

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Committee Substitute for
2 Senate Bill No. 4, Page 8, Section 143.1032, Line 32, by inserting after all of said section and line
3 the following:
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5 "196.276. 1. As used in this section, the following terms mean:

6 (1) "Consent", a mutual acknowledgment by both a restaurant and a food delivery platform,
7 which may be obtained electronically;

8 (2) "Food delivery platform", a business that acts as a third-party intermediary by taking and
9 arranging for the delivery or pickup of orders from multiple restaurants for ultimate consumers. The
10 term does not include delivery or pickup orders placed directly with, and fulfilled by, a restaurant.
11 The term does not include websites, mobile applications, or other electronic services that do not post
12 restaurant menus, logos, or pricing information on their platforms;

13 (3) "Likeness", a mark or trade name;

14 (4) "Mark", a trademark or service mark, regardless of whether the trademark or service
15 mark is actually registered;

16 (5) "Restaurant", a business in this state that:

17 (a) Operates its own permanent food service facilities with commercial cooking equipment
18 on its premises; and

19 (b) Prepares and offers to sell multiple entrees for consumption on or off the premises;

20 (6) "Trade name", a name used by a person or entity to identify the person's or entity's
21 business or vocation.

22 2. (1) A food delivery platform shall not take and arrange for the delivery or pickup of an
23 order from a restaurant in this state unless such food delivery platform has filed a certificate of
24 formation or registration with the secretary of state.

25 (2) A food delivery platform shall:

26 (a) Not use a restaurant's likeness in a manner that could reasonably be interpreted to falsely
27 suggest sponsorship or endorsement by the restaurant;

28 (b) Not, without the restaurant's consent, take and arrange for the delivery or pickup of an
29 order from a restaurant;

30 (c) Not, without an agreement with the restaurant, intentionally inflate or alter a restaurant's
31 pricing, although other charges may be assessed to the ultimate consumer if they are noted
32 separately to the consumer;

33 (d) Not, without an agreement with the restaurant, attempt to charge a restaurant, or expect
34 the restaurant to pay or absorb any fee, commission, or charge;

35 (e) Remove a restaurant from the food delivery platform's services within ten days of
36 receiving the restaurant's request for removal unless an agreement between the food delivery

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platform and the restaurant states otherwise; and

(f) Clearly provide to the ultimate consumer a mechanism to express order concerns directly to the food delivery platform.

(3) Any agreement between a food delivery platform and a restaurant to take and arrange for the delivery or pickup of orders shall:

(a) Be in writing and expressly authorize the food delivery platform to take and arrange for the delivery or pickup of orders from the restaurant;

(b) Clearly identify any fee, commission, or charge that the restaurant will be required to pay or absorb; and

(c) Not include a provision, clause, or covenant that requires a restaurant to indemnify a food delivery platform, or any employee, independent contractor, or agent of the food delivery platform, for any damages or harm caused by the actions or omissions of the food delivery platform or any employee, independent contractor, or agent of the food delivery platform.

(4) Any provision in an agreement between a food delivery platform and a restaurant, or in a written consent, that is contrary to subdivision (3) of this subsection is void and unenforceable.

3. (1) A restaurant may bring an action to enjoin a violation of this section. If the court finds a violation, the court shall issue an injunction and may:

(a) Subject to subdivision (2) of this subsection, require the violator to pay to the injured party all profits derived from or damages resulting from the wrongful acts; and

(b) Order that the wrongful act be terminated.

(2) If the court finds that the food delivery platform committed a wrongful act in bad faith, in violation of this section by not having an agreement or written consent, or otherwise, as according to the circumstances of the case, the court, in the court's discretion, may:

(a) Enter judgment in an amount not to exceed three times the amount of profits and damages; and

(b) Award reasonable attorney's fees to the restaurant."; and

Further amend said bill, Page 66, Section D, Line 4, by inserting after all of said section and line the following:

"Section E. The enactment of section 196.276 of section A of this act shall become effective on January 1, 2022."; and

Further amend said bill by amending the title, enacting clause, and intersectional references accordingly.