

MIKE KUGLITSCH

STATE REPRESENTATIVE • 84TH ASSEMBLY DISTRICT

DATE: February 16, 2022
RE: **Testimony for Assembly Bill 901**
TO: Assembly Committee on Small Business Development
FROM: Representative Mike Kuglitsch
SUBJECT: Assembly Bill 901 -- Third-Party Food Delivery Services

Thank you Chairman Oldenburg and Members of the Committee for your consideration of Assembly Bill 901 (AB 901), which establishes principles for delivery of food by third-party delivery services.

Imagine owning a restaurant and receiving a call that your food was delivered late and cold. Your response is “but we don’t deliver...”

A growing issue in the restaurant industry has delivery and rideshare companies offering the public food and drink options without informing the restaurant. Third-party delivery services are known to list menus for local restaurants on their website and take orders for delivery without ensuring the food and drink arrive promptly on time. The result is often a bad review.

Delivery represents one of the most important segments of growth for the restaurant industry and third-party platforms play an important role in helping restaurants survive and grow their business, but restaurants have a right to know and determine when and if their food is being delivered.

In addition, customers should expect the same degree of food safety from delivery as they do when dining in a restaurant.

Assembly Bill 901 is based on principles and guidelines the third-party delivery companies agreed to in cooperation with the Council of State Restaurant Associations and the National Restaurant Association.

Senator Testin and I, along with the Restaurant Association, met with the third-party delivery platforms two weeks ago and reached an agreed upon bill that focuses on consent between parties for delivery and the details of listing a restaurant on a third-party food delivery platform.

Specifics include:

- The Amendment adds a definition of consent: a mutual acknowledgement by both a restaurant and a 3rd-party food delivery service, including mutual acknowledgement obtained electronically or orally.
- Any 3rd-party delivery service must include a simple option for restaurants to be removed from the digital network.
- If a restaurant requests to be removed from the platform, the delivery service has 3-days from the time of receiving the request to delist the restaurant and may not list the restaurant again until permission is received.
- A 3rd-party delivery service may not solicit requests from consumers for restaurants to be listed for delivery.
- If there is no contract, the delivery company should not misrepresent its relationship with the restaurant to consumers and should offer an easy way to be removed from the platform, if desired.
- A 3rd-party food delivery service will ensure individuals delivering food know basic food safety principles, including personal hygiene and avoiding cross contamination.
- Third-party delivery companies must offer access to general information regarding when the order was made and the contents.
- If a 3rd-party food delivery service violates the contract, enforcement includes 3-strikes of action of not more than \$1,000 for the 1st offense, \$5,000 for the 2nd offense and \$10,000 for the 3rd offense.
- The effective date of the bill is 6 months after the bill is enacted.

Senator Testin and I feel this agreed upon bill will result in 3rd party delivery companies working with restaurants to ensure an up-to-date menu, correct menu descriptions, accurate menu prices, and safe and prompt deliveries.

Thank you Mr. Chair for the opportunity to speak today and I ask the Assembly Committee on Small Business Development to support AB 901.

I am happy to take any questions.



PATRICK TESTIN

STATE SENATOR

DATE: February 16th, 2022

RE: **Testimony on Assembly Bill 901**

TO: The Assembly Committee on Small Business Development

FROM: Senator Patrick Testin

Thank you Chairman Oldenburg for accepting my testimony on behalf of Assembly Bill 901 (AB 901).

The last two years have been a turbulent time for restaurants. They have had to be creative and accept new changes to the industry in order to survive. One way to continue to serve customers was delivery, but not every restaurant could offer delivery services. Third-party delivery services helped to remedy that situation.

Third-party food delivery services are a popular and convenient option for many; however, these companies can currently operate without bearing any responsibility to the restaurants whose food they transport. This can lead to the customer mistakenly blaming the restaurant for errors over which they have no control. Rep. Kuglitsch and I authored AB 901 because restaurants should have a right to know and determine when and if their food is delivered.

This bill outlines best practices and creates an environment of transparency that will enable both restaurants and delivery services to thrive. Some of the issues this legislation will address:

- Restaurants will receive transparency on fees (including commissions, delivery fees, and promotional fees) charged by third-party delivery companies.
- Third-party delivery companies must obtain consent or permission from a restaurant before using its name, menu, symbols, and images on its platform, or offering that restaurant's food to customers.
- Third-party food delivery services will ensure individuals delivering food know basic food safety principles.

Wisconsin is not alone in considering this sort of legislation; ten other states and Washington D.C. have already instituted similar requirements. This is an opportunity for Wisconsin to be one of the leaders in ensuring clarity and transparency for both restaurants and food delivery services. Rep. Kuglitsch and I have enjoyed a collaborative dialogue with the industries that this legislation would impact. The substitute amendment that we have introduced incorporates feedback from multiple stakeholders and addresses potential concerns.



