

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3978

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 15, 2020

STATEMENT

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 3978.

As amended and reported by the committee, this bill regulates the service fees that third-party food takeout and delivery service applications or websites may charge during a state of emergency declared in response to COVID-19.

Under the amended bill, it would be an unlawful practice for any third-party food takeout and delivery service application or website, during a state of emergency declared in response to COVID-19, to charge a service fee to a restaurant 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.

This bill does not 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 the third-party application or website. However, any restaurant that chooses to pay a service fee that is greater than that set forth by the provisions of this bill is required to affirmatively elect to do so regardless of any contract that is in effect on the bill's effective date unless the contract was entered into prior to the state of emergency declared by the Governor pursuant to Executive Order No. 103 of 2020.

The provisions of this bill are to repeatedly take effect anytime the Governor restricts dine-in service to less than 25 percent of the maximum capacity allowed by law during any state of emergency declared in response to COVID-19.

In addition, this bill is to 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 restaurants utilizing its services.

The bill defines “third-party food takeout and delivery service application or Internet website” to mean any online food order or delivery service that allows a consumer to place an order for takeout or delivery from a restaurant.

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

As amended and reported, the bill is identical to Senate Bill No. 2437 (1R) of the 2020-2021 session.

COMMITTEE AMENDMENTS:

The committee amended the bill to:

1) apply only during a state of emergency declared in response to COVID-19;

2) expire on the first day of the third month following the date on which the Governor allows restaurants to operate dine-in service at 25 percent of the maximum capacity allowed by law or greater; except that the provisions of the bill would take effect again if dine-in service is later restricted to less than 25 percent capacity during a state of emergency declared in response to COVID-19;

3) make it 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 a state of emergency of seven days or more, 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.

4) provide that any restaurant may choose to pay up to 25 percent of the cost of the individual order to access additional advertising or other products and services;

5) provide that any restaurant that chooses to pay a service fee that is greater than the fee set forth in the provisions of this bill is 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; and

6) provide that the provisions of section 2 of the bill will 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.