House of Representatives

General Assembly

File No. 245

January Session, 2021

Substitute House Bill No. 6602

House of Representatives, April 1, 2021

The Committee on Commerce reported through REP. SIMMONS, C. of the 144th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THIRD-PARTY DELIVERY SERVICES FOR RESTAURANTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2021*) (a) As used in this section:

(1) "Agreement" means a written contractual agreement between a merchant and a third-party delivery service;

(2) "Customer" means a person, business or other entity that places an order for merchant products through the marketplace;

(3) "Likeness" means identifiable symbols attributed and easily identified as belonging to a specific merchant or retailer;

(4) "Marketplace" means a third-party's proprietary online communication platform where customers may view and search the menus of merchants and place an order for merchant products via such third-party's Internet web site or mobile application for delivery by a merchant or by the third-party delivery service, or an independent

contractor of the third-party delivery service, to the customer;

(5) "Merchant" means a food service establishment in which food is stored, offered for sale, processed or prepared, and includes the transportation of any food; and

(6) "Third-party delivery service" means a company, organization or entity, outside of the operation of a merchant's business, that facilitates delivery or online ordering services to customers.

(b) A third-party delivery service shall not use the likeness, registered trademark or any intellectual property belonging to a merchant to falsely suggest sponsorship or endorsement by or affiliation with a merchant.

(c) A third-party delivery service shall not take orders or arrange for delivery of merchant products through such third-party delivery service's marketplace without obtaining the written consent of a merchant.

(d) No agreement entered into between a merchant and a third-party delivery service shall include a provision, clause or covenant that requires a merchant to indemnify a third-party delivery service or any independent contractor or agent of such third-party delivery service for any damages or harm caused by such third-party delivery service or any independent contractor or agent of such third-party delivery service.

(e) (1) Any merchant whose likeness is used by a third-party delivery service or who appears on a third-party delivery service's marketplace, in violation of this section, may bring an action in the Superior Court to recover actual damages or five thousand dollars, whichever is greater. The court may, in its discretion, award punitive damages and other equitable relief it deems appropriate.

(2) The Commissioner of Consumer Protection, after a hearing in accordance with the provisions of chapter 54 of the general statutes, may impose a civil penalty of not more than one thousand dollars per day for any violation of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2021*	New section

CE *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 22 $	FY 23 $
Consumer Protection, Dept.	GF - Potential Cost	143,884	148,201
State Comptroller - Fringe Benefits[1]	GF - Potential Cost	59,424	61,207
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill places restrictions and requirements on third-party delivery services working with food service establishments and results in a potential cost and potential revenue gain to the state.

The bill requires the Department of Consumer Protection (DCP) to hold hearings for violations of the bill resulting in a potential cost to the agency depending on the number of hearings. If the bill generates numerous new hearings DCP may have to hire up to two new employees (one attorney and one special investigator) for a salary and fringe benefit cost of $203,308 in FY 22 and $209,407 in FY 23.

The bill also authorizes DCP to impose a civil penalty of up to $1,000 per day on third-party delivery services for any violations resulting in a potential revenue gain to the state to the extent that violations occur.

[1]The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 41.3% of payroll in FY 22 and FY 23.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of hearings and civil penalties assessed.

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)