

SENATE BILL NO. 320—SENATOR NEAL

MARCH 22, 2021

Referred to Committee on Commerce and Labor

SUMMARY—Enacts various provisions relating to food delivery service platforms. (BDR 52-591)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to trade practices; prohibiting a food delivery service platform provider from engaging in certain activities; requiring a food delivery service platform provider to remove a food dispensing establishment from the food delivery service platform of the provider upon request; requiring a food delivery service platform provider to make certain disclosures concerning online food orders; prohibiting a food delivery service platform provider from charging a food dispensing establishment any fees over a certain amount during the period in which the Declaration of Emergency for COVID-19 issued by the Governor remains in effect; establishing certain practices as deceptive trade practices; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 This bill enacts various provisions relating to a food delivery service platform,  
2 which is defined in **section 4** of this bill to mean an Internet website, online service  
3 or mobile application which allows users to purchase food from multiple food  
4 dispensing establishments and arrange for the same-day delivery or same-day  
5 pickup of such food. **Section 5** of this bill defines “food delivery service platform  
6 provider” as a person who operates a food delivery service platform.  
7 **Section 12** of this bill prohibits a food delivery service platform provider from  
8 facilitating an online food order involving a food dispensing establishment unless  
9 the provider has entered into an agreement with the food dispensing establishment  
10 that expressly authorizes the provider to engage in such activities. **Section 13** of  
11 this bill requires a food delivery service platform provider to remove a food



12 dispensing establishment from the food delivery service platform of the provider  
13 upon the receipt of a written request from the food dispensing establishment.  
14 **Section 13** provides that a food delivery service platform provider that violates that  
15 requirement is subject to a civil penalty of \$500 per day of the violation.

16 **Section 14** of this bill prohibits a food delivery service platform provider from  
17 using the likeness, registered trademark or intellectual property of a food  
18 dispensing establishment without first obtaining the written consent of the food  
19 dispensing establishment. **Section 14** provides that a food delivery service platform  
20 provider that violates that prohibition is subject to a civil penalty of \$500 per day of  
21 the violation. **Section 15** of this bill authorizes a food dispensing establishment  
22 whose likeness, registered trademark or intellectual property was used by a food  
23 delivery service platform provider in violation of **section 14** to bring an action  
24 against the provider.

25 **Section 16** of this bill requires a food delivery service platform provider to  
26 disclose certain information to a user of the platform who engages in an online food  
27 order. Among the information required to be disclosed by **section 16** is any  
28 commission associated with the online food order. **Section 3** of this bill defines  
29 "commission," in general, to mean any fee charged by a food delivery service  
30 platform provider to a food dispensing establishment for the use of the services of  
31 the provider in effectuating online food orders. **Section 17** of this bill sets forth the  
32 manner in which such commissions are required to be disclosed.

33 On March 12, 2020, Governor Steve Sisolak issued a Declaration of  
34 Emergency due to the outbreak of the disease identified by the Centers for Disease  
35 Control and Prevention of the United States Department of Health and Human  
36 Services as COVID-19. (Declaration of Emergency for COVID-19 (March 12,  
37 2020)) **Section 19** of this bill prohibits, for the period during which the Declaration  
38 of Emergency for COVID-19 remains in effect, a food delivery service platform  
39 provider from charging a food dispensing establishment any fees for an online food  
40 order that exceed a certain amount.

41 Existing law defines various activities involving businesses and occupations  
42 that constitute deceptive trade practices. (NRS 598.0915-598.0925) If a person  
43 knowingly engages in a deceptive trade practice, the person may be subject to  
44 restraint by injunction and the imposition of civil and criminal penalties. (NRS  
45 598.0979, 598.0985, 598.0999) **Sections 18 and 19** of this bill provide that a  
46 violation of the provisions of **section 16, 17 or 19** of this bill constitutes a  
47 deceptive trade practice.

48 **Sections 3-11** of this bill define words and terms for the purposes of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 597 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 18, inclusive, of this  
3 act.

