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## **OLR Bill Analysis**

### **sHB 6602**

#### ***AN ACT CONCERNING THIRD-PARTY DELIVERY SERVICES FOR RESTAURANTS.***

#### **SUMMARY**

This bill prohibits a third-party food delivery service (e.g., GrubHub, UberEats, or DoorDash) from:

1. falsely suggesting a relationship (i.e., sponsorship, endorsement, or affiliation) with a food service establishment by using the establishment's (a) likeness, (b) registered trademark, or (c) intellectual property, and
2. using its proprietary marketplace (e.g., mobile application) to take orders or arrange for the delivery of a food service establishment's products without first obtaining the establishment's written consent.

The bill allows a food service establishment to bring an action in Superior Court to recover the greater of \$5,000 or actual damages when its likeness is used by a third-party delivery service or it appears on a third-party proprietary marketplace in violation of the bill. It allows the court to award punitive damages and equitable relief as it deems appropriate. The bill also authorizes the Department of Consumer Protection commissioner to impose a civil penalty of up to \$1,000 per day on a third-party delivery service for any violation of the bill, following a hearing held in accordance with the Uniform Administrative Procedures Act. (As the bill does not establish a process for food service establishments to file a complaint with DCP, it is unclear how the department could levy a civil penalty, or how it would interact with an establishment's option to file a cause of action.)

Finally, the bill bars contracts between third-party delivery services and food service establishments from including a provision, clause, or

covenant requiring an establishment to hold harmless the delivery service or its independent contractors or agents for any damages or harm they cause.

To the extent this provision of the bill applies to existing contracts, it may implicate the Contracts Clause of the U.S. Constitution (see BACKGROUND).

Under the bill, “third-party delivery service” means a company, organization, or entity, outside of a food establishment’s operation that facilitates online ordering or delivery services to customers. A “marketplace” is a third-party delivery service’s proprietary online communication platform where customers can (1) view and search food service establishments’ menus and (2) place delivery orders for establishments’ products through the third-party’s website or mobile application that are fulfilled by the establishment, third-party service, or an independent contractor of the third-party delivery service.

EFFECTIVE DATE: October 1, 2021

## **BACKGROUND**

### ***Contracts Clause of the U.S. Constitution***

The Contracts Clause (Article I, Section 10) bars states from passing laws that impair the obligation of contracts. When analyzing an alleged contracts clause violation, the threshold inquiry for a court is whether a state law has substantially impaired a contractual relationship. If so, in deciding whether to uphold the law at issue, the court must determine whether the (1) law has a legitimate and important public purpose and (2) adjustment of the rights of the parties to the contractual relationship was reasonable and appropriate in light of that purpose (*Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411-413 (1983)).

## **COMMITTEE ACTION**

Commerce Committee

Joint Favorable Substitute

Yea 23 Nay 0 (03/16/2021)

