

ASSEMBLY, No. 5459

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 15, 2021

Sponsored by:

Assemblyman NICHOLAS CHIARAVALLOTTI

District 31 (Hudson)

Assemblywoman ANGELA V. MCKNIGHT

District 31 (Hudson)

SYNOPSIS

Bans non-consensual third-party delivery service use of likenesses, intellectual property, and trademarks.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/15/2021)

1 AN ACT concerning third-party use of likenesses, intellectual
2 property, and trademarks and supplementing P.L.1960, c.39
3 (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. As used in this act:

9 “Agreement” means a written contractual agreement between a
10 merchant and a third-party delivery service.

11 “Customer” means a person, business, or other entity that places
12 an order for a merchant’s products through a marketplace.

13 “Likeness” means an identifiable symbol attributed and easily
14 identified as belonging to a specific merchant or retailer.

15 “Marketplace” means a third party’s proprietary online
16 communication platform where customers can view and search the
17 menus of a merchant or place an order for a merchant’s products via
18 the third party’s website or mobile application for delivery by the
19 third party to the customer.

20 “Merchant” means a restaurant or other retail entity.

21 “Third-party delivery service” means a company, organization,
22 or entity, outside of the operation of the merchant’s business that
23 provides delivery services to customers.
24

25 2. a. A third-party delivery service shall not use a likeness,
26 registered trademark, or any intellectual property belonging to a
27 merchant in the service’s advertisements or marketplace without
28 obtaining written consent from the merchant to use the likeness,
29 trademark, or other intellectual property.

30 b. No agreement entered into in accordance with this act that
31 provides for the consent of a merchant for a third-party delivery
32 service to use its likeness, registered trademark, or intellectual
33 property shall include a provision that requires a merchant to
34 indemnify a third-party delivery service, any independent contractor
35 acting on behalf of a third-party delivery service, or any registered
36 agent of a third-party delivery service for any damages or harm that
37 may occur after a product leaves a merchant’s place of business.
38

39 3. It is an unlawful practice and a violation of P.L.1960, c.39
40 (C.56:8-1 et seq.) to violate the provisions of this act.
41

42 4. This act shall take effect immediately.
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45 STATEMENT

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47 This bill prohibits third-party delivery services from using any
48 likeness, registered trademark, or intellectual property of a

1 merchant without written consent. Agreements for the use of a
2 likeness, registered trademark, or intellectual property must include
3 a provision requiring a merchant to indemnify a third-party delivery
4 service for any damages to a product after the product has left the
5 merchant's place of business. A violation of the bill would be a
6 violation of New Jersey's consumer fraud law. This is punishable
7 by a monetary penalty of not more than \$10,000 for a first offense
8 and not more than \$20,000 for any subsequent offense. In addition,
9 violations can result in cease and desist orders issued by the
10 Attorney General, the assessment of punitive damages, and the
11 awarding of treble damages and costs to the injured party.

12 It is the sponsor's intent that food delivery services must obtain
13 written consent before using any likeness, trademark, or intellectual
14 property of the restaurant or other establishment whose food they
15 may be delivering.