

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 1444 (Lee)
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Fiscal: No
Urgency: No
JT

SUBJECT

Food delivery platforms

DIGEST

This bill, with respect to consumer communications intended for food facilities placed through a listing website, regulates the practice of re-routing the communication to a food delivery platform by requiring certain disclosures to consumers and to food facilities in contracts for such services.

EXECUTIVE SUMMARY

The COVID-19 pandemic has devastated the restaurant industry and made consumers and restaurants alike increasingly reliant on online food delivery options. 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) Stats. 2020, Ch. 125) (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.

This bill seeks to expand the Act by regulating the practice in which communications – phone calls, typically – intended for restaurants through online directories such as Yelp are, without the customer’s knowledge, rerouted to a food delivery platform, which then charges the restaurant a referral fee. Specifically, the bill: prohibits charges for call forwarding that does not result in a paid order; prohibits a listing website from associating a forwarded number with a restaurant unless it makes specific disclosures; and requires detailed information related to fees and charges to be included in contracts that are entered into or modified after the bill becomes operative.

The bill is sponsored by the Silicon Valley Chamber Coalition and supported by other Chambers of Commerce as well as the California Restaurant Association, the Consumer Attorneys of California, the Consumer Federation of California, RAISE High Road Restaurants, and Small Business Majority. It is opposed by a coalition consisting of Grubhub, the California Asian Pacific Chamber of Commerce, the Black Restaurant Coalition of Los Angeles, and Mel's Fish.

If the bill passes this Committee, it will 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 consumer. (§ 22598(a).)
 - 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. (§ 22598(b).)
- 3) 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:

- 1) Finds and declares:
 - a) Web-based platforms that provide information about food delivery services should provide accurate business information, and consumers have the right to know who they are doing business with.
 - b) The Legislature believes that it is an unethical business practice to reroute telephone calls without consumer consent or knowledge through a third-

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

party platform in order for the third-party platform to collect a referral fee, and third-party platforms should not charge food establishments for calls routed through their service that do not result in orders.

- c) The Legislature considers the practice of leading customers to believe they are ordering directly from a food establishment, when they are actually being rerouted through a third-party platform in order to charge a referral fee, counter to public policy.
- 2) Defines:
- a) "Clearly and conspicuously" to mean a larger type than the surrounding text, or in a contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. For an audio disclosure, "clearly and conspicuously" means in a volume and cadence sufficient to be readily audible and understandable.
 - b) "Forwarded call" as 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 facility.
 - c) "Listing website" as 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.
- 3) Prohibits food delivery platforms from charging a food facility a fee for a forwarded call unless that forwarded call directly resulted in a paid order, or an order paid for with a coupon or other promotional offer provided by the food delivery platform, from that food facility that will be delivered, or arranged for delivery or pickup, to the consumer by the food delivery platform. Requires an agreement made pursuant to that provision, entered into or modified on or after January 1, 2022, to clearly and conspicuously disclose all of the following:
- a) All possible charges or fees the food delivery platform may levy on the food facility.
 - b) Detailed information of how each possible charge or fee may be applied to the food facility.
 - c) An estimation of each charge or fee and the percentage costs associated with them.
 - d) Listing websites that are partnered with the food delivery platform.
- 4) Prohibits a listing website from associating a telephone number with a food facility on their internet website or application if the listing website knows the use of that telephone number will result in a forwarded call, unless the listing website clearly and conspicuously discloses if an order placed through a telephone number or other interface on their internet website or application may result in a commission or fee paid to a party other than the food facility,

identifies the party to which that commission or fee may be paid, and includes in the disclosure a direct link to the telephone number of the food facility.

- 5) Contains a severability clause.

COMMENTS

1. Author's statement

The author writes:

Many businesses have had no choice but to become more reliant on third-party food delivery platforms to survive the pandemic economy. Restaurants and small businesses have been existentially reliant on these services - resulting in a significant disparity in bargaining power between these multi-billion-dollar platforms and restaurants.

