2021 SENATE BILL 861

January 13, 2022 – Introduced by Senators TESTIN, NASS, WANGGAARD, COWLES and AGARD, cosponsored by Representatives KUGLITSCH, MAGNAFCI, ALLEN, ARMSTRONG, DITTRICH, DOYLE, EDMING, GUNDRUM, HONG, KITCHENS, ORTIZ-VELEZ, J. RODRIGUEZ, SCHRAA, SINICKI, SNOGRASS, SPREITZER, SUBECK, SUMMERFIELD and VRUWINK. Referred to Committee on Labor and Regulatory Reform.

AN ACT to create 100.75 of the statutes; relating to: third-party food delivery services and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill establishes requirements for third-party food delivery services that operate digital networks and deliver food purchased from restaurants through digital networks. Specifically, the bill prohibits a third-party food delivery service from listing a restaurant on its digital network or offering a restaurant’s food for delivery unless the third-party food delivery service first obtains written consent from the operator of the restaurant. The bill also requires third-party food delivery services to ensure that menus, descriptions, and prices related to a restaurant are accurate.

Under the bill, third-party food delivery services must disclose to restaurants the amount of any commissions, delivery fees, and promotional fees charged, and