

Amendment No. 406

Senate Amendment to Senate Bill No. 320	(BDR 52-591)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

WBD/WLK



Date: 4/20/2021

S.B. No. 320—Enacts various provisions relating to food delivery service platforms. (BDR 52-591)



SENATE BILL NO. 320—SENATOR NEAL

MARCH 22, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Enacts various provisions relating to food delivery service platforms. (BDR 52-591)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trade practices; prohibiting a food delivery service platform provider from engaging in certain activities; requiring a food delivery service platform provider to remove a food dispensing establishment from the food delivery service platform of the provider upon request; requiring a food delivery service platform provider to make certain disclosures concerning online food orders; prohibiting a food delivery service platform provider from charging a food dispensing establishment any fees over a certain amount during ~~the~~ any period in which ~~the~~ a Declaration of Emergency for COVID-19 issued by the Governor remains in effect; establishing certain practices as deceptive trade practices; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

This bill enacts various provisions relating to a food delivery service platform, which is defined in **section 4** of this bill to mean an Internet website, online service or mobile application which allows users to purchase food from multiple food dispensing establishments and arrange for the same-day delivery or same-day pickup of such food. **Section 5** of this bill defines “food delivery service platform provider” as a person who operates a food delivery service platform.

Section 12 of this bill prohibits a food delivery service platform provider from facilitating an online food order involving a food dispensing establishment unless the provider has entered into ~~an~~ a written agreement with the food dispensing establishment that expressly authorizes the provider to engage in such activities. **Section 13** of this bill requires a food delivery service platform provider to remove a food dispensing establishment from the food delivery service platform of the provider ~~upon~~ within 48 hours after the receipt of a written request from the food dispensing establishment. **Section 13** provides that a food delivery service platform provider that violates that requirement is subject to a civil penalty of \$500 per day of the violation.

Section 14 of this bill prohibits a food delivery service platform provider from using the likeness, registered trademark or intellectual property of a food dispensing establishment

without first obtaining the written consent of the food dispensing establishment. **Section 14** provides that a food delivery service platform provider that violates that prohibition is subject to a civil penalty of \$500 per day of the violation. **Section 15** of this bill authorizes a food dispensing establishment whose likeness, registered trademark or intellectual property was used by a food delivery service platform provider in violation of **section 14** to bring an action against the provider.

Section 16 of this bill requires a food delivery service platform provider to disclose certain information to a user of the platform who engages in an online food order. Among the information required to be disclosed by **section 16** is ~~any~~ **a statement that indicates a commission is to be paid** associated with the online food order. **Section 3** of this bill defines “commission,” in general, to mean any fee charged by a food delivery service platform provider to a food dispensing establishment for the use of the services of the provider in effectuating online food orders. **Section 17** of this bill sets forth the **procedures by which a food delivery service platform provider may request an alternative** manner in which ~~such commissions are required to~~ **all required information may** be disclosed.

On March 12, 2020, Governor Steve Sisolak issued a Declaration of Emergency due to the outbreak of the disease identified by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services as COVID-19. (Declaration of Emergency for COVID-19 (March 12, 2020)) **Section 19** of this bill prohibits, for ~~the~~ **any** period during which ~~the~~ **a** Declaration of Emergency for COVID-19 **declared by the Governor of this State** remains in effect, a food delivery service platform provider from charging a food dispensing establishment any ~~fees~~ **commission** for an online food order that ~~exceed~~ **exceeds** a certain amount.

Existing law defines various activities involving businesses and occupations that constitute deceptive trade practices. (NRS 598.0915-598.0925) If a person knowingly engages in a deceptive trade practice, the person may be subject to restraint by injunction and the imposition of civil and criminal penalties. (NRS 598.0979, 598.0985, 598.0999) **Sections 18 and 19** of this bill provide that a violation of the provisions of **section 16, 17 or 19** of this bill constitutes a deceptive trade practice.

Sections 3-11 of this bill define words and terms for the purposes of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 597 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this act.

Sec. 2. *As used in sections 2 to 18, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. 1. *“Commission” means any fee or other payment of money that is charged by a food delivery service platform provider to a food dispensing establishment for the use of the services of the food delivery service platform provider in effectuating online food orders.*

2. *The term includes, without limitation, any annual fee charged to a food dispensing establishment for the use of the services described in subsection 1.*

3. *The term does include any fee that is charged by a food delivery service platform provider for services provided as a general or indirect cost of doing business, including, without limitation, fees for the processing of credit cards or for advertising in a restaurant directory.*

Sec. 4. *“Food delivery service platform” means an Internet website, online service or mobile application which allows users to purchase food from multiple food dispensing establishments and arrange for the same-day delivery or same-day pickup of such food.*

1 Sec. 5. "Food delivery service platform provider" means a person who
2 operates a food delivery service platform.

3 Sec. 6. 1. "Food dispensing establishment" means a food establishment
4 that prepares and serves food intended for immediate consumption. The term
5 includes, without limitation, a restaurant. The term does not include a
6 convenience store or a grocery store.