Chairman and Members of the Committee,

I am Scott Divine, VP of Sales for EatStreet. We're a proud Wisconsin company founded and based right here in Madison. I've been with EatStreet for 8 years. I began with the company as employee number 21 as a sales executive, sitting, in person, across the table, with thousands of restaurant owners over the years and building this business, relationship by relationship. I've watched our company grow from a small startup with a few dozen employees to a substantial employer and contributor to Wisconsin's economy, with over 2000 jobs created and maintained in Wisconsin. We're proud that a majority of these jobs are our drivers, who are directly employed by EatStreet, not independent contractors.

Here at EatStreet, partnering directly with restaurants has been the core element of our success. We understand that the relationship between a restaurant and 3rd party delivery company needs to be a "win-win" agreement, and we work towards that goal every day. We're also proud of the value we bring to our restaurant partners. 3rd party delivery companies such as EatStreet not only provide valuable last mile fulfillment services for our restaurant partners, but also generate significant new revenue for restaurants. Independent research shows that almost 7 in 10 orders from 3rd party delivery platforms are brand new orders to the restaurant.

We truly value the restaurants on our platform, which is why over the years EatStreet has partnered with the National Restaurant Association and is a current member of the Wisconsin Restaurant Association.

I do believe that most of us here are looking for the same result: A restaurant should have the right to decide which 3rd party platforms it's listed on, and which it's not.

We did have some concerns with the original draft of the bill. Our concerns were twofold. First, we had concerns regarding the methods by which restaurants were allowed to grant consent to be listed on 3rd party platforms. Secondly, we had concerns regarding consumer privacy and data protection as they related to the bill.

Our CEO, Matt Howard, along with our competitors sat down with the Wisconsin Restaurant Association and the authors of this bill, to discuss ways in which AB901 could be modified to be able to work for both Wisconsin restaurants as well as Wisconsin companies such as EatStreet. We appreciate both Representative Kuglitsch and Senator Testin for listening to our concerns and introducing the substitute amendment, which is a collaboration between all interested parties. We are in favor of the amended language of this legislation. We feel it will provide restaurant owners all across the state with the tools to protect their business and decide which delivery platforms to work with. In addition, we feel it provides a strong legal framework and a level playing field for local companies such as EatStreet.

To wrap things up, recently there was a story in the Wisconsin State Journal on this bill and the issues discussed today. I'll read a small portion of the story to highlight EatStreet:

Matt Van Nest, co-owner of Brasserie V on Monroe Street, said he's had trouble with Grubhub ordering his food, and more than half the time it was food the restaurant was no longer serving.

Van Nest said he's had a good experience with EatStreet, the Wisconsin-based food delivery company, and it's the only delivery service he uses. He likes EatStreet because it has its own employees, instead of private contractors.

Finally, in that story there are some insightful comments from Kristine Hillmer, president and CEO of the Wisconsin Restaurant Association:

She said EatStreet is a valued partner to a lot of restaurants and not one of the big three: Uber Eats, Grubhub and DoorDash.

"A restaurant needs to be able to have control over their product and what's happening with it and not have companies insert themselves into that relationship," she said.

"We just want the restaurant to be, pun intended, in the driver's seat to say who can and who cannot deliver their food," Hillmer said.

Thank you for your time and I'm happy to answer any questions.



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February 8, 2022

TO: Assembly Committee on Small Business Development
Representative Loren Oldenburg, Chair

FR: Susan Quam, Executive Vice President

RE: AB 901 – Third Party Delivery Consent

Thank you Chair Oldenburg and members of the committee for hearing our story this morning. We appreciate your time today.

The Wisconsin Restaurant Association (WRA) represents over 7,000 restaurant locations statewide. Our organization represents all segments of the restaurant and hospitality industry; our membership includes food establishments of all types and sizes, such as seasonal drive-ins, supper clubs, diners, bars, locally owned franchisees, fine-dining and hotels/resorts. Over 75 percent of our membership are independent restaurants. Regardless of ownership type, all restaurants are the cornerstones of their neighborhoods and communities. Restaurants not only provide great food, drink and hospitality, they support schools, teams, charities and churches with fundraising and donations. They provide meeting places to celebrate, mourn and organize, or just provide a safe, tasty meal for a busy family.

This committee and many others in the Capitol have heard us explain the economic toll the pandemic has taken on restaurants and the entire tourism industry. I will not dive into those statistics at this time, but have attached our most recent survey information for you to this testimony.