Despite growing competition in the food delivery industry, only four companies - Uber Eats, Postmates, DoorDash and Grubhub - have primary control of the market. As of March 2021, these same companies accounted for 99% of sales in the food delivery market. During the pandemic, big tech monopolies have been able to capitalize on this new economic reality, while our local restaurants have struggled to survive.

California has led the nation in restaurant closures since the beginning of the pandemic, resulting in forty-thousand restaurants closing. It is imperative that we craft policy to provide the necessary tools and protections to our small businesses, so they are able to survive, recover and thrive during economic uncertainty. We must ensure they are not being exploited by big-tech monopolies.

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

The COVID-19 pandemic has decimated the restaurant industry. Millions of employees have been laid off or furloughed, approximately four in 10 restaurants have closed, and it has been estimated that anywhere from 20 to 80 percent will close permanently.² Meanwhile, sales through third-party online delivery services, already a major growth

² National Restaurant Association, Letter to Congress (Apr. 20, 2020), available at <https://restaurant.org/downloads/pdfs/business/covid19-letter-to-house-senate-leaders.pdf> (as of May 30, 2021); 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/> (as of May 30, 2021).

industry before the pandemic, surged dramatically last year, growing by 122 percent.³ Although these services can conveniently and safely connect restaurants with homebound 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 the recently acquired Postmates⁶), and 18 percent were through Grubhub.⁷ Despite rapid growth and skyrocketing valuations, the companies are not making money.⁸ As more consumers get vaccinated and restrictions ease, the industry stands to lose business from customers eager to resume dining on-premises.⁹

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.¹⁰ 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.¹¹ While large corporate partners have the bargaining power to pay lower fees,¹² many smaller restaurants that rely heavily on delivery services have reportedly operated at a

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> (as of May 31, 2021).

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/> (as of May 30, 2021).)

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> (as of May 30, 2021).)

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/> (as of May 30, 2021).

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

⁹ *Which company is winning the restaurant food delivery war?*, *supra*, fn. 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

loss because of fees from delivery services.¹³ This has prompted several major cities to adopt temporary ordinances capping service fees, set at 20 percent of the total sale price in New York and Berkeley, 15 percent in San Francisco, and 10 percent in Seattle and Los Angeles.¹⁴

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.¹⁵ One type of predatory practice involved listing restaurants on food delivery websites without their consent,¹⁶ 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.¹⁷

3. How food delivery platforms intermediate communications between consumers and restaurants

Customers who go online to search for and contact restaurants may be unwittingly diverted to food delivery services without understanding the costs

¹³ 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> (as of May 30, 2021).

¹⁴ *Id.*

¹⁵ 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> (as of Jun. 12, 2021).

¹⁶ 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> (as of May 31, 2021).

¹⁷ 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].)

The UCL provides that a court "may make such orders or judgments . . . as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition." (§ 17203.) The law also permits courts to award injunctive relief and, in certain cases, to assess civil penalties against the violator. (§§ 17203, 17206.) Pursuant to Proposition 64 (2004), the UCL provides that a person may bring an action for an injunction or restitution if the person "has suffered injury in fact and has lost money or property as a result of the unfair competition." (§ 17204.)

to the restaurant they intend to support. According to a 2019 *Vice* article, some food delivery platforms create specialized phone numbers that automatically forward to the restaurant of interest in order to more effectively track the calls that resulted from their marketing. As the article describes:

As it turns out, the number listed for “General Questions” in the Yelp app is the restaurant’s real number. The number listed for “Delivery or Takeout” is owned by Yelp partner Grubhub. [...] Even though restaurants are capable of taking orders directly – after all, both numbers are routed to the same place – Yelp is pushing customers to Grubhub-owned phone numbers in order to facilitate what Grubhub calls a “referral fee” of between 15 percent and 20 percent of the order total

Yelp has historically functioned like an enhanced Yellow Pages, listing direct phone numbers for restaurants along with photos, information about the space, menus, and user reviews. But Yelp began prompting customers to call Grubhub phone numbers in October 2018 after the two companies announced a “long-term partnership.”¹⁸

The article notes that this often results in erroneously charged referral fees for calls that do not result in orders.¹⁹ The Consumer Federation of California, in support of the bill, writes that “[r]estaurant owners are forced to individually review and dispute these charges, taking up time and energy that these establishments cannot afford.” They add:

These practices over the past 5 years, and especially during the pandemic, have contributed to California leading the nation in the number of restaurant closures (our #1 market size also plays a role), while market revenue for food delivery in the US has increased a whopping 205%. This is absolutely unsustainable, and CFC believes that small restaurants and food establishments should not be bled dry needlessly, especially if consumers are unwittingly contributing to this injustice.

