. ¹**【Companies】** While
 16 some companies have provided meaningful support to the restaurant
 17 community, other companies¹ offering third-party ¹food¹ takeout
 18 and delivery services may charge restaurants a service fee
 19 exceeding 30 percent of the individual order price, thereby
 20 compounding the current financial strain on restaurants. Restaurants
 21 that are also small businesses, in particular, may have limited
 22 bargaining power to negotiate lower fees. The Legislature finds
 23 that it is in the public interest to take action to maximize restaurant
 24 revenue from takeout and delivery orders to enable restaurants to
 25 survive this crisis¹**【**, and any similar future crisis, **】**¹ and remain
 26 sources of employment and community vitality in this State.
 27

28 2. ¹a.¹ 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 is¹:

37 (1)¹ greater than ¹**【15】** 20¹ percent of the cost of the individual
 38 order¹; or

39 (2) greater than 10 percent of the cost of the individual order,
 40 when the order is delivered by an employee of the restaurant or an
 41 independent contractor with whom the restaurant has contracted
 42 directly¹.

43 The provisions of this section shall not be construed to limit the
 44 ability of any restaurant to choose to pay ¹**【greater than 15 percent】**

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:

¹Assembly ALA committee amendments adopted June 15, 2020.

1 up to 25 percent¹ of the cost of the individual order to access
2 additional advertising or other products and services offered by any
3 third-party food takeout and delivery service application or Internet
4 website. ¹However, any restaurant that chooses to pay a service fee
5 that is greater than the fee set forth in the provisions of this section
6 shall be required to affirmatively elect to pay that fee regardless of
7 any contract that is in effect on the effective date of this act unless
8 the contract was entered into prior to the state of emergency
9 declared by the Governor pursuant to Executive Order No. 103 of
10 2020.

11 b. The provisions of this section shall supersede and preempt
12 any county or municipal law, ordinance, resolution, or regulation
13 concerning the relationship between third-party food takeout and
14 delivery service applications or Internet websites and any restaurant
15 utilizing its services.

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

20

21 3. This act shall take effect immediately.