4 **Sec. 2.** *As used in sections 2 to 18, inclusive, of this act,*  
5 *unless the context otherwise requires, the words and terms defined*  
6 *in sections 3 to 11, inclusive, of this act have the meanings*  
7 *ascribed to them in those sections.*

8 **Sec. 3. 1.** *"Commission" means any fee or other payment*  
9 *of money that is charged by a food delivery service platform*  
10 *provider to a food dispensing establishment for the use of the*



1 *services of the food delivery service platform provider in*  
2 *effectuating online food orders.*

3 2. *The term includes, without limitation, any annual fee*  
4 *charged to a food dispensing establishment for the use of the*  
5 *services described in subsection 1.*

6 3. *The term does include any fee that is charged by a food*  
7 *delivery service platform provider for services provided as a*  
8 *general or indirect cost of doing business, including, without*  
9 *limitation, fees for the processing of credit cards or for advertising*  
10 *in a restaurant directory.*

11 **Sec. 4.** *“Food delivery service platform” means an Internet*  
12 *website, online service or mobile application which allows users to*  
13 *purchase food from multiple food dispensing establishments and*  
14 *arrange for the same-day delivery or same-day pickup of such*  
15 *food.*

16 **Sec. 5.** *“Food delivery service platform provider” means a*  
17 *person who operates a food delivery service platform.*

18 **Sec. 6. 1.** *“Food dispensing establishment” means a food*  
19 *establishment that prepares and serves food intended for*  
20 *immediate consumption. The term includes, without limitation, a*  
21 *restaurant.*

22 2. *As used in this section, “food establishment” has the*  
23 *meaning ascribed to it in NRS 446.020.*

24 **Sec. 7.** *“Food purchase price” means the portion of the total*  
25 *online food order price that is attributable to the amount charged*  
26 *by the food dispensing establishment for the food.*

27 **Sec. 8.** *“Likeness” means any identifiable symbol attributed*  
28 *and easily identified as belonging to a specific food dispensing*  
29 *establishment.*

30 **Sec. 9.** *“Online food order” means a transaction in which a*  
31 *user, through a food delivery service platform, purchases food*  
32 *from a food dispensing establishment and arranges for the same-*  
33 *day delivery or same-day pickup of such food.*

34 **Sec. 10.** *“Total online food order price” means the total*  
35 *amount paid or to be paid by a user as a result of an online food*  
36 *order.*

37 **Sec. 11.** *“User” means a person who uses a food delivery*  
38 *service platform to engage in an online food order.*

39 **Sec. 12.** *A food delivery service platform provider shall not*  
40 *facilitate an online food order involving a food dispensing*  
41 *establishment, including, without limitation, arranging for the*  
42 *same-day delivery or same-day pickup of food prepared by a food*  
43 *dispensing establishment, unless the food delivery service platform*  
44 *provider has entered into an agreement with the food dispensing*



1 *establishment that expressly authorizes the food delivery service*  
2 *platform provider to engage in such activities.*

3 **Sec. 13.** 1. *A food dispensing establishment may, at any*  
4 *time, submit a written request to a food delivery service platform*  
5 *provider directing the provider to remove the food dispensing*  
6 *establishment from the food delivery service platform. If the food*  
7 *delivery service platform has appointed a registered agent located*  
8 *in this State, the request must be submitted to the registered agent.*

9 2. *A food delivery service platform provider that receives a*  
10 *request submitted pursuant to subsection 1 shall confirm receipt of*  
11 *the request and immediately remove the food dispensing*  
12 *establishment from the food delivery service platform.*

13 3. *A food delivery service platform provider who violates the*  
14 *provisions of subsection 2 is subject to a civil penalty of \$500 per*  
15 *day of the violation, and each day's continuance of the violation*  
16 *constitutes a separate and distinct violation.*

17 **Sec. 14.** 1. *A food delivery service platform provider shall*  
18 *not use the likeness, registered trademark or intellectual property*  
19 *of a food dispensing establishment unless the food delivery service*  
20 *platform provider first obtains the written consent of the food*  
21 *dispensing establishment.*

22 2. *A food delivery service platform provider who violates the*  
23 *provisions of subsection 1 is subject to a civil penalty of \$500 per*  
24 *day of the violation, and each day's continuance of the violation*  
25 *constitutes a separate and distinct violation.*

26 **Sec. 15.** 1. *A food dispensing establishment whose likeness,*  
27 *registered trademark or intellectual property was used by a food*  
28 *delivery service platform provider in violation of section 14 of this*  
29 *act may bring an action against the food delivery service platform*  
30 *provider in any court of competent jurisdiction and may recover*  
31 *the sum of \$5,000 or the amount of actual damages sustained,*  
32 *whichever is greater.*

33 2. *If the food dispensing establishment prevails in the action,*  
34 *the court may award such punitive damages and equitable relief as*  
35 *the court determines to be proper.*