Grubhub, the principal player in this space, opposes the bill. A legal memorandum provided to the Committee fleshes out Grubhub’s business model:

Diners sign up for Grubhub’s easy-to-use, personalized platform that offers a broad array of restaurant search options, ranging from location, to food type, to restaurant ratings, to delivery time. Grubhub diners navigate to individual restaurant pages that display restaurants’ menus, hours of

¹⁸ Adrienne Jeffries, *Yelp is Screwing Over Restaurants By Quietly Replacing Their Phone Numbers* (Aug. 6, 2019) <https://www.vice.com/amp/en/article/wjwebw/yelp-is-sneakily-replacing-restaurants-phone-numbers-so-grubhub-can-take-a-cut> (as of May 20, 2021).

¹⁹*Id.*

operation, comments, and other information. Diners then place orders with restaurants online, through the mobile application, or by phone. Grubhub makes it easy for diners to enjoy takeout and delivery from their favorite local restaurants and to discover new options.

Restaurants contract with Grubhub to be part of its restaurant network, gaining access to Grubhub's millions of diners and extensive marketing services. Grubhub provides restaurants an efficient means to generate additional takeout orders, on top of any orders placed through the restaurant's own channels. In their contracts, restaurants agree to pay clearly disclosed advertising fees, typically percentage-based commissions on orders that diners place using Grubhub's services. Grubhub then markets the restaurants to its millions of diners.

Although most diners place orders online through Grubhub's website or mobile app, many still prefer to call restaurants found through Grubhub's platform and order by phone—an option that Grubhub has made available since 2004. To facilitate this preference, Grubhub generates a unique telephone number for each restaurant partner and lists that number on the corresponding restaurant page on the Grubhub platform. A diner who calls that number—found on the Grubhub application and otherwise advertised by Grubhub—hears a binary prompt: “Press 1 to place an order, Press 2 for all other information.” Following the diner's selection, the call is then forwarded directly to the restaurant, where the diner and restaurant complete the order. Grubhub does not deliver food when the order is made by phone. Grubhub tracks the calls and charges commissions to restaurants as authorized by its contracts with restaurants. Restaurants have the ability to listen to these call recordings in near-real time through their Grubhub restaurant portal.

Yelp, which takes a neutral position on the bill, no longer allows Grubhub's tracking numbers to be used on Yelp's website.

4. Expands the Act to regulate call-forwarding and associated practices

This bill seeks to expand the Act by regulating phone calls and other communications made to restaurants through online directories that, without the customer's knowledge, re-route the communication to a food delivery platform, which then charges the restaurant a referral fee.

First, the bill would prohibit food delivery platforms from charging a food facility a fee for a forwarded call unless that forwarded call directly resulted in a paid order.

Second, the bill would prohibit a listing website²⁰ from associating a telephone number with a food facility on their website if they know the use of the number will result in a forwarded call. While “associate” is not clear on its face, the website is not in violation of this provision if it discloses whether the order may result in a commission or fee paid to a party other than the food facility, and, if so, to whom. The disclosure must also include a direct link to the telephone number of the food facility.

Third, the bill prohibits a listing website from associating a telephone number with a food facility on their internet website or application if the listing website knows the use of that telephone number will result in a forwarded call, unless the listing website clearly and conspicuously discloses (1) if an order placed through a telephone number or other interface on their internet website or application may result in a commission or fee paid to a party other than the food facility, (2) identifies the party to which that commission or fee may be paid, and (3) includes in the disclosure a direct link to the telephone number of the food facility. These requirements apply to contracts entered into or modified after January 1, 2022.

