

**SENATE, No. 2437**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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INTRODUCED MAY 7, 2020

**Sponsored by:**  
**Senator VIN GOPAL**  
**District 11 (Monmouth)**

**SYNOPSIS**

Limits service fees charged to restaurants by third-party food takeout and delivery applications during certain states of emergency.

**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  
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 crisis, and  
25 any similar future crisis, 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 a state  
31 of emergency of seven days or more, to charge a service fee to a  
32 restaurant for food take-out or delivery orders that is:

- 33 (1) greater than 20 percent of the cost of the individual order; or  
34 (2) greater than 10 percent of the cost of the individual order,  
35 when the order is delivered by an employee of the restaurant or an  
36 independent contractor with whom the restaurant has contracted  
37 directly.

38 The provisions of this section shall not be construed to limit the  
39 ability of any restaurant to choose to pay a greater percentage of the  
40 cost of the individual order to access additional advertising or other  
41 products and services offered by any third-party food takeout and  
42 delivery service application or Internet website.

43 b. The provisions of this section shall supersede and preempt  
44 any county or municipal law, ordinance, resolution, or regulation  
45 concerning the relationship between third-party food takeout and  
46 delivery service applications or Internet websites and any restaurant  
47 utilizing its services.

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

5  
6 3. This act shall take effect immediately.

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9 STATEMENT

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11 This bill regulates the service fees that third-party food takeout  
12 and delivery service applications or websites may charge during a  
13 state of emergency lasting longer than seven days.

14 Due to the current state of emergency declared in response to the  
15 COVID-19 pandemic, restaurants have been prohibited from  
16 offering dine-in service and limited to delivery and takeout  
17 offerings only, which has placed a sudden and severe financial  
18 strain on many restaurants. This emergency has also resulted in an  
19 increased use of third-party food takeout and delivery service  
20 applications and websites, such as DoorDash, Grubhub, and Uber  
21 Eats, to place an order with restaurants for takeout or delivery.  
22 While some companies have provided meaningful support to the  
23 restaurant community, other companies offering third-party food  
24 takeout or delivery services may charge restaurants a service fee  
25 exceeding 30 percent of the order price, thereby compounding the  
26 current financial strain on restaurants. High service fees  
27 particularly hurt small businesses. Restaurants that are also small  
28 businesses, in particular, may have limited bargaining power to  
29 negotiate lower fees. It is in the public interest to take action to  
30 maximize restaurant revenue from takeout and delivery orders to  
31 enable restaurants to survive this crisis, and any similar future  
32 crisis, and remain sources of employment and community vitality in  
33 this State.

34 Under the provisions of this bill, it would be an unlawful practice  
35 for any third-party food takeout and delivery service application or  
36 website, during a state of emergency lasting longer than seven days,  
37 to charge a service fee to a restaurant that is: 1) greater than 20  
38 percent of the cost of the individual order; or 2) greater than 10  
39 percent of the cost of the individual order, when the order is  
40 delivered by an employee of the restaurant or an independent  
41 contractor with whom the restaurant has contracted directly.  
42 However, this bill does not limit the ability of any restaurant to  
43 choose to pay a greater percentage of the cost of the individual  
44 order to access additional advertising or other products and services  
45 offered by the third-party application or website.

46 In addition, this bill is to supersede and preempt any county or  
47 municipal law, ordinance, resolution, or regulation concerning the  
48 relationship between third-party food takeout and delivery service

**S2437 GOPAL**

1 applications or Internet websites and any restaurants utilizing its  
2 services.

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

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