As restaurants were forced to close to indoor dining in March of 2020, some restaurants were able to remain open with skeleton crews for carryout and delivery sales. For restaurants where carry out and delivery was not part of their business model, these “new” sales provided some cash flow and allowed them to keep a few people employed. Even prior to the pandemic, we saw increasing demand for restaurant delivery and third party delivery companies provided opportunities for restaurants to expand their customer base. We know that many restaurant companies continue to have thriving relationships with third party companies. However, as any industry grows, especially at a rate that is artificially accelerated due to forces like a pandemic, there are issues and business practice that do emerge that are not beneficial to all restaurants. That is why we are here today regarding putting some parameters in place to level the playing field for restaurants, especially as they try to hang on to their businesses.

AB 901 as originally written, was based on a set of agreed upon principles developed by the Council of State Restaurant Associations, our partner the National Restaurant Association, and some of the larger, national third party companies. We admit that the original bill contains a large number of requirements for third party companies and was a very ambitious list of industry

demands. We realize now that some of the requirements in the bill, such as much of the data sharing requirements, really should be contract negotiations between the restaurants and the third party companies and we worked with the bill's authors and third party companies to pare those types of requirements down to just sharing the very basics needed to fulfill the order. Those changes are reflected in the substitute amendment before you.

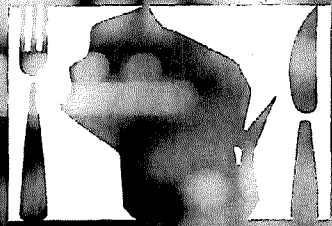
As you can see when comparing the substitute amendment, you can see that we have moved significantly in an effort to compromise and reach consensus with the third party companies on what should be in place. We appreciate their efforts in developing what is in the amendment.

This amendment contains some basic safeguards for restaurants, which are very important as our industry tries to recover and still allows the third party companies to grow and thrive in Wisconsin.

- **Definition of restaurant based on what is already contained in statute 125.**
 - Ch. 125.035 (18) "Restaurant" means **any building, room, or place where meals are prepared or served or sold to transients or the general public**, including all places used in connection with it and including any public or private school lunchroom for which food service is provided by contract.

- **Base requirements**
 - A third party company must remove a restaurant from its platform if the restaurant informs the platform it does not wish to be listed. This includes:
 - When a restaurant wishes to terminate an existing agreement
 - When a restaurant does not want to be listed in any way, including dining guide type references
 - If a restaurant is listed in a dining guide-style way, the platform cannot solicit or petitions its customers to ask restaurants to be added to the platform
 - Delivery drivers must be informed of, and the driver must acknowledge they understand basic food safety principles including personal hygiene and avoiding cross contamination
 - Minimal data sharing
 - Content of the order
 - Time order was placed
 - If a restaurant is listed without documented consent the third party has 3 business days to remove the restaurant after being contacted
 - If a restaurant wishes to be removed from the platform after giving documented consent, the third party has 10 business days to remove the restaurant after being contacted
 - Fines for not complying with removal of listing results in graduated fines.
 - Bill goes into effect six months after it is published

We appreciate the efforts put forth by Representative Kuglitsch, Senator Testing and their teams in getting an agreement in place and putting forward the substitute amendment. We urge your support in moving this bill forward as amended and help the restaurant industry move forward in our recovery efforts.



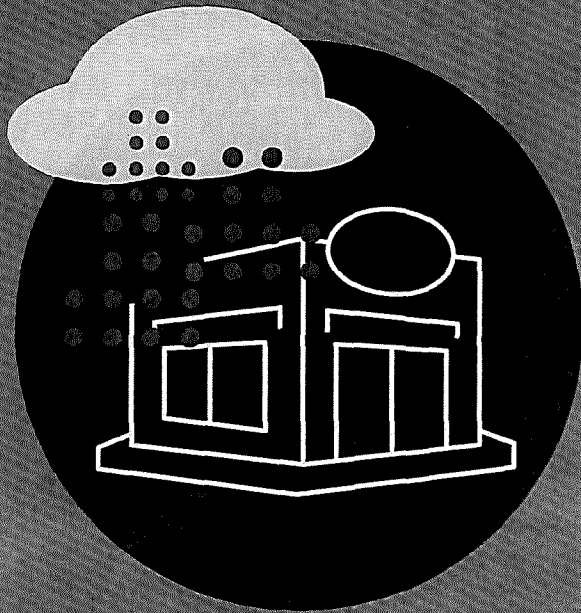
WISCONSIN
RESTAURANT
ASSOCIATION

COVID-19 UPDATE

Restaurants are still feeling an ECONOMIC IMPACT

Restaurant Industry Impact Survey · December 2021

To assess the impact of the pandemic the National Restaurant Association Research Group conducted a survey of 3,000 restaurant operators Nov. 16 – Dec. 2, 2021.



