

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1099 Food Delivery Platforms
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Melo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 676

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 0 N, As CS	Fletcher	Anstead
2) Commerce Committee	18 Y, 0 N	Fletcher	Hamon

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division), housed within the Department of Business and Professional Regulation, is responsible for enforcing laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety and welfare.

Florida statute defines “public food service establishment” as any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption, subject to certain exceptions. The regulation of public food service establishments in Florida is preempted to the state.

Third-party food delivery platforms are third-party apps that consumers can use to order delivery from public food service establishments for a fee. Once an order is placed, the food delivery platform sends an individual to pick up the food from the food establishment and deliver it to the consumer. These types of platforms are becoming increasingly popular, but are not currently regulated by the state.

The bill:

- Creates definitions for the terms "food delivery platform" and "food service establishment" for purposes of the bill's provisions;
- Requires a food delivery platform to itemize and clearly disclose the cost breakdown of each transaction to a consumer, including, but not limited to, certain specified information;
- Requires a food delivery platform that does not have a relationship with a food service establishment to provide notice to the consumer that the food delivery platform does not have any such relationship;
- Authorizes the Division to:
 - Issue a notice to cease and desist to a food delivery platform for violations,
 - Enforce a cease and desist notice or issue an administrative fine if the food delivery platform does not cure a violation within 7 days, and
 - Receive and investigate complaints of a food delivery platform's violation;
- Expressly preempts regulation of food delivery platforms to the state; and
- Provides rule-making authority to the Division.

The bill has no effect on local or state government revenues or expenses. The bill has an indeterminate positive and negative impact on the private sector.

The bill shall become effective upon becoming a law.

FULL ANALYSIS
I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (Division) is a division of the Department of Business Regulation.¹ The Division is responsible for enforcing laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety and welfare.²

Public Food Service Establishments

Florida statute³ defines “public food service establishment” as any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

There are several exclusions from the definition of the term, including:

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty, or temporarily to serve events such as fairs, carnivals, and athletic contests;
- Any eating place maintained and operated by a church or religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests;
- Any eating place located on an airplane, train, bus, or watercraft that is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;
- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.⁴

Under Florida law, the regulation of public food service establishments is preempted to the state.⁵

Off-Premises Options for Public Food Service Establishments

As a result of the loss of business that occurred during the coronavirus pandemic, many public food service establishments added off-premises options for serving food.⁶ According to the National Restaurant Association, the most common off-premises addition was curbside takeout by 67 percent of operators nationwide.⁷ An additional 17 percent added in-house delivery options, and 27 percent added

¹ Office of Program Policy Analysis and Government Accountability, *Department of Business and Professional Regulation: Hotel and Restaurant Regulation*, <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4016> (last visited Jan. 31, 2024).

² S. 509.032(1), F.S.

³ S. 509.013(5)(a), F.S.

⁴ S. 509.013(5)(b), F.S.

⁵ S. 509.032(7), F.S.

⁶ National Restaurant Association, *Consumers respond to new off-premises options at restaurants*, <https://restaurant.org/education-and-resources/resource-library/consumers-respond-to-new-off-premises-options-at-restaurants/> (last visited Jan. 31, 2024).

⁷ *Id.*

food delivery by third-party food delivery platforms,⁸ which are third-party apps that consumers can use to order delivery from public food service establishments for a fee.⁹ Once an order is placed, the food delivery platform sends an individual to pick up the food from the food establishment and deliver it to the consumer.¹⁰

Regulation of Food Delivery Platforms

Food delivery platforms are not currently regulated by the State of Florida. However, the United States Food and Drug Administration (FDA), in coordination with the U.S. Department of Agriculture and the Centers for Disease Control and Prevention, have developed best practices recommendations for the safe delivery of food, including for when ordering food from online platforms, produce and meal-kit subscription services, ghost kitchens (which only prepare and fulfill orders for delivery, without a physical storefront), and third-party delivery services and programs.¹¹

A proposed ordinance in Miami-Dade County would regulate food delivery platforms,¹² seemingly the first local ordinance of its kind in the United States.¹³ The ordinance would:

- Require the food delivery service to itemize and clearly disclose the cost breakdown of each transaction;
- Permit public food service establishments to access the information about the customers who place orders for their food through a third-party food delivery application, including the consumer's name and address; and
- Prohibit a food delivery platform from unreasonably restricting a public food service establishment from marketing to or contacting a customer under certain circumstances.