While focus of the bill is re-routed phone calls, the author also points to reports that Grubhub has amassed domain names similar to those of restaurants to intercept orders by customers.²¹ The bill defines “forwarded call” broadly as 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 facility. As such, the bill would appear to prohibit this unfair business practice.

5. Stakeholder positions

a. Support

The bill’s sponsor, the Silicon Valley Chamber Coalition, which consists of 18 Chambers of Commerce in the Silicon Valley area, writes in a letter echoed by other supporters:

The COVID 19 pandemic continues to impose extraordinary hardship on local restaurants and food establishments. Whether a restaurant’s doors stay open depends on their profit margin. The average restaurant profit margin falls between 3-5%. With delivery app fees taking up to a 30% commission, the costs of working with third party ordering systems has historically outweighed the benefits.

²⁰ The bill broadly defines “listing website” as 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. This would apply to heavily-trafficked websites such as Yelp and Google.

²¹Natt Garun, *Grubhub is using thousands of fake websites to upcharge commission fees from real businesses* (Jun. 28, 2019) The Verge, <https://www.theverge.com/2019/6/28/19154220/grubhub-seamless-fake-restaurant-domain-names-commission-fees> (as of May 26, 2021).

Yet in this pandemic economy, partnering with third party ordering systems has been the only way some businesses have been able to operate due to local and state restrictions. Businesses that were required to close their indoor and outdoor dining were forced to adopt new models in order to survive. Food ordering platforms and online listing services have become one of the few avenues for small businesses to interact with customers.

In order to stay competitive many restaurants are forced to change their existing business models and use third party ordering systems. However, small businesses are barely staying afloat with their narrow margins becoming increasingly smaller due to high fees from third party ordering apps.

AB 1444 requires that listing services provide clear and accurate information about contacting a food facility so that customers know how to connect with the business directly and small businesses are able to interact with their customers without a tech company rerouting the call.

This bill will also ensure that restaurant owners are only charged for calls that result in orders, and not oversight errors.

- b. Yelp, having discontinued call-forwarding with Grubhub, takes a neutral position*

Yelp writes:

We have reviewed AB 1444 by Assemblymember Alex Lee, the accompanying analysis and some of his public statements about its contents. We wish to inform you that, contrary to the depiction of our company in those documents and comments, Grubhub tracking numbers are no longer used on Yelp. Accordingly, we take no position on AB 1444.

- c. Grubhub and others oppose the bill on several grounds, some of which are no longer in the bill*

Regarding the previous version of the bill, Grubhub, the California Asian Pacific Chamber of Commerce, the Black Restaurant Coalition of Los Angeles, and Mel's Fish jointly write:

We oppose AB 1444 because it takes away valuable opportunities for restaurants and resources for diners. As drafted, the bill would prohibit websites from listing phone numbers for diners to place orders through delivery platforms - an important service restaurants specifically contract with third parties to provide. This service makes ordering from

restaurants on food delivery platforms more accessible for the visually-impaired and for those who are more comfortable using a phone than a computer. In many instances, local restaurants contract with services to secure advertising on websites like Yelp that provide food order assistance. Why should these restaurants be penalized for contracting for such services? What is the problem this bill is trying to solve? AB1444 appears to be a solution in search of a problem.

Phone orders have been a long-standing part of the food delivery business. In fact, phone ordering services to restaurants began long before delivery platforms ever offered delivery and continue to generate critical revenue for restaurants and more delivery opportunities and earning potential for drivers. If passed, this bill will cost small local California restaurants more than \$10 million in annual revenue generated by phone orders.

Our understanding is the legislative intent of this bill was to guarantee that restaurants are only charged order commissions for calls that result in an order being placed - not calls for information, delivery updates, etc. We support that intent. However, in its current form the bill goes far beyond that intent and prohibits an important resource and valuable revenue stream for restaurants, and has serious accessibility implications for residents across California.

We look forward to working with members of the committee to reach a solution that supports restaurants while protecting and promoting accessibility.