Delta variant
dampened
indoor dining at

46%

of restaurants
in the State



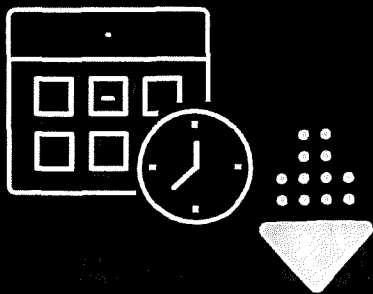
78%

of local restaurants
are understaffed



75%

of local restaurants'
Oct. 2021 sales were
weaker than Oct. 2019



34% of local operators
think it will be

12+ months

until business normalizes

→ **17%** think it never will

Profitability is down



71%

have smaller
margins



**Costs
are up**

93% paying more for food

69% paying higher occupancy costs

71% have higher labor costs

For more information & resources, visit wirerestaurant.org



CHALLENGES FOR RESTAURANTS CONTINUE TO PILE ON

While things are moving in a positive direction compared to the shutdowns and restrictions in 2020, **restaurants are still experiencing many challenges.**

Restaurant recovery has started **moving in reverse** because consumers changed their behavior due to the delta variant.

Restaurant sales were up slightly in September, but in inflation-adjusted terms, eating and drinking place sales were **down from July levels.**

Restaurants are still nearly 1 million jobs, or **about 8%**, below pre-pandemic levels, which is double national employment levels.

90,000 restaurants are closed permanently or long-term.

There are **177,000 restaurants waiting**

to find out if Congress will replenish the RRF. Those restaurants still aren't on solid financial ground and without the RRF, would see

many of them close

if people continue to change their dining habits as we move into the colder months.

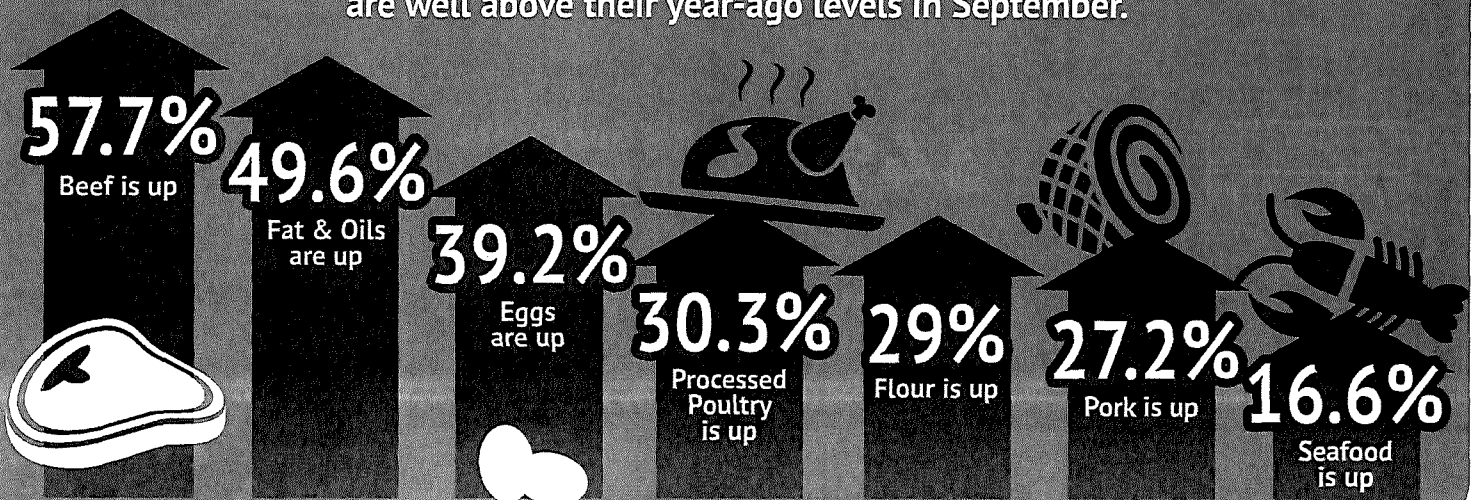
closed

According to a survey by Alignable, **51% of small business restaurant owners** said they couldn't cover their September rent.

Menu prices up 5.3% in last 12 months in the Midwest between September 2020 and September 2021.

Wholesale food prices increased sharply in September, **posting the highest 12-month increase** since 1980.

Several of the major commodities in the wholesale food price index are well above their year-ago levels in September.



The Wisconsin Restaurant Association and the National Restaurant Association continue to tell the restaurant story, underscoring the need to provide support for restaurants.

wirestaurant.org