

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

SB 1490 (Durazo) – As Amended April 23, 2024

AS PROPOSED TO BE AMENDED

SENATE VOTE: 31-8

SUBJECT: Food delivery platforms

SYNOPSIS

In 2020, the Legislature adopted the Fair Food Delivery Act (Act). The Act prohibits food delivery platforms 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.

Last session, AB 286 (Gonzalez, Ch. 513, Stats. 2021) expanded the Act by, among other provisions, prohibiting a food delivery platform from marking up the price of the food and beverages it delivers or retaining tips or gratuities it receives.

Last year, AB 502 (Lee, Ch. 164, Stats. 2023), among other provisions, addressed issues with consumer communications intended for food facilities that are placed through a listing website. It prohibits such websites from associating methods of communication with a food facility where they know that use of that method will result in a “forwarded call.”

This bill makes several changes to the Act, including:

- *Requiring platforms to prominently disclose and itemize each fee, surcharge, cost charged to the restaurant and gratuity payable to the driver, courier, or food facility.*
- *Providing restaurants with a mechanism to remove the restaurant, including its name, address, logo, or menu listing.*
- *Requiring the platform to remove the restaurant within three days of receiving the request.*
- *Requiring disclosure of order status to the restaurant and customer, including delivery method, anticipated date and time of delivery and confirmation of successful or unsuccessful delivery.*

This bill is supported by the Digital Restaurant Association, the Independent Hospitality Coalition, and the Santa Monica Chamber of Commerce. It is opposed by the California Chamber of Commerce and TechNet.

SUMMARY: Makes various changes to the requirements and prohibitions for food delivery platforms contained in the Fair Food Deliver Act of 2020. Specifically, **this bill:**

- 1) Adds beverage orders to the type of orders for which a food delivery platform, as defined, acts as an intermediary for consumers to submit orders to a participating food facility and to arrange for the delivery of the order from the food facility to the consumer.
- 2) Excludes fees, commissions, and surcharges from the definition of purchase price, in addition to the existing exclusion of taxes and gratuities.
- 3) Requires a food delivery platform to provide a mechanism for a food facility to do the following, provided that these do not interfere with preexisting contractual obligations between a food delivery platform and a food facility:
 - a) Remove the food facility from the platform, including its name, address, logo, or menu listing, within three business days of receiving a request.
 - 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.
- 4) Requires a food delivery platform to inform a food facility of all of the following related to errors:
 - a) How charges for customer order or delivery errors are calculated.
 - b) How charges related to errors are allocated between the food delivery platform and the food facility.
 - c) The process for food facilities to dispute charges related to errors, including whether disputes may be subject to automatic resolution.
- 5) Requires a food delivery platform to clearly and regularly disclose the status of the order to the food facility and the customer, including the method of delivery; the anticipated date and time the order will be delivered and; confirmation that the order has been successfully delivered or that the delivery cannot be completed.

EXISTING LAW:

- 1) Establishes the Fair Food Delivery Act, which prohibits food delivery platforms, as defined, from arranging for the delivery of an order from a food facility, as defined, 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. (Bus. & Prof Code § 22598 et seq.)
- 2) Defines:
 - d) “Food delivery platform” 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.
 - e) “Food facility,” via a cross reference to Health and Safety Code section 113789, which generally defines that term as an operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level, as specified.

- f) “Online order” as 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) “Purchase price” as the price, as listed on the menu, for the items contained in an online order. This definition does not include taxes or gratuities that may make up the total amount charged to the customer of an online order. (Bus. & Prof. Code § 22598.)
- 3) Makes it unlawful for a food delivery platform to do the following:
- a) Charge a customer any purchase price for food or beverage that is higher than the price posted on the food delivery platform’s website by the food facility at the time of the order.
 - b) 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. (Bus. & Prof. Code § 22599.1(a).)
- 4) Requires a food delivery platform to disclose to the customer and to the food facility an accurate, clearly identified, and itemized cost breakdown of each transaction, including the following information:
- a) The purchase price of the food and beverage.
 - b) 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.
 - c) Each fee, commission, or cost charged to the customer by the food delivery platform.
 - d) Any tip or gratuity. (Bus. & Prof. Code § 22599.1(b).)
- 5) Requires a listing website to clearly and conspicuously disclose if an order placed through a telephone number or other interface on their 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. (Bus. & Prof. Code § 22599.1(c)(2).)
- 6) Establishes the Unfair Competition Law, which provides a statutory cause of action for any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising, including over the internet. (Bus. & Prof. Code § 17200 et seq.)

FISCAL EFFECT: As currently in print, this bill is keyed non-fiscal.

