

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: CS/SB 676

INTRODUCER: Regulated Industries Committee and Senator Bradley

SUBJECT: Food Delivery Platforms

DATE: February 13, 2024

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|------------|------------------|
| 1. | <u>Oxamendi</u> | <u>Imhof</u> | <u>RI</u> | Fav/CS |
| 2. | <u>Davis</u> | <u>Betta</u> | <u>AEG</u> | Favorable |
| 3. | <u>Oxamendi</u> | <u>Yeatman</u> | <u>FP</u> | Favorable |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 676 provides for the regulation of food delivery platforms. The bill defines the term “food delivery platform” to mean 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. The bill does not apply to delivery or pickup orders placed directly with, and fulfilled by, a food service establishment. The bill defines the term “food service establishment” to have the same meaning as the term “public food service establishment,” as defined in s. 509.013(5), F.S.

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. The food service establishment’s consent must be in either a written or electronic format.

Under the bill, a food delivery platform must itemize and clearly disclose to the consumer the cost breakdown of each transaction. The food delivery platform must provide the consumer with information about the delivery, including the anticipated date and time of the delivery of the order.

By July 1, 2025, the bill requires a food delivery platform to provide a food service establishment with a method of contacting the consumer while the order is prepared and being

delivered for up to two hours after the order is picked up from the food service establishment for delivery to the consumer and a method for responding to a consumer's ratings or reviews.

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 stating otherwise as provided in the bill. Under the bill, a food delivery platform may not, without an agreement with the food service establishment, intentionally inflate, decrease, or alter a food service establishment's pricing.

The bill specifies the requirements for the agreement between a food delivery platform and a food service establishment, including clearly stating all fees, commissions, and charges that the food service establishment is expected to pay or absorb, policies related to alcoholic beverages, insurance requirements, the collection and remitting of taxes, and how disputes will be resolved.

The agreement between the food delivery platform and the food service establishment 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. A food delivery platform may also not unreasonably limit 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 responsibility for errors and reconciling disputed transactions.

The bill authorizes the Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) to enforce the provisions in the bill by issuing cease and desist orders upon a finding of probable cause that there is a violation and seeking an injunction or writ of mandamus against persons who violate the notice to cease and desist. The bill authorizes the division to issue a civil penalty of not more than \$1,000 per offense for each violation and provides that the division is entitled to attorney fees and costs if it is required seek enforcement of a notice for a penalty under the Administrative Procedures Act.

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

This bill has a significant fiscal impact on the DBPR. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Division of Hotels and Restaurants

The division is charged with enforcing the laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.¹

¹ Section 509.032, F.S.

Public Food Service Establishments

A “public food service establishment” is defined 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.²

There are several exclusions from the definition of public food service establishment, 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 a 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 which 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 under s. 500.12, F.S.;
- 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.³

The regulation of public food service establishments is preempted to the state.⁴

Off-premises Options for Public Food Establishments

Due to the loss of business during the coronavirus pandemic, many public food establishments added new off-premises food options. The most common addition was curbside takeout by 67 percent of operators nationwide according to the National Restaurant Association.⁵ Twenty-seven percent of the operators added food delivery by third party food delivery platforms and an additional 17 percent added in-house delivery options.⁶ Food delivery platforms are third-party ordering apps that pick up and deliver food from public food service establishments for a fee.⁷

² Section 509.013(5)(a), F.S.

³ Section 509.013(5)(b), F.S.

⁴ Section 509.032(7), F.S.

⁵ *Consumers respond to new off-premise options at restaurants*, September 17, 2020, available at <https://restaurant.org/education-and-resources/resource-library/consumers-respond-to-new-off-premises-options-at-restaurants/> (last visited January 16, 2024).

⁶ *Id.*

⁷ See <https://cloudkitchens.com/blog/top-food-delivery-apps/> (last visited January 24, 2024).

Regulation of Food Delivery Platforms

Food delivery platforms, which are third-party providers who, for a fee, deliver food orders from public food service establishments to the consumer are not regulated by the State of Florida.

United State 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 when ordering food from online retailers, 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.⁸

A proposed ordinance in Miami-Dade County would regulate food delivery platforms.⁹ The proposed ordinance would require the food delivery service to itemize and clearly disclose the cost breakdown of each transaction. The proposed ordinance would 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. It also would bar the food delivery service prohibiting a food delivery platform from restricting a public food service establishment from marketing to or contacting a customer under certain circumstances. This appears to be the first local ordinance of its kind in the United States.¹⁰ However, the Board of County Commissioners has deferred action on this proposed ordinance.¹¹

III. Effect of Proposed Changes:

The bill creates s. 509.103, F.S., to regulate food delivery platforms.

The bill defines the term “food delivery platform” to mean 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. The bill exempts the following types of activities from the term:

- 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.

