

SENATE, No. 3542

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 11, 2021

Sponsored by:

Senator VIN GOPAL

District 11 (Monmouth)

SYNOPSIS

Limits certain service fees charged by third-party food takeout and delivery applications during COVID-19 state 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 amending
3 P.L.2020, c.42.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. Section 2 of P.L.2020, c.42 (C.56:8-226) is amended to read
9 as follows:

10 2. a. It shall be an unlawful practice and a violation of
11 P.L.1960, c.39 (C.56:8-1 et seq.) for any third-party food takeout
12 and delivery service application or Internet website, during and
13 until the first day of the third month following any state of
14 emergency declared by the Governor in response to COVID-19
15 **[that restricts restaurant dine-in service to less than 25 percent of**
16 **the maximum capacity allowed by law,]** to charge a service fee to a
17 restaurant for **[food]** take-out or delivery orders that is:

18 (1) greater than 20 percent of the cost of the individual order; or
19 (2) greater than 10 percent of the cost of the individual order,
20 when the order is delivered by an employee of the restaurant or an
21 independent contractor with whom the restaurant has contracted
22 directly.

23 The provisions of this section shall not be construed to limit the
24 ability of any restaurant to **[choose]** affirmatively elect to pay up to
25 25 percent of the cost of the individual order to access additional
26 advertising or other products and services offered by any third-party
27 food takeout and delivery service application or Internet website if
28 the terms of the agreement for extra services are set forth in simple,
29 clear, understandable, and easily readable terms. **[However, any**
30 **restaurant that chooses to pay a service fee that is greater than the**
31 **fee set forth in the provisions of this section shall be required to**
32 **affirmatively elect to pay that fee regardless of any contract that is**
33 **in effect on the effective date of this act unless]** A restaurant may
34 elect to waive the requirement that it affirmatively elect to pay up to
35 25 percent of the cost of the individual order if the contract was
36 entered into prior to the state of emergency declared by the
37 Governor pursuant to Executive Order No. 103 of 2020.

38 b. The provisions of this section shall supersede and preempt
39 any county or municipal law, ordinance, resolution, or regulation
40 concerning the relationship between third-party food takeout and
41 delivery service applications or Internet websites and any restaurant
42 utilizing its services.

43 c. As used in this section**[,]** :

44 "**[third-party]** Third-party food takeout and delivery service
45 application or Internet website" means any online food ordering and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 delivery service that allows a consumer to place an order for takeout
2 or delivery from a restaurant.

3 “Restaurant” means any establishment primarily engaged in the
4 preparation and sale of food or beverages for consumption on or off
5 the premises.

6 (cf: P.L.2020, c.42, s.2)

7

8 2. This act shall take effect immediately.

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STATEMENT

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13 This bill limits the service fees that third-party food takeout and
14 delivery service applications or websites may charge during a state
15 of emergency declared by the Governor in response to the COVID-
16 19 pandemic.

17 Under current law, it is an unlawful practice for a third-party
18 food takeout and delivery service application or website to charge
19 service fees that are greater than 20 percent of the cost of the
20 individual order during and until the first day of the third month
21 following any state of emergency declared by the Governor in
22 response to COVID-19 that restricts restaurant dine-in service to
23 less than 25 percent of the maximum capacity allowed by law.

24 Under the provisions of this bill, it would be an unlawful practice
25 for any third-party food takeout and delivery service application or
26 website to charge a restaurant a service fee for any take-out or
27 delivery order that is greater than 20 percent of the cost of the
28 individual order, during and until the first day of the third month
29 following any state of emergency declared by the Governor in
30 response to COVID-19.

31 In addition, this bill clarifies that current law is not to be
32 construed to limit the ability of any restaurant to affirmatively elect
33 to pay up to 25 percent of the cost of the individual order to access
34 additional advertising or other services offered by the third-party
35 food takeout and delivery service application or website if the terms
36 of the agreement for extra services are set forth in simple, clear,
37 understandable, and easily readable terms. However, a restaurant
38 may elect to waive the requirement that it affirmatively elect to pay
39 up to 25 percent of the cost of the individual order if the contract
40 was entered into prior to the state of emergency declared by the
41 Governor pursuant to Executive Order No. 103 of 2020.

42 The bill defines “restaurant” to mean any establishment primarily
43 engaged in the preparation and sale of food or beverages for
44 consumption on or off the premises.