COMMENTS:

1) **Purpose of the bill.** Food delivery platforms provide an alternative for restaurants that may not wish to employ their own delivery professionals, but want to be able to allow customers to have food delivered to them. However, because the delivery platforms are businesses, there are

fees attached to deliveries for both the customer and the restaurant. As one can imagine, different apps have different approaches to setting prices both for both parties. According to the Senate Business, Professions and Economic Development Committee analysis:

While each food delivery platform is different, one platform provided insight on its current business model, including details about what the arrangement between an online food delivery platform and a food facility might look like.

Generally speaking, the food delivery platform enters into a written contract with independent restaurants who choose to use its services. Potential agreements and contracts are not freely available on its website—a restaurant must create an account with the food delivery platform to be provided with more information about a partnership. Independent restaurants can negotiate, change, modify, or otherwise alter agreements. A partner restaurant or company is eligible to terminate an agreement within only a few days, and typically restaurants are able to pause their account at any time without incurring charges.

Current law requires that delivery platforms inform customers that restaurants are being assessed fees, not the amount or ultimate recipient of each fee. The author argues that this lack of transparency results in hidden costs for consumers. Platforms often claim that no or low delivery fees are being charged when there are actually delivery fees charged to the restaurant and built into the purchase price in the subtotal.

This bill allows restaurants to opt in to the disclosure to consumers of the itemized breakdown of the transaction of an online food order including purchase prices, fees and commissions charged to the restaurant, any fees charged to the customer and tips. By providing transparent information, consumers can make informed decisions when ordering food from restaurants.

To further increase transparency for restaurants and customers the bill proposes:

- Requiring platforms to prominently disclose and itemize each fee, surcharge, cost charged to the restaurant and gratuity payable to the driver, courier, or food facility.
- Providing restaurants a mechanism to opt in to the disclosure to consumers of the itemized breakdown of the transaction including purchase price, fees/commissions charged to the restaurant.
- Providing restaurants with a mechanism to remove the restaurant, including its name, address, logo, or menu listing.
- Requiring the platform to remove the restaurant within three days of receiving the request.
- Requiring disclosure of order status to the restaurant and customer including delivery method, anticipated date and time of delivery and confirmation of successful or unsuccessful delivery.
- Requiring platforms to inform restaurants of the process used to calculate charges for customer order or delivery errors; how the charges are allocated; and the process for disputing charges related to order and delivery errors.

2) **Author's statement.** According to the author:

Customers and restaurants are paying high, and often hidden fees when ordering through the big third-party delivery platforms. SB 1490 requires platforms to disclose to consumers the actual costs involved in online food order and delivery, including both the fees charged to restaurants and the fees directly paid by customers. By providing transparent information, consumers will not be deceived by misleading cost information and can make informed decisions when ordering food from their favorite restaurants.

Current law requires only that delivery platforms inform customers that restaurants are being assessed fees, not the amount or ultimate recipient of each fee. This lack of transparency results in hidden costs for consumers. Platforms often claim that no or low delivery fees are being charged when there are actually delivery fees charged to the restaurant and built into the purchase price in the subtotal. The existing law does not cover full fee transparency for the customer and restaurant alike. SB 1490 would allow customers and restaurants to understand exactly what fees they are paying and understand the breakdown.

3) **The Fair Food Delivery Act.** Several lawsuits against food delivery platforms have been filed across the country alleging, among other unscrupulous behaviors, unfair business practices, labor violations, and the misuse of restaurants' names and logos.¹ One type of predatory practice involved listing restaurants on food delivery websites without their consent,² which risks overwhelming restaurant operations, creating quality and safety problems, and eroding customer bases.

In response, the Legislature adopted the Fair Food Delivery Act of 2020. The Act prohibits food delivery platforms 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.

Last session, AB 286 (Gonzalez, Ch. 513, Stats. 2021) expanded the Act by prohibiting a food delivery platform from marking up the price of the food and beverages it delivers or retaining tips or gratuities it receives. AB 286 also requires food delivery platforms to provide itemized cost breakdowns to customers and food facilities that includes the purchase price of the food and beverage; a notice, if applicable, that the food delivery platform charges a fee, commission, or cost to the food facility, except as specified; each fee, commission, or cost charged to the customer by the food delivery platform; and any tip or gratuity.

Last year, AB 502 (Lee, Ch. 164, Stats. 2023) addressed issues with consumer communications intended for food facilities that are placed through a listing website. It prohibits such websites from associating methods of communication with a food facility where they know that use of that method will result in a "forwarded call," as defined. AB 502 also requires certain disclosures with respect to fees, commissions, and other costs in connection with orders placed through such websites.