36 **Sec. 16.** 1. *Before an online food order is consummated*  
37 *with a user, the food delivery service platform provider must*  
38 *disclose to the user the following information in plain language*  
39 *and in a conspicuous manner:*

40 (a) *The total online food order price;*

41 (b) *Each portion of the total online food order price that is*  
42 *attributable to:*

43 (1) *The food purchase price;*

44 (2) *Any sales tax or other tax;*



1           (3) Any delivery fee or service fee charged to the user by the  
2 food delivery service platform provider or food dispensing  
3 establishment; and

4           (4) Any gratuity to be paid to the person who delivers the  
5 food;

6           (c) Any commission associated with the online food order in  
7 accordance with section 17 of this act; and

8           (d) If a commission is disclosed pursuant to paragraph (c), a  
9 statement that indicates that the commission is to be paid by the  
10 food dispensing establishment in connection with the online food  
11 order.

12           2. If, after the consummation of an online food order, the  
13 user is provided with a receipt for the online food order, the  
14 information required to be disclosed pursuant to subsection 1 must  
15 be set forth on the receipt in plain language and in a conspicuous  
16 manner.

17           **Sec. 17. 1.** Except as otherwise provided in subsection 4, a  
18 commission disclosed pursuant to section 16 of this act must be  
19 presented as a single aggregate number that is determined and  
20 expressed in accordance with subsection 2 or 3, as applicable.

21           2. If it is feasible for a food delivery service platform provider  
22 to determine the total of all commissions actually attributable to  
23 the particular online food order for which the food delivery service  
24 platform provider is making the disclosure, the single aggregate  
25 number described in subsection 1 must:

26           (a) Represent the total of all commissions charged to the food  
27 dispensing establishment that are actually attributable to the  
28 particular online food order for which the provider is making the  
29 disclosure, and

30           (b) Be expressed in a dollar amount or as a percentage of the  
31 total online food order price or any portion thereof.

32           3. If it is not feasible for a food delivery service platform  
33 provider to determine the total of all commissions actually  
34 attributable to the particular online food order for which the food  
35 delivery service platform provider is making the disclosure, the  
36 single aggregate number described in subsection 1 must:

37           (a) Represent a good-faith estimate of the total of all  
38 commissions attributable to the particular online food order for  
39 which the provider is making the disclosure; and

40           (b) Be expressed in a dollar amount, a percentage of the total  
41 online order price or any portion thereof or a range of percentages  
42 based on previous commissions charged to the food dispensing  
43 establishment.

44           4. If a food delivery service platform provider determines that  
45 it is not feasible to disclose commissions pursuant to section 16 of



1 *this act in the manner provided in this section, the provider may*  
2 *submit a request to the Commissioner of Consumer Affairs to*  
3 *disclose commissions in an alternative manner. Such a request*  
4 *must include, without limitation, a proposal for an alternative*  
5 *manner in which to disclose commissions and any other*  
6 *information the Commissioner deems necessary. If the*  
7 *Commissioner approves the request, the food delivery service*  
8 *platform provider may disclose commissions pursuant to section*  
9 *16 of this act in the manner set forth in the approved request.*

10 **Sec. 18.** *A person who knowingly violates section 16 or 17 of*  
11 *this act is deemed to have committed a deceptive trade practice for*  
12 *the purposes of NRS 598.0903 to 598.0999, inclusive.*

13 **Sec. 19.** 1. During the period in which the Declaration of  
14 Emergency issued by the Honorable Steve Sisolak, Governor of the  
15 State of Nevada, on March 12, 2020, remains in effect, a food  
16 delivery service platform provider shall not charge a food  
17 dispensing establishment any fee or combination of fees for an  
18 online food order that exceeds 20 percent of the food purchase price  
19 of the online food order.

20 2. A food delivery service platform provider shall not reduce  
21 the compensation rates paid to any person who delivers food for the  
22 provider or garnish the gratuities of such a person as a result of this  
23 section.

24 3. A person who knowingly violates this section is deemed to  
25 have committed a deceptive trade practice for the purposes of NRS  
26 598.0903 to 598.0999, inclusive.

27 4. As used in this section:

28 (a) "Food delivery service platform provider" has the meaning  
29 ascribed to it in section 5 of this act.

30 (b) "Food dispensing establishment" has the meaning ascribed  
31 to it in section 6 of this act.

32 (c) "Food purchase price" has the meaning ascribed to it in  
33 section 7 of this act.

34 (d) "Online food order" has the meaning ascribed to it in section  
35 9 of this act.

