

House Bill 2536

Sponsored by Representative NOSSE (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Imposes requirements on third-party food platforms. Directs Oregon Health Authority to adopt rules to implement requirements. Creates cause of action for person harmed by violation of Act.

A BILL FOR AN ACT

1
2 Relating to third-party food platforms; creating new provisions; and repealing ORS 624.145.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) As used in sections 1 and 2 of this 2023 Act:**

5 (a) **“Capped fee” means a delivery fee, a take-out fee or a transaction fee.**

6 (b)(A) **“Delivery fee” means a fee charged by a third-party food platform for providing a**
7 **restaurant with a service that delivers food or beverages from the restaurant to customers.**

8 (B) **“Delivery fee” does not include any other fee that may be charged by a third-party**
9 **food platform to a restaurant, including but not limited to marketing fees, advertising fees**
10 **or transaction fees.**

11 (c) **“Order” means a telephone order or an order placed by a customer through a third-**
12 **party food platform for delivery or pickup.**

13 (d) **“Purchase price” means the menu price of an order excluding taxes, gratuities or any**
14 **other fees that may make up the total cost to the customer for an order.**

15 (e) **“Restaurant” has the meaning given that term in ORS 624.010.**

16 (f)(A) **“Take-out fee” means a fee charged by a third-party food platform for providing a**
17 **restaurant with a service in which a customer places an order with the restaurant through**
18 **the third-party food platform, but the order does not include delivery.**

19 (B) **“Take-out fee” does not include any other fee that may be charged by a third-party**
20 **food platform to a restaurant, including but not limited to marketing fees, advertising fees**
21 **or transaction fees.**

22 (g) **“Telephone order” means an order placed by a customer to a restaurant through a**
23 **telephone call forwarded by a call system provided by a third-party food platform.**

24 (h) **“Third-party food platform” means a website, mobile application or other Internet**
25 **platform that offers or arranges for the sale and the same-day delivery or same-day pickup**
26 **of food or beverages from a restaurant.**

27 (i) **“Transaction fee” means a charge for the processing of a payment for an order im-**
28 **posed upon a third-party food platform by a third-party payment processor.**

29 (2) **A third-party food platform may not take and arrange for the delivery or pickup of**
30 **an order from a restaurant without first obtaining the written consent of the restaurant**
31 **expressly authorizing the third-party food platform to take orders and deliver meals prepared**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 by the restaurant.

2 (3) A third-party food platform may not disclose information about a restaurant, includ-
 3 ing but not limited to listing the restaurant’s menu, address or contact information, or per-
 4 form services on behalf of or in association with the restaurant, without the written consent
 5 of the restaurant.

6 (4) A third-party food platform may not charge a fee to a restaurant without the prior
 7 voluntary agreement of the restaurant.

8 (5) A third-party food platform may not charge a restaurant a delivery fee that exceeds
 9 15 percent of the purchase price of the order, unless the purchase price of the order is less
 10 than \$10.

11 (6) A third-party food platform may not charge a restaurant a take-out fee that exceeds
 12 five percent of the purchase price of an order.

13 (7) A third-party food platform may charge a restaurant a transaction fee. Unless the
 14 restaurant and the third-party food platform contract otherwise, the transaction fee may
 15 not exceed three percent of the purchase price of an order. In no event may the transaction
 16 fee exceed the amount charged to the third-party food platform by the third-party payment
 17 processor.

18 (8) A restaurant and a third-party food platform may contract for fees to be paid by the
 19 restaurant other than capped fees, including but not limited to fees for advertising, mar-
 20 keting or promotional services. A third-party food platform may offer a package that bundles
 21 together services that incur a capped fee with services that incur noncapped fees, thereby
 22 exceeding the capped fees, so long as the pricing is transparent and restaurant participation
 23 is voluntary.

24 (9) Notwithstanding the option to offer additional services for noncapped additional fees,
 25 a third-party food platform must give restaurants the option of obtaining services through
 26 the platform for delivery and take-out that do not exceed the capped fees. A third-party food
 27 platform may not refuse to provide delivery or to process an order for take-out on behalf of
 28 a restaurant based solely on the restaurant’s decision to select only services that incur
 29 capped fees.

30 (10) A third-party food platform must list on its website, mobile application or other
 31 Internet platform the name, address and contact information for all restaurants that con-
 32 tract for services with the third-party food platform, including those restaurants that only
 33 contract for services that incur capped fees.

34 (11) A third-party food platform may not reduce the compensation rate paid to a delivery
 35 service driver or request that a delivery service driver accept a lower compensation rate in
 36 the future or garnish gratuities to comply with this section.

37 (12) At the time a final price is disclosed to a customer for the intended order from a
 38 restaurant through a third-party food platform and before the transaction is completed by
 39 the customer, the third-party food platform shall disclose to the customer, in plain and
 40 simple language and in a conspicuous manner, any commission, fee or other monetary pay-
 41 ment charged to the customer by the third-party food platform.

42 (13) After a transaction occurs for an order from a restaurant through a third-party food
 43 platform, the third-party food platform shall provide an electronic or printed receipt to the
 44 customer. The receipt shall disclose, in plain and simple language and in a conspicuous
 45 manner:

- 1 **(a) The purchase price for the order.**
 - 2 **(b) Any delivery charge, gratuity or service fee imposed on and collected from the cus-**
 - 3 **tomer by the third-party food platform.**
 - 4 **(c) Any delivery charge, gratuity or service fee imposed on and collected from the cus-**
 - 5 **tomer by the restaurant in addition to the purchase price.**
 - 6 **(d) Any tip or gratuity that will be paid to the person delivering the food and not to the**
 - 7 **third-party food platform or restaurant and that was added into the transaction when the**
 - 8 **transaction occurred.**
 - 9 **(14) A third-party food platform may not charge a fee from a restaurant for a telephone**
 - 10 **order if a telephone call between the restaurant and the customer does not result in an ac-**
 - 11 **tual transaction during the telephone call.**
 - 12 **(15) A third-party food platform shall terminate a restaurant service contract within 72**
 - 13 **hours of receipt of notice of termination from the restaurant.**
 - 14 **(16) The Oregon Health Authority shall adopt rules implementing this section.**
 - 15 **SECTION 2. A person harmed by a violation of section 1 of this 2023 Act by a third-party**
 - 16 **food platform may bring an action against the third-party food platform and may recover**
 - 17 **damages in the amount of \$500 for each violation.**
 - 18 **SECTION 3. ORS 624.145 is repealed.**
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