Grubhub also submitted a legal memorandum describing the “deleterious policy consequences” and “numerous legal flaws” of the prior version of the bill. According to the memorandum, the bill violates the First Amendment, the contracts clause, the takings clause, the dormant commerce clause, the due process clause, and the equal protection clause. The memorandum perhaps “doth protest too much”²² when it asserts the bill – which passed the first house of the Legislature with zero no votes – is not even a valid exercise of the State’s police power because it is “‘manifestly unreasonable,’ ‘arbitrary,’ or capricious, and lacks any relation to ‘public health, safe, morals or general welfare.’”²³

One of the aspects of the current version of the bill that Grubhub opposes is the requirement that a listing website disclose that an order placed through their system

²²From an oft-quoted line in William Shakespeare’s *Hamlet*, Act III, Scene 2.

²³Jones Day Memorandum to Grubhub re AB 1444, p. 8, quoting *Massingill v. Dep’t of Food & Agric.* (2002) 102 Cal.App.4th 498, 504.

may result in a commission or fee. Arguing this violates the First Amendment, the memorandum cites to *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31* (2018) 138 S. Ct. 2448, 2463 for the proposition that the disclosure requirement would be subject to strict scrutiny, the most exacting standard of judicial review typically applied to laws affecting fundamental rights or protected characteristics. That case, of course, involved political speech in the form of compulsory union dues for public employees “even if they choose not to join and strongly object to the positions the union takes in collective bargaining and related activities.” (*Id.* at 2459-2460.) And the court stated it was “unnecessary to decide the issue of strict scrutiny” because it found that the challenged scheme could not survive a more permissive standard of review. (*Id.* at 2465.)

The bill simply requires disclosure of factual information about charges imposed as part of a food ordering and delivery process. In the context of the regulation of commercial speech, compelled disclosure of “purely factual and uncontroversial information about the terms under which . . . services will be available” need only be reasonably related to the State’s interest in preventing deception of consumers. (*Nat’l Inst. of Family & Life Advocates v. Becerra* (2018) 138 S.Ct. 2361, 2372; *Zauderer v. Office of Disciplinary Counsel of Supreme Court* (1985) 471 U.S. 626, 651.) Without appropriate disclosures, customers who wish to support local restaurants are unlikely to know that placing a call through a listing website may dilute the restaurant’s profits. Empowered with that knowledge, some customers may opt to contact the restaurant directly.

While many of the legal arguments in the memorandum appear overblown, the bill was recently amended to change provisions Grubhub argued interfered with existing contracts. Now the bill simply requires disclosures, both to consumers – who may be interested to know if a third party is taking a cut of the restaurant’s profits when they are placing an order – and to restauranteurs, who may not understand the full ramifications of the agreement if the charges and fees associated with call forwarding are not set forth in adequate detail. Additionally, the bill requires the direct telephone number of the restaurant to be made available, as specified, so that the customer has the option to call the restaurant directly.

SUPPORT

Silicon Valley Chamber Coalition (sponsor)
California African American Chamber of Commerce
California Restaurant Association
Consumer Attorneys of California
Consumer Federation of California
Hispanic Chamber of Commerce Silicon Valley
Mountain View Chamber of Commerce
RAISE High Road Restaurants
Small Business Majority

OPPOSITION

California Asian Pacific Chamber of Commerce
Black Restaurant Coalition of Los Angeles
Grubhub
Mel's Fish
Six individuals

RELATED LEGISLATION

Pending Legislation: AB 286 (Gonzalez, 2021) prohibits a food delivery platform from (1) marking up the price of the food and beverages it delivers, and (2) retaining tips or gratuities. The bill also requires food delivery platforms to provide customers with cost breakdowns. The bill passed this Committee by a vote of 9-2 and is now pending in the Senate Business, Professions and Economic Development Committee.

Prior Legislation: *See* Comment 2.

AB 3336 (Carrillo, Ch. 105, Stats. 2020) requires 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.

PRIOR VOTES:

Assembly Floor (Ayes 68, Noes 0)

Assembly Privacy and Consumer Protection Committee (Ayes 9, Noes 0)
