AB-1444 Food delivery platforms. (2021-2022)

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CALIFORNIA LEGISLATURE—2021–2022 REGULAR SESSION

ASSEMBLY BILL

NO. 1444

Introduced by Assembly Member Lee
(Coauthor: Senator Newman)

February 19, 2021

An act to amend Sections 22598 and 22599 of, and to add Sections 22599.4 and 22599.6 to, the Business and Professions Code, relating to food delivery.

LEGISLATIVE COUNSEL’S DIGEST

AB 1444, Lee. Food delivery platforms.

Existing law, the Fair Food Delivery Act of 2020, defines a “food delivery platform” as an online business that acts as an intermediary between consumers and multiple food facilities, as defined, to submit food orders and arrange for the delivery of the order, and prohibits a food delivery platform from arranging for the delivery of an order from a food facility without first obtaining an agreement with the food facility.

This bill, in addition to making related findings and declarations, would require those agreements between a food delivery platform and a food facility to be written, require those agreements when food delivery platforms arrange for the pickup of an order from food facilities, and would require specified disclosures in agreements entered into or modified on or after January 1, 2022. The bill would prohibit food delivery platforms from charging a food facility for forwarded calls, as defined, unless the forwarded call resulted in a paid order, as specified, from the food facility that will be delivered, or arranged for delivery or pickup, to the consumer by the food delivery platform.
This bill would also prohibit a listing website, as defined, from associating a telephone number with a food facility on their internet website or application that the listing website knows would result in a forwarded call, unless the listing website clearly and conspicuously, as defined, discloses if an order placed through a telephone number or other interface on their internet website or application may result in a commission or fee paid to a party other than the food facility, identifies that party, and provides a direct link to the telephone number of the food facility, as specified. The bill would make the provisions of the act severable.

This bill would incorporate additional changes to Section 22598 of the Business and Professions Code proposed by AB 286 to be operative only if this bill and AB 286 are enacted and this bill is enacted last.

Vote: majority  Appropriation: no  Fiscal Committee: no  Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) Web-based platforms that provide information about food delivery services should provide accurate business information, and consumers have the right to know who they are doing business with.

(b) The Legislature believes that it is an unethical business practice to reroute telephone calls without consumer consent or knowledge through a third-party platform in order for the third-party platform to collect a referral fee, and third-party platforms should not charge food establishments for calls routed through their service that do not result in orders.

(c) The Legislature considers the practice of leading customers to believe they are ordering directly from a food establishment, when they are actually being rerouted through a third-party platform in order to charge a referral fee, counter to public policy.

SEC. 2. Section 22598 of the Business and Professions Code is amended to read:

22598. For purposes of this chapter, the following definitions shall apply:

(a) “Clearly and conspicuously” means in a font no smaller than boldface, 14-point type, clearly separate from any other language on the page. For an audio disclosure, “clearly and conspicuously” means in a volume and cadence sufficient to be readily audible and understandable.

(b) “Food delivery platform” means an online business that acts as an intermediary between consumers and multiple food facilities to submit food orders from a consumer to a participating food facility, and to arrange for the delivery of the order from the food facility to the consumer.

(c) “Food facility” means a food facility, as defined in Section 113789 of the Health and Safety Code.

(d) “Forwarded call” means a communication made by a consumer and intended for a food facility, by telephone call or other means of communication, that has been routed by a food delivery platform, or a routing service under the direction of the food delivery platform, to the intended food facility.

(e) “Listing website” means an internet website or application that lists, or produces through search results, telephone numbers associated with food facilities, and that has 100,000,000 or more unique monthly visitors.

SEC. 2.5. Section 22598 of the Business and Professions Code is amended to read:

22598. As used in this chapter:

(a) “Clearly and conspicuously” means in a font no smaller than boldface, 14-point type, clearly separate from any other language on the page. For an audio disclosure, “clearly and conspicuously” means in a volume and cadence sufficient to be readily audible and understandable.

(b) “Food delivery platform” means an online business that acts as an intermediary between consumers and multiple food facilities to submit food orders from a consumer to a participating food facility, and to arrange for the delivery of the order from the food facility to the consumer.

(c) “Food facility” means a food facility, as defined in Section 113789 of the Health and Safety Code.

(d) “Forwarded call” means a communication made by a consumer and intended for a food facility, by telephone call or other means of communication, that has been routed by a food delivery platform, or a routing service under the direction of the food delivery platform, to the intended food facility.
(e) “Listing website” means an internet website or application that lists, or produces through search results, telephone numbers associated with food facilities, and that has 100,000,000 or more unique monthly visitors.

(f) “Online order” means an order for food or beverage placed by a customer through or with the assistance of a food delivery platform, including, but not limited to, a telephone order, for delivery.

(g) “Purchase price” means the price, as listed on the menu, for the items contained in an online order. This definition does not include taxes or gratuities that may make up the total amount charged to the customer of an online order.

SEC. 3. Section 22599 of the Business and Professions Code is amended to read:

22599. (a) A food delivery platform shall not arrange for the delivery or pickup of an order from a food facility without first obtaining a written agreement with the food facility expressly authorizing the food delivery platform to take orders and deliver or pickup meals prepared by the food facility.

(b) A food delivery platform shall not charge a food facility a fee for a forwarded call unless that forwarded call directly resulted in a paid order, or an order paid for with a coupon or other promotional offer provided by the food delivery platform, from that food facility that will be delivered, or arranged for delivery or pickup, to the consumer by the food delivery platform.

(c) A written agreement made pursuant to subdivision (a), entered into or modified on or after January 1, 2022, shall clearly and conspicuously disclose all of the following:

(1) All possible charges or fees the food delivery platform may levy on the food facility.

(2) Detailed information of how each possible charge or fee may be applied to the food facility.

(3) An estimation of each charge or fee and the percentage costs associated with them.

(4) Listing websites that are partnered with the food delivery platform.

(d) The clear and conspicuous disclosures made pursuant to subdivision (c) shall be placed immediately above the signature line in the written agreement between the food delivery platform and food facility.

SEC. 4. Section 22599.4 is added to the Business and Professions Code, to read:

22599.4. (a) A listing website shall not associate a telephone number with a food facility on their internet website or application if the listing website knows the use of that telephone number will result in a forwarded call, unless the listing website complies with subdivision (b).

(b) (1) A listing website shall clearly and conspicuously disclose if an order placed through a telephone number or other interface on their internet website or application may result in a commission or fee paid to a party other than the food facility, and shall identify the party to which that commission or fee may be paid.

(2) The disclosure required by paragraph (1) shall include a direct link to the telephone number of the food facility. The listing website may not levy any charge or fee on the food facility for posting the direct link, and shall clearly and conspicuously disclose that the direct link does not result in any charge or fee on the food facility.

SEC. 5. Section 22599.6 is added to the Business and Professions Code, to read:

22599.6. The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 22598 of the Business and Professions Code proposed by both this bill and Assembly Bill 286. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2022, (2) each bill amends Section 22598 of the Business and Professions Code, and (3) this bill is enacted after Assembly Bill 286, in which case Section 2 of this bill shall not become operative.