The bill defines the term “food service establishment” to have the same meaning as the term “public food service establishment” as defined in s. 509.013(5), F.S. It also defines the term

⁸ U.S. Food and Drug Administration, *FDA Highlights Best Practices on Food Safety for Online Delivery Services*, Dec. 9, 2022, available at: <https://www.fda.gov/food/cfsan-constituent-updates/fda-highlights-best-practices-food-safety-online-delivery-services> (last visited Jan. 24, 2024).

⁹ See *Memorandum to Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners*, Sept. 11, 2023, available at: <https://www.miamidade.gov/govaction/legistarfiles/Matters/Y2023/231055.pdf> (last visited Jan. 24, 2024).

¹⁰ Jesse Scheckner, *Miami-Dade sets table for food delivery app regulations amid privacy concerns*, Aug. 29, 2023, available at: <https://floridapolitics.com/archives/631690-miami-dade-sets-table-for-food-delivery-app-regulations-amid-privacy-concerns/> (last visited Jan. 24, 2024).

¹¹ See Miami-Dade Legislative Item File Number: 231055, at: <https://www.miamidade.gov/govaction/matter.asp?matter=231055&file=true&fileAnalysis=false&yearFolder=Y2023> (last visited Jan. 24, 2024).

“purchase price” to mean the price, as listed on the menu, for the items in a consumer’s order. The term does not include 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. The food service establishment’s consent must be in either a written or electronic format.

Under the bill, a food delivery platform must itemize and clearly disclose to the consumer the cost breakdown of each transaction, including, but not limited to, the following information:

- 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.

In addition, a food delivery platform must clearly provide to the consumer:

- The anticipated date and time of the delivery of the order.
- The delivery address.
- Confirmation that the order has been successfully delivered or completed.
- A mechanism for the consumer to express order concerns directly to the food delivery platform.

By July 1, 2025, the bill requires a food delivery platform to provide a food service establishment with:

- A method of contacting the consumer while the order is prepared and being delivered for up to two hours after the order is picked up from the food service establishment for delivery to the consumer.
- A method for responding to a consumer’s ratings or reviews.

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 stating otherwise as provided in the bill.

Under the bill, a food delivery platform may not, without an agreement with the food service establishment, intentionally inflate, decrease, or alter a food service establishment’s pricing.

The bill requires that the agreement between a food delivery platform and a food service establishment:

- 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.
- Clearly disclose policies regarding disputed transactions and the procedure for resolving those disputes.

The agreement between the food delivery platform and the food service establishment 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.

A food delivery platform may also not unreasonably limit 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 responsibility for errors and reconciling disputed transactions.

The bill authorizes the division to enforce the provisions in the bill by:

- Authorizing the division to issue a cease and desist order upon a finding of probable cause that there is a violation;
- Providing that the division's issuance of a cease and desist order is not subject to Administrative Procedures Act requirements for agency actions which affect substantial interests, including a hearing before the Division of Administrative Hearing;
- Authorizing the division to seek an injunction or writ of mandamus against persons who violate the notice to cease and desist;
- Providing that the division is entitled to attorney fees and costs if it is required seek enforcement of a notice for a penalty under the Administrative Procedures Act;
- Authorizing the division to issue a civil penalty that may not exceed \$1,000 per offense for each violation, and that the division may regard as a separate offense each day or portion of a day in which there has been a violation of the provision in the bill or of a the rules of the division; and
- Requiring the division to allow food delivery platforms seven business days to cure a violation before issuing a notice to cease or desist, an injunction, or a writ of mandamus or imposing a civil penalty.

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

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Food delivery platforms may incur costs associated with the requirements of this bill.

C. Government Sector Impact:

The DBPR states it will incur additional expenses related to the number of full-time employees (FTE) required to handle the workload needed to implement the bill. The DBPR estimates it will need three additional staff and associated costs of \$309,705 (\$187,495 Hotels and Restaurant Trust Fund and \$122,210 Administrative Trust Fund) for Fiscal Year 2024-2025.¹²

According to DBPR, the bill is unclear if the division would need to create a new license classification or online registration for food delivery platforms to allow regulation and enforcement. However, the DBPR is also expected to incur some nonrecurring costs to configure changes to DBPR's licensing system. According to the DBPR, the system modifications can be made with existing resources.¹³

The bill may result in an indeterminate increase in fines collected by the division due to noncompliance.

VI. Technical Deficiencies:

None.

¹² See Department of Business and Professional Regulation, *2024 Agency Legislative Bill Analysis for CS/SB 676* at 8 (January 22, 2024) (on file with the Senate Appropriations Committee on Agriculture, Environment, and General Government).

¹³ *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 509.103 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on January 22, 2024:

The committee substitute authorizes the division to enforce the provisions in the bill by issuing cease and desist orders upon a finding of probable cause that there is a violation and seeking an injunction or writ of mandamus against persons who violate the notice to cease and desist. The bill authorizes the division to issue a civil penalty of not more than \$1,000 per offense for each violation and provides that the division is entitled to attorney fees and costs if it is required seek enforcement of a notice for a penalty under the Administrative Procedures Act.

B. Amendments:

None.