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CHAPTER 42

An Act limiting certain third-party food takeout and delivery application service fees charged to restaurants and supplementing P.L.1960, c.39 (C.56:8-1 et seq.).

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

C.56:8-225 Findings, declarations relative to third-party food takeout, delivery applications relative to restaurants.

1. The Legislature finds and declares that due to the current state of emergency declared in response to the COVID-19 pandemic, restaurants have been prohibited from offering dine-in service and limited to delivery and takeout offerings only, which has placed a sudden and severe financial strain on many restaurants. This emergency has also resulted in an increased use of third-party food takeout and delivery service applications to place orders with restaurants for food takeout or delivery. While some companies have provided meaningful support to the restaurant community, other companies offering third-party food takeout and delivery services may charge restaurants a service fee exceeding 30 percent of the individual order price, thereby compounding the current financial strain on restaurants. Restaurants that are also small businesses, in particular, may have limited bargaining power to negotiate lower fees. The Legislature finds that it is in the public interest to take action to maximize restaurant revenue from takeout and delivery orders to enable restaurants to survive this crisis and remain sources of employment and community vitality in this State.

C.56:8-226 Limit on service fee.

2. a. It shall be 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 and until the first day of the third month following any state of emergency declared by the Governor in response to COVID-19 that restricts restaurant dine-in service to less than 25 percent of the maximum capacity allowed by law, 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.

The provisions of this section shall not be construed to 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 any third-party food takeout and delivery service application or Internet website. However, any restaurant that chooses to pay a service fee that is greater than the fee set forth in the provisions of this section shall be 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.

b. The provisions of this section shall 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.

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

3. This act shall take effect immediately.

Approved June 26, 2020.

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