7 2. As used in this section ~~[-"food"]~~ :

8 (a) "Convenience store" has the meaning ascribed to it in NRS 597.225.

9 (b) "Food establishment" has the meaning ascribed to it in NRS 446.020.

10 (c) "Grocery store" has the meaning ascribed to it in NRS 597.225.

11 Sec. 7. "Food purchase price" means the portion of the total online food
12 order price that is attributable to the amount charged by the food dispensing
13 establishment for the food.

14 Sec. 8. "Likeness" means any identifiable symbol attributed and easily
15 identified as belonging to a specific food dispensing establishment.

16 Sec. 9. "Online food order" means a transaction in which a user, through
17 a food delivery service platform, purchases food from a food dispensing
18 establishment and arranges for the same-day delivery or same-day pickup of such
19 food.

20 Sec. 10. "Total online food order price" means the total amount paid or to
21 be paid by a user as a result of an online food order.

22 Sec. 11. "User" means a person who uses a food delivery service platform
23 to engage in an online food order.

24 Sec. 12. A food delivery service platform provider shall not facilitate an
25 online food order involving a food dispensing establishment, including, without
26 limitation, arranging for the same-day delivery or same-day pickup of food
27 prepared by a food dispensing establishment, unless the food delivery service
28 platform provider has entered into ~~[-an]~~ a written agreement with the food
29 dispensing establishment that expressly authorizes the food delivery service
30 platform provider to engage in such activities.

31 Sec. 13. 1. A food dispensing establishment may, at any time, submit a
32 written request to a food delivery service platform provider directing the provider
33 to remove the food dispensing establishment from the food delivery service
34 platform. If the food delivery service platform has appointed a registered agent
35 located in this State, the request must be submitted to the registered agent.

36 2. A food delivery service platform provider that receives a request
37 submitted pursuant to subsection 1 shall confirm receipt of the request and
38 ~~[-immediately]~~ remove the food dispensing establishment from the food delivery
39 service platform ~~[-]~~ within 48 hours after receipt of the request.

40 3. A food delivery service platform provider who violates the provisions of
41 subsection 2 is subject to a civil penalty of \$500 per day of the violation, and each
42 day's continuance of the violation constitutes a separate and distinct violation.

43 Sec. 14. 1. A food delivery service platform provider shall not use the
44 likeness, registered trademark or intellectual property of a food dispensing
45 establishment unless the food delivery service platform provider first obtains the
46 written consent of the food dispensing establishment.

47 2. A food delivery service platform provider who violates the provisions of
48 subsection 1 is subject to a civil penalty of \$500 per day of the violation, and each
49 day's continuance of the violation constitutes a separate and distinct violation.

50 Sec. 15. 1. A food dispensing establishment whose likeness, registered
51 trademark or intellectual property was used by a food delivery service platform
52 provider in violation of section 14 of this act may bring an action against the food
53 delivery service platform provider in any court of competent jurisdiction and may

1 recover the sum of \$5,000 or the amount of actual damages sustained, whichever
2 is greater.

3 2. If the food dispensing establishment prevails in the action, the court may
4 award such punitive damages and equitable relief as the court determines to be
5 proper.

6 **Sec. 16.** 1. Before an online food order is consummated with a user, the
7 food delivery service platform provider must disclose to the user the following
8 information in plain language and in a conspicuous manner:

9 (a) The total online food order price;

10 (b) Each portion of the total online food order price that is attributable to:

11 (1) The food purchase price;

12 (2) Any sales tax or other tax;

13 (3) Any delivery fee or service fee charged to the user by the food delivery
14 service platform provider or food dispensing establishment; and

15 (4) Any gratuity to be paid to the person who delivers the food; and

16 (c) ~~Any commission associated with the online food order in accordance~~
17 ~~with section 17 of this act; and~~

18 ~~—(d) If a commission is disclosed pursuant to paragraph (c), a~~ A statement
19 ~~that indicates that the a commission is to be paid by the food dispensing~~
20 ~~establishment in connection with the online food order. The statement must~~
21 ~~include a disclosure of the average commission expressed as the highest possible~~
22 ~~percentage of the aggregate food purchase price on deliveries by the food delivery~~
23 ~~service platform provider for the food dispensing establishment in this State.~~

24 2. If, after the consummation of an online food order, the user is provided
25 with a receipt for the online food order, the information required to be disclosed
26 pursuant to paragraphs (a) and (b) of subsection 1 must be set forth on the
27 receipt in plain language and in a conspicuous manner.

