

P.L. 2020, CHAPTER 42, *approved June 26, 2020*
Senate, No. 2437 (*First Reprint*)

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

28 2. a. 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 is:

37 (1) greater than 20 percent of the cost of the individual order; or

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:

¹Senate SBA committee amendments adopted May 11, 2020.

1 (2) greater than 10 percent of the cost of the individual order,
2 when the order is delivered by an employee of the restaurant or an
3 independent contractor with whom the restaurant has contracted
4 directly.

5 The provisions of this section shall not be construed to limit the
6 ability of any restaurant to choose to pay ¹up to 25 percent¹ of the
7 cost of the individual order to access additional advertising or other
8 products and services offered by any third-party food takeout and
9 delivery service application or Internet website. ¹However, any
10 restaurant that chooses to pay a service fee that is greater than the
11 fee set forth in the provisions of this section shall be required to
12 affirmatively elect to pay that fee regardless of any contract that is
13 in effect on the effective date of this act unless the contract was
14 entered into prior to the state of emergency declared by the
15 Governor pursuant to Executive Order No. 103 of 2020.¹

16 b. The provisions of this section shall supersede and preempt
17 any county or municipal law, ordinance, resolution, or regulation
18 concerning the relationship between third-party food takeout and
19 delivery service applications or Internet websites and any restaurant
20 utilizing its services.

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

25
26 3. This act shall take effect immediately.
27
28
29
30

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