

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

AB 375 (Davies)
Version: May 15, 2024
Hearing Date: June 4, 2024
Fiscal: No
Urgency: No
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SUBJECT

Food delivery platforms: disclosure of delivery drivers' identity

DIGEST

This bill amends the Fair Food Delivery Act (the Act) to require food delivery platforms to provide customers with the name and a picture of the delivery driver on its online-enabled application or platform at the time the customer is notified their purchase is out for delivery.

EXECUTIVE SUMMARY

While third party app-based food delivery companies, such as DoorDash, Uber Eats, and Grubhub, offer the promise of convenient and safe access to a variety of restaurants at the click of a button, these companies often impose hefty commissions and onerous terms that can add to the struggles of ailing restaurants. To protect restaurants and customers, the Legislature enacted the Fair Food Delivery Act of 2020 (AB 2149 (Gonzalez, Ch. 125, Stats. 2020) (Act), which prohibits food delivery platforms from arranging for the delivery of an order from a food facility without first obtaining an agreement authorizing the food delivery platform to take orders and deliver meals prepared by the food facility. Additional protections have since been added.

This bill seeks to bolster customer protections by requiring platforms, starting March 1, 2025, to disclose to customers, as provided, the name of the driver and the driver's picture. The provision borrows from the law applying to transportation network companies (TNCs), requiring similar disclosures to customers for safety and security reasons.

The bill is author-sponsored. No timely support or opposition was received by the Committee. If the bill passes this Committee, it will next be heard in the Senate Committee on Business, Professions, and Economic Development.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Act (Bus. & Prof Code § 22598 et seq.)¹, 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 (§ 22599).
- 2) Defines:
 - a) “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;
 - b) “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;
 - c) “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; and
 - d) “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. (§ 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. (§ 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;

¹ All further section references are to the Business and Professions Code unless otherwise indicated.

- 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; and
 - d) any tip or gratuity. (§ 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. (§ 22599.1(c)(2).)
- 6) Requires transportation network companies (TNCs) to provide passengers a driver's first name and picture and the license plate number and an image of the make and model of the vehicle on its online-enabled application or platform at the time the passenger is matched with a driver. (Pub. Util. Code § 5445.1.)
- 7) 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. (§ 17200 et seq.)

This bill requires food delivery platforms, effective March 1, 2025, to provide customers with the name and a picture of the delivery driver on the platform's online-enabled application or platform at the time the customer is notified their purchase is out for delivery.

COMMENTS

1. Food delivery platforms and the Fair Food Delivery Act of 2020

The COVID-19 pandemic decimated the restaurant industry. Millions of employees were laid off or furloughed and approximately four in 10 restaurants closed.² Meanwhile, sales through third-party online delivery services, already a major growth industry before the pandemic, surged dramatically, growing by 122 percent in 2020.³

² National Restaurant Association, Letter to Congress (Apr. 20, 2020), *see* <https://www.cnbc.com/2020/04/20/coronavirus-restaurants-describe-huge-shortfalls-with-government-aid.html>; Matt Goulding, *An Extinction Event for America's Restaurants* (June 19, 2020) *The Atlantic*, available at <https://www.theatlantic.com/culture/archive/2020/06/what-will-happen-restaurants/613141/>. All internet citations are current as of May 2, 2024.

³ Chris Crowley, *5 Big Reasons the Delivery 'Boom' May Soon Go Bust* (May 5, 2021) *New York Magazine*, available at <https://www.grubstreet.com/2021/05/5-reasons-the-food-delivery-boom-may-soon-go-bust.html>.

Although these services can conveniently and safely connect restaurants with customers, they can be costly – commissions are often around 30 percent of the sale price, and there may be additional fees⁴ – and a poor fit for some restaurants.⁵ In an industry known for thin profit margins, this impact to revenues can be a formidable barrier to sustained financial viability. Yet for many restaurants, partnering with a third-party delivery service has been the only way to continue operating in the midst of the pandemic.

Three major companies control the online food delivery industry. In April of 2021, 56 percent of meal delivery sales were through DoorDash and its subsidiaries, 26 percent were through Uber Eats and its subsidiaries (including Drizly and Postmates⁶), and 18 percent were through Grubhub.⁷ Despite rapid growth and skyrocketing valuations, the companies are not making money.⁸

These companies have strongholds in different metro areas: for instance, whereas DoorDash had 74 percent of sales in San Francisco, it had just 41 percent of sales in Los Angeles where Uber Eats and Postmates collectively had 44 percent.⁹ The companies also vie for partnerships with the nation's top chain restaurants. Uber Eats has a contract with Starbucks, Postmates with Popeye's, Grubhub with Taco Bell and KFC. While large corporate partners have the bargaining power to pay lower fees, many smaller restaurants that rely heavily on delivery services have reportedly operated at a loss because of fees from delivery services.¹⁰ This prompted several major cities to adopt temporary ordinances capping service fees.¹¹

Several lawsuits against food delivery platforms have been filed across the country alleging, among other unscrupulous behaviors, unfair business practices, labor

⁴ For the top five food delivery platforms, total markups range from 17 percent to 40.5 percent of the restaurant's list price. (Noah Lichtenstein, *The hidden cost of food delivery*, (Mar. 16, 2020) TechCrunch, available at <https://techcrunch.com/2020/03/16/the-hidden-cost-of-food-delivery/>.)

