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SB-1490 Food delivery platforms. (2023-2024)

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Senate Bill No. 1490

CHAPTER 898

An act to amend Sections 22598, 22599, and 22599.1 of the Business and Professions Code, relating to food delivery.

[Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1490, Durazo. Food delivery platforms.

Existing law imposes various business practice restrictions on a food delivery platform, defined as 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.

This bill would expand the definition of a food delivery platform to cover the completion of those deliveries and to include beverage orders, as provided.

Existing law 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 expressly authorizing the food delivery platform to take orders and deliver meals prepared by the food facility.

This bill would require a food delivery platform to provide to a food facility a mechanism to, among other things, remove the food facility, as specified, from the platform within 3 business days of receiving a request to be removed from the platform. The bill would require a food delivery platform to inform a food facility, before signing an agreement, of the fees charged by the food delivery platform for each service plan offered and the features included in each service plan, as applicable. Among other changes, the bill would also require a food delivery platform to inform a food facility of any change to the agreement deemed material and applicable to the food facility.

Existing law prohibits a food delivery platform from charging a customer a purchase price for food or beverage that is higher than the price posted on the food delivery platform's internet website by the food facility at the time of the order. Existing law requires a food delivery platform to disclose to the customer and to the food facility a cost breakdown of each transaction, as described. Existing law requires the cost breakdown to include, among other information, the purchase price of the food and beverage and any tip or gratuity. Existing law defines "purchase price" as the price, as listed on the menu, for items contained in an online order and excludes from this definition the taxes or gratuities that make up the total amount charged to the customer of an online order.

This bill would also exclude from the definition of "purchase price" fees and commissions that may make up the total amount charged to the customer of an online order. The bill would revise the above-described requirement to disclose the cost breakdown by, among other things, limiting the tip or gratuity disclosure requirement to those tips or gratuities that are payable to the delivery driver or food facility. The bill would require a food delivery platform to disclose clearly and regularly to the food facility and the customer the status of the order, as specified.

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

SECTION 1. 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 and beverage orders from a consumer to a participating food facility, and to arrange for, or to complete, 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) (1) "Purchase price" means the price, as listed on the menu, for the items contained in an online order.

(2) "Purchase price" does not include taxes, fees, commissions, or gratuities that may make up the total amount charged to the customer of an online order.

SEC. 2. Section 22599 of the Business and Professions Code is amended to read:

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

(b) (1) Subject to paragraph (2), a food delivery platform shall provide to a food facility a mechanism to do both of the following:

(A) Remove the food facility, including its name, address, logo, or menu listing, from the platform within three business days of receiving a request to be removed from the platform.

(B) Direct the food delivery platform to disclose to customers the delivery fee charged to the food facility and each fee, commission, or cost charged to the food facility, as provided in paragraph (2) of subdivision (b) of Section 22599.1.

(2) Nothing in this subdivision shall interfere with preexisting contractual obligations between a food delivery platform and a food facility.

(c) (1) A food delivery platform shall inform a food facility of both of the following prior to signing an agreement:

(A) The fees charged by the food delivery platform for each service plan offered.

(B) The features included in each service plan, as applicable.

(2) A food delivery platform shall also inform a food facility of any change to the agreement referenced in this subdivision that is deemed material and applicable to the food facility.

(d) A food delivery platform shall inform a food facility of all of the following:

(1) How charges for customer order and delivery errors are calculated.

(2) How charges related to errors are allocated between the food delivery platform and the food facility.

(3) The process for food facilities to dispute charges related to errors, including whether disputes may be subject to automatic resolution.

(e) This section shall not require a food delivery platform to reveal information that is confidential, proprietary, or a trade secret.

(f) This section shall not prohibit offering bundled services at a single price.

SEC. 3. Section 22599.1 of the Business and Professions Code is amended to read:

22599.1. (a) It is unlawful for a food delivery platform to do either of the following:

(1) Charge a customer any purchase price for food or beverage that is higher than the price posted on the food delivery platform's internet website by the food facility at the time of the order.

(2) Retain any portion of amounts designated as a tip or gratuity. Any tip or gratuity for a delivery order shall be paid by a food delivery platform, in its entirety, to the person delivering the food or beverage. Any tip or gratuity for a pickup order shall be paid by a food delivery platform, in its entirety, to the food facility.

(b) A food delivery platform shall prominently disclose to the customer and to the food facility an accurate, clearly identified, and itemized cost breakdown of each transaction, including, but not limited to, all of the following information:

(1) The purchase price of the food and beverage.

(2) A notice, if applicable, that the food delivery platform charges a fee, commission, or cost to the food facility, unless the food facility directs that the food delivery platform disclose to customers the delivery fee charged to the food facility and each fee, commission, or cost charged to the food facility.

(3) Each fee, commission, and any other cost charged to the customer by the food delivery platform.

(4) Any tip or gratuity payable to the delivery driver or food facility.

(c) (1) A listing website shall not associate a telephone number or other method of direct communication with a food facility on the listing website's internet website or application if the listing website knows the use of that telephone number or other method of direct communication will result in a forwarded call.

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

(d) A food delivery platform shall clearly and regularly disclose to the food facility and the customer the status of the order, including all of the following:

(1) The method of delivery.

(2) The anticipated date and time of the delivery of the order.

(3) Confirmation that the order has been successfully delivered or that the delivery cannot be completed.