¹ See Jaya Saxena *Who's Paying for the Great Delivery Wars?* (Jan. 21, 2021) Eater.com, available at <https://www.eater.com/22224695/uber-eats-postmates-grubhub-delivery-wars-2021>.

² Janelle Bitker & Shwanika Narayan, *Grubhub, DoorDash rush to add restaurants. Customers and drivers pay the price* (Feb. 2, 2020) San Francisco Chronicle, available at <https://www.sfchronicle.com/business/article/Grubhub-DoorDash-rush-to-add-restaurants-15023372.php>.

4) **Suggested committee clarifying amendment.** As currently drafted, the language related to clarifying the rights of a food facility to have their authorized agent review agreements between the food delivery platform and the food facility before they enter into them is duplicative of protections in current law and is unnecessarily confusing. The amendment deletes that language.

~~(d) A food delivery platform shall allow a food facility to authorize specified individuals to review the agreement between the food delivery platform and the food facility, provided that the food facility and any additional authorized individuals comply with all applicable confidentiality provisions and any other provisions that protect the food delivery platform from competitive, proprietary, or other harm.~~

5) **Related legislation.** AB 502 (Lee; Ch. 164, Stats of 2023) *see comment 3*.

AB 1444 (Lee, 2021) a substantially similar bill, would have expanded the Fair Food Delivery Act of 2020 by regulating the practice in which consumer communications intended for food facilities placed through a listing website are re-routed to a food delivery platform. That bill passed the Legislature but was vetoed by the Governor.

AB 286 (Lorena Gonzalez, Ch. 513, Stat. 2021) among other provisions, prohibited a food delivery platform from charging a customer any purchase price for food or beverage higher than the price set by the food facility and prohibited a food delivery platform from retaining any portion of amounts designated as a tip or gratuity. The bill also required any tip or gratuity for a delivery order to be paid by a food delivery platform, in its entirety, to the person delivering the food or beverage.

AB 2149 (Lorena Gonzalez, Ch. 125, Stats. 2020) prohibited a food delivery platform, as defined, 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.

AB 3336 (Carrillo, Ch. 105, Stats. 2020) required ready-to-eat food delivered by third-party food delivery services to be transported in a manner that protects the food from contamination and spoilage, including by requiring the interior floor, sides, and top of the food holding area to be clean, requiring the food to be maintained at a holding temperature necessary to prevent spoilage, and by requiring bags or containers to be closed with a tamper-evident method prior to the food deliverer taking possession of the ready-to-eat food.

AB 1360 (Ting, 2019) would have established requirements on food delivery platforms that deliver food to consumers from a grocery establishment, a retail store with a grocery department, or a grocery warehouse, including requiring that a food delivery driver has specified training, and that the food delivery platform maintains liability insurance. The bill died on the Senate floor.

ARGUMENTS IN SUPPORT:

Writing in support of the bill, the Digital Restaurant Association argues:

The restaurant industry currently faces many challenges. With online orders averaging 40% of restaurant revenue and the big three delivery companies 99% market share, these third-party delivery platforms have substantial power in the restaurant industry. Our aim is to protect consumers and restaurants from unfair and harmful business practices by advocating

for transparency on fees, terms and services, and improving the restaurant's and consumer's experience.

SB 1490 aligns with our goals of fee disclosures to customers and restaurants including an itemized breakdown of purchase price, fees, commissions, and tips, so the customer understands the true costs and the restaurant can understand the specific fees for marketing, ordering and delivery .We also support the ability to increase order information sharing by requiring the disclosure of order status including delivery method, anticipated date and time and confirmation of successful delivery to assist with the customer experience and reduce miscommunication.

ARGUMENTS IN OPPOSITION:

The Chamber of Commerce and TechNet write in opposition:

The California Chamber of Commerce and TechNet are OPPOSED to SB 1490 (Durazo) as amended April 23, 2024. This bill presents a unique situation where, while we are not opposed to present text, we understand the author and sponsor intend to add in new language which, despite discussions among stakeholders, we have not been able to agree with.

Though we do not have ongoing concerns *with the present text of SB 1490*, we remain in opposition due to the stated intent of the author and sponsor to potentially add additional language to **SB 1490** related to what the sponsor alleges are “secret penalties” being applied by food service platforms. This language was present in prior versions of the bill, but was subsequently removed with the sponsor indicating an intent to re-add the concept in some form. Because this issue remains outstanding (with ongoing meetings between the sponsor, author, and stakeholders), we have remained in opposition pending negotiations on this language.

REGISTERED SUPPORT / OPPOSITION:

Support

Digital Restaurant Association
Independent Hospitality Coalition
Santa Monica Chamber of Commerce

Opposition

California Chamber of Commerce
Technet

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