⁵ Many restaurants use their own online ordering and delivery systems to ensure quality control and cost-effectiveness. Boutique restaurants may lack the capacity to absorb extra orders and may be unwilling to risk entrusting an unknown, unregulated third party to handle an order properly and deliver it promptly.

⁶ Before Uber acquired Postmates, Uber and Grubhub discussed a possible merger. (Ed Hammond, *Uber Approaches Grubhub With Takeover Offer*, (May 12, 2020) Bloomberg, available at <https://www.bloomberg.com/news/articles/2020-05-12/uber-is-said-to-approach-grubhub-with-takeover-offer>.)

⁷ Liyin Yeo, *Which company is winning the restaurant food delivery war?* (May 14, 2021) Bloomberg Second Measure, available at <https://secondmeasure.com/datapoints/food-delivery-services-grubhub-uber-eats-door-dash-postmates/>.

⁸ *5 Big Reasons the Delivery 'Boom' May Soon Go Bust*, *supra*, fn. 3.

⁹ *Id.*

¹⁰ Supriya Yelimeli, *Berkeley limits service fees for third-party food delivery apps* (July 13, 2020) Berkeleyside, <https://www.berkeleyside.org/2020/07/13/food-delivery-berkeley>.

¹¹ *Id.*

violations, and the misuse of restaurants' names and logos.¹² One type of predatory practice involved listing restaurants on food delivery websites without their consent,¹³ 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. (§ 22599.) A violation of the Act constitutes an unfair business practice under the Unfair Competition Law.¹⁴

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.

¹² 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>.

¹³ 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>.

¹⁴ Business and Professions Code section 17200 prohibits unfair competition, including unlawful, unfair, and fraudulent business acts. The UCL covers a wide range of conduct, making any business practice prohibited by law independently actionable as an unfair competitive practice. (*Medical Marijuana, Inc. v. ProjectCBD.com* (2020) 46 Cal.App.5th 869, 896, citing *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1143.) However, "a practice may violate the UCL even if it is not prohibited by another statute. Unfair and fraudulent practices are alternate grounds for relief." (*Medical Marijuana, Inc. v. ProjectCBD.com, supra*, 46 Cal.App.5th at 896, quoting *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 370 [citations and nested quotation marks omitted].)

2. Strengthening the protections of the Fair Food Delivery Act

This bill focuses on the safety of customers at the point of delivery. The bill requires platforms to provide to customers the name and a picture of the delivery driver. This must appear on its app or platform at the time the customer is notified the order is out for delivery. The new requirement takes effect on March 1, 2025.

The provision borrows from Section 5445.1 of the Public Utilities Code, enacted by AB 2986 (Cunningham, Ch. 286, Stats. 2018). That statute requires TNCs to provide the following information to passengers at the time the passenger is matched with a driver:

- The transportation network company driver's first name and a picture of the driver.
- An image of the make and model of the transportation network company driver's vehicle.
- The license plate number of the transportation network company driver's vehicle.

AB 2986 codified existing regulation issued by the California Public Utility Commission at the time and sought to address growing concerns about misconduct by drivers and others posing as TNC drivers.

According to the author:

California is the home of innovation and entrepreneurship. We take great pride in ensuring technology developed and used in our state benefits not only the business, but the consumer. Unfortunately, when it comes to the intersection of technology and public safety, there are grey areas. AB 375 is a common sense measure to close one of these grey areas and ensure that when a customer is using a food delivery application, they are given appropriate information about who is coming to their residence. Should an unfortunate incident occur, as we have seen, this kind of information could help local law enforcement and the application itself track down who was responsible and allow the legal system to proceed promptly.

SUPPORT

None received

OPPOSITION

None received

RELATED LEGISLATION

Pending Legislation: SB 1490 (Durazo, 2024) makes a series of changes to the Act, including requirements that the food delivery platform provide facilities a mechanism to remove themselves and to request that certain fees charged to the facility be disclosed to customers. It also requires certain disclosures be made to facilities and customers. SB 1490 is currently in the Assembly Privacy and Consumer Protection Committee.

Prior Legislation:

AB 502 (Lee, Ch. 164, Stats. 2023) *See Comment 2.*

AB 286 (Gonzalez, Ch. 513, Stats. 2021) *See Comment 2.*

AB 2149 (Gonzalez, Ch. 125, Stats. 2020) *See Executive Summary.*

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.

AB 2986 (Cunningham, Ch. 286, Stats. 2018) *See Comment 2.*

PRIOR VOTES:

Assembly Floor (Ayes 67, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 10, Noes 0)
