

HOUSE OF REPRESENTATIVES STAFF FINAL BILL 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

FINAL HOUSE FLOOR ACTION: 112 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 1099 passed the House on March 6, 2024, as CS/SB 676.

The Division of Hotels and Restaurants (Division), housed within the Department of Business and Professional Regulation (DBPR), 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," "food service establishment," and "purchase price" for purposes of the bill's provisions;
- Prohibits a food delivery platform from taking and arranging for the delivery or pickup of orders from a food service establishment without the express consent of that food service establishment;
- Requires a food delivery platform to:
 - Itemize and clearly disclose the cost breakdown of each transaction and provide certain other specified information to a consumer,
 - By July 1, 2025, provide a food service establishment with a method of contacting the consumer while preparing the order and a method to respond to reviews, and
 - Remove a food service establishment's listing on the food delivery platform within 10 days of receiving the food service establishment's request for removal;
- Provides requirements for an agreement between a food delivery platform and a food service establishment;
- Prohibits a food delivery platform from engaging in certain activities;
- 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 appropriations to DPBR and three full-time positions for the purpose of implementing the bill.

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 was approved by the Governor on April 2, 2024, ch. 2024-48, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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

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).

operators nationwide.⁷ An additional 17 percent added in-house delivery options, and 27 percent added 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

⁷ *Id.*

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).

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 for the consumer 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.
 - A search engine that only facilitates an order to be picked up from a food service establishment without accepting a commission or fee for the order or connects a consumer to a food delivery platform's website, mobile application, or payment and order processing system for the purpose of placing an order.
- "Food service establishment" has the same meaning as the term "public food service establishment" as currently defined by Florida statute.
- "Purchase price" means the price, as listed on the menu, for the items in a consumer's order, excluding fees, tips or gratuities, and taxes.

The bill prohibits a food delivery platform from taking and arranging for the delivery or pickup of orders from a food service establishment without the express consent of that food service establishment. Such consent must in either a written or electronic format.

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:

- The purchase price of the food and beverage.
- Any commission, delivery fee, or promotional fee charged to the consumer by the food delivery platform.
- Any tip or gratuity.
- Any taxes due on the transaction.

The bill also requires a food delivery platform to clearly provide to the consumer:

- The anticipated date and time of the delivery of the order;
- The address to which the order will be delivered;
- Confirmation that the order has been successfully delivered or that the delivery cannot be completed; and
- A mechanism for the consumer to express order concerns directly to the food delivery platform.

Additionally, by July 1, 2025, the bill requires a food delivery platform to provide a food service establishment with a method for contacting the consumer while preparing the order, during delivery of the order, and for up to 2 hours after the order is picked up from the food service establishment for delivery to the consumer. The food delivery platform must also provide a method to respond to ratings or reviews that are left by the consumer.

The bill requires a food delivery platform to remove a food service establishment's listing on the food delivery platform within 10 days after receiving the food service establishment's request for removal, unless there is an existing agreement between the two parties which contains provisions stating otherwise.

The bill prohibits a food delivery platform, without an agreement with the food service establishment, from intentionally inflating, decreasing, or altering a food service establishment's pricing.

Under the bill, an agreement between a food delivery platform and a food service establishment must do all of the following:

- Clearly state all fees, commissions, and charges that the food service establishment is expected to pay or absorb;
- Clearly state the policies of the food delivery platform, including, but not limited to, policies related to alcoholic beverages, marketing, menus and pricing, payment, and prohibited conduct;
- Include the insurance requirements for delivery partners of the food delivery platform and identify the party responsible for the cost of such insurance;
- Identify the party responsible for collecting and remitting applicable sales taxes; and
- Clearly disclose policies regarding disputed transactions and the procedure for resolving those disputes.

An agreement may not include a provision that requires a food service establishment to indemnify the food delivery platform, or any employee, contractor, or agent of the food delivery platform, for any damage or harm caused by the acts or omissions of the food delivery platform or any of its employees, contractors, or agents.

The bill prohibits a food delivery platform from unreasonably limiting the value or number of transactions that may be disputed by a food service establishment with respect to orders, goods, or delivery errors for determining the responsibility for errors and reconciling disputed transactions.

If the Division has probable cause to believe a food delivery platform has violated the provisions of the bill, or any rule 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 written notice of any violation and 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 violates 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.

The bill expressly preempts regulation of food delivery platforms to the state.

Lastly, for the 2024-2025 fiscal year, the sums of \$173,573 in recurring funds and \$13,922 in nonrecurring funds from the Hotel and Restaurant Trust Fund and \$113,749 in recurring funds and \$8,461 in nonrecurring funds from the Administrative Trust Fund are appropriated to DPBR, and three full-time equivalent positions with a total associated salary rate of \$182,692 are authorized, for the purpose of implementing the provisions of the bill.

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.