28 **Sec. 17.** ~~1. Except as otherwise provided in subsection 4, a commission~~
29 ~~disclosed pursuant to section 16 of this act must be presented as a single~~
30 ~~aggregate number that is determined and expressed in accordance with~~
31 ~~subsection 2 or 3, as applicable.~~

32 ~~2. If it is feasible for a food delivery service platform provider to determine~~
33 ~~the total of all commissions actually attributable to the particular online food~~
34 ~~order for which the food delivery service platform provider is making the~~
35 ~~disclosure, the single aggregate number described in subsection 1 must:~~

36 ~~—(a) Represent the total of all commissions charged to the food dispensing~~
37 ~~establishment that are actually attributable to the particular online food order for~~
38 ~~which the provider is making the disclosure, and~~

39 ~~—(b) Be expressed in a dollar amount or as a percentage of the total online~~
40 ~~food order price or any portion thereof.~~

41 ~~3. If it is not feasible for a food delivery service platform provider to~~
42 ~~determine the total of all commissions actually attributable to the particular~~
43 ~~online food order for which the food delivery service platform provider is making~~
44 ~~the disclosure, the single aggregate number described in subsection 1 must:~~

45 ~~—(a) Represent a good faith estimate of the total of all commissions~~
46 ~~attributable to the particular online food order for which the provider is making~~
47 ~~the disclosure; and~~

48 ~~—(b) Be expressed in a dollar amount, a percentage of the total online order~~
49 ~~price or any portion thereof or a range of percentages based on previous~~
50 ~~commissions charged to the food dispensing establishment.~~

51 ~~4. If a food delivery service platform provider determines that it is not~~
52 ~~feasible to disclose commissions, the information required pursuant to section~~
53 ~~16 of this act in the manner provided in this that section, the provider may~~

1 submit a request to the Commissioner of Consumer Affairs to disclose
2 ~~commissions~~ the information in an alternative manner. Such a request must
3 include, without limitation, a proposal for an alternative manner in which to
4 disclose ~~commissions~~ the information required pursuant to section 16 of this act
5 and any other information the Commissioner deems necessary. If the
6 Commissioner approves the request, the food delivery service platform provider
7 may disclose ~~commissions~~ the information required pursuant to section 16 of
8 this act in the manner set forth in the approved request.

9 Sec. 18. A person who knowingly violates section 16 or 17 of this act is
10 deemed to have committed a deceptive trade practice for the purposes of NRS
11 598.0903 to 598.0999, inclusive.

12 Sec. 19. 1. During ~~the~~ any period in which ~~the~~ a Declaration of
13 Emergency issued by the ~~Honorable Steve Sisolak~~ Governor of the State of
14 Nevada ~~on March 12, 2020,~~ due to the outbreak of the disease identified by
15 the Centers for Disease Control and Prevention of the United States
16 Department of Health and Human Services as COVID-19 remains in effect, a
17 food delivery service platform provider shall not charge a food dispensing
18 establishment ~~any fee or combination of fees~~ a commission for an online food
19 order that exceeds 20 percent of the food purchase price of the online food order ~~;~~
20 plus a credit card processing fee. A food dispensing establishment may agree
21 in writing to pay a food delivery service platform provider a commission that
22 exceeds the limit established in this subsection to obtain optional products or
23 services, including, without limitation, advertising, marketing or access to
24 customer subscription programs.

25 2. A food delivery service platform provider shall not reduce the
26 compensation rates paid to any person who delivers food for the provider or garnish
27 the gratuities of such a person as a result of this section.

28 3. A person who knowingly violates this section is deemed to have committed
29 a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.

30 4. As used in this section:

31 (a) "Food delivery service platform provider" has the meaning ascribed to it in
32 section 5 of this act.

33 (b) "Food dispensing establishment" has the meaning ascribed to it in section 6
34 of this act.

35 (c) "Food purchase price" has the meaning ascribed to it in section 7 of this act.

36 (d) "Online food order" has the meaning ascribed to it in section 9 of this act.