The Miami-Dade Board of County Commissioners has deferred action on this proposed ordinance.¹⁴

Effect of the Bill

The bill creates definitions for the following terms:

- "Food delivery platform" means a business that acts as a third-party intermediary by taking and arranging for the delivery or pickup of orders from multiple food service establishments for the consumer. The term does not include:
 - Delivery or pickup orders placed directly with, and fulfilled by, a food service establishment.
 - Websites, mobile applications, or other electronic services that do not post food service establishment menus, logos, or pricing information on their platforms.
- "Food service establishment" has the same meaning as the term "public food service establishment" as currently defined by Florida statute.

The bill requires a food delivery platform to itemize and clearly disclose the cost breakdown of each transaction to a consumer, including, but not limited to:

⁸ *Id.*

⁹ Hsu Kuan Liu, *A Study on Consumers' Perception of Food Delivery Platforms* (July 22, 2023), Qeios, <https://www.qeios.com/read/FFSG78#:~:text=Food%20delivery%20platforms%20primarily%20allow.the%20meals%20to%20the%20consumers>. (last visited Jan. 31, 2024).

¹⁰ *Id.*

¹¹ U.S. Food and Drug Administration, *FDA Highlights Best Practices on Food Safety for Online Delivery Services* (Dec. 9, 2022), <https://www.fda.gov/food/cfsan-constituent-updates/fda-highlights-best-practices-food-safety-online-delivery-services> (last visited Feb. 2, 2024).

¹² See Memorandum to Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners (Sep. 11, 2023), <https://www.miamidade.gov/govaction/legistarfiles/Matters/Y2023/231055.pdf> (last visited Feb. 2, 2024).

¹³ Jesse Scheckner, *Miami-Dade sets table for food delivery app regulations amid privacy concerns* (Aug. 29, 2023), <https://floridapolitics.com/archives/631690-miami-dade-sets-table-for-food-delivery-app-regulations-amid-privacyconcerns/> (last visited Feb. 2, 2024).

¹⁴ See Miami-Dade Legislative Item File Number: 231055,

<https://www.miamidade.gov/govaction/matter.asp?matter=231055&file=true&fileAnalysis=false&yearFolder=Y2023> (last visited Feb. 2, 2024).

- The purchase price of the food and beverage, or any other item, and clearly indicate if such prices exceed the food service establishment's pricing.
- Any commission, delivery fee, or promotional fee charged to the customer by the food delivery platform.
- Any tip or gratuity.
- Any taxes due on the transaction.

If a food delivery platform does not have a relationship with a food service establishment, the bill requires the food delivery platform to provide clear and conspicuous notice to the consumer that the food delivery platform does not have any relationship with such food service establishment.

If the Division has reason to believe a food delivery platform has violated the provisions of the bill, or any rules adopted pursuant to the bill, the following rules apply:

- The Division may issue to the food delivery platform a notice to cease and desist from the violation, but the issuance of a notice to cease and desist does not constitute agency action for which a hearing under Florida law may be sought.
- The Division must provide the food delivery platform 7 business days in which to cure the violation before imposing a civil penalty or commencing any legal proceeding.
- For the purpose of enforcing a cease and desist notice, the Division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who fails to comply with the notice.
- If the Division is required to seek enforcement of the notice for a penalty, it is entitled to collect attorney fees and costs, together with any cost of collection.

The bill allows the Division to impose a civil penalty on a food delivery platform in an amount not to exceed \$1,000 per offense for each violation of the bill's provisions, provided such food delivery platform is given 7 days to cure the violation. The division may regard as a separate offense each day or portion of a day in which there has been a violation.

Additionally, the bill authorizes the Division to receive and investigate complaints that allege a food delivery platform has violated the bill's provisions.

The bill expressly preempts regulation of food delivery platforms to the state, and grants the Division rule-making authority to administer the section of law proposed by the bill.

B. SECTION DIRECTORY:

Section 1. Creates s. 509.103, F.S., relating to food delivery platforms.

Section 2. Provides the bill will become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has a positive impact on the private sector to the extent that the bill creates a regulatory framework for food delivery platforms operating in Florida, thus enhancing consumer protections for individuals in the state that use such platforms.

The bill has an indeterminate negative impact on the private sector to the extent that food delivery platforms will now have to comply with the bill's provisions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Division with rule-making authority to administer the proposed s. 509.103, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 6, 2024, the Regulatory Reform and Economic Development Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The committee substitute made the following changes:

- Removed provisions relating to requiring:
 - Express consent from a restaurant for the food delivery platform to deliver or pick up orders for a consumer.
 - Certain customer disclosures, communication, and mechanisms.
 - The food delivery platform to remove the restaurant's listing from the platform upon request of the restaurant.
- Allowed the Division to investigate complaints, adopt rules, issue cease and desist orders, and collect civil penalties.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform and Economic Development Subcommittee.