

First Regular Session of the 123rd General Assembly (2023)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2022 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1279

AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4-23.2 IS ADDED TO THE INDIANA CODE AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]:

Chapter 23.2. Third Party Food Delivery Services

Sec. 1. As used in this chapter, "affiliate" means any person who directly or indirectly controls, is controlled by, or is under common control of another person.

Sec. 2. (a) As used in this chapter, "covered establishment" means a:

- (1) restaurant; or**
- (2) food service establishment;**

that offers, in a single transaction, whether directly or through a third party food delivery service, the sale and same-day delivery or pick up of food and beverages to customers.

(b) The term does not include a grocery store.

Sec. 3. As used in this chapter, "online order" means an order that is:

- (1) placed by a customer of a covered establishment;**
- (2) for food and beverages prepared or provided by the covered establishment;**
- (3) for same-day delivery or pick up in Indiana; and**

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(4) made through an online modality or platform provided by a third party food delivery service, including:

- (A) a website;**
- (B) a mobile application; or**
- (C) another Internet service.**

Sec. 4. As used in this chapter, "person" means an individual, a corporation, a partnership, an association, or another legal entity.

Sec. 5. (a) As used in this chapter, "third party food delivery service" means a person that:

(1) uses an online modality or platform, such as:

- (A) a website;**
- (B) a mobile application; or**
- (C) another Internet service;**

to offer or arrange for the sale, and same-day delivery or pick up, of food and beverages prepared or provided by one (1) or more covered establishments that are not affiliates of the person; and

(2) engages in the activities described in subdivision (1):

- (A) for consideration; or**
- (B) for the purpose of obtaining customer data related to a transaction between a covered establishment and a customer of the covered establishment.**

(b) The term does not include an:

- (1) Internet service provider; or**
- (2) Internet search engine;**

used by a third party food delivery service, a covered establishment, or a customer of a covered establishment if the Internet service provider or Internet search engine does not both receive consideration for and offer and arrange for the sale, and same-day delivery or pick up, of food and beverages prepared or provided by one (1) or more covered establishments that are not affiliates of the Internet service provider or the Internet search engine, as described in subsection (a)(1) and (a)(2).

Sec. 6. (a) A third party food delivery service may not provide any services related to facilitating, processing, or delivering an online order for a covered establishment unless the covered establishment expressly agrees in a signed writing, or through an electronic agreement signed and dated with an electronic signature (as defined in IC 26-2-8-102), to allow the third party food delivery service to provide those services.

(b) If a covered establishment provides notice to a third party food delivery service of the covered establishment's cancellation of



the covered establishment's service contract with the third party food delivery service, the third party food delivery service shall comply with any terms and conditions for cancellation specified in the contract, not later than:

- (1) the time specified in the contract, if such a time is specified in the contract; or
- (2) if a time is not specified in the contract, seventy-two (72) hours after the covered establishment's provision of the notice of cancellation.

Unless otherwise specified in the service contract, not later than the time specified in subdivision (1) or (2), as applicable, the third party food delivery service shall remove all menus associated with the covered establishment, whether the menus were provided to the third party food delivery service by the covered establishment or otherwise, from all online modalities or platforms of the third party food delivery service and shall cease to offer, arrange, or perform any activities related to the sale, and same-day delivery or pickup, of food and beverages prepared or provided by the covered establishment.

Sec. 7. (a) If a third party food delivery service:

- (1) provides services related to facilitating, processing, or delivering an online order for a covered establishment without the covered establishment's express agreement to allow the third party food delivery service to provide those services, in violation of section 6(a) of this chapter; or
- (2) fails to terminate a service contract with a covered establishment as provided in section 6(b) of this chapter;

the covered establishment may bring an action for the alleged violation in a court with jurisdiction.

(b) A court in an action brought by a covered establishment against a third party food delivery service under subsection (a) may grant a temporary injunction enjoining the third party food delivery service, during the pendency of the action, from providing services related to facilitating, processing, or delivering online orders for food or beverages prepared or provided by the covered establishment.

(c) A covered establishment that prevails in an action brought under subsection (a) is entitled to:

- (1) actual damages;
- (2) temporary or permanent injunctive relief;
- (3) liquidated damages of not more than fifty thousand dollars (\$50,000); and



(4) reasonable costs and attorney's fees;
for each transaction the third party food delivery service made with a customer for food and beverages prepared or provided by the covered establishment in violation of section 6(a) of this chapter.

Sec. 8. The remedies set forth in this chapter are:

- (1) cumulative;**
- (2) nonexclusive; and**
- (3) in addition to any other legal or equitable remedy available to a person aggrieved by a violation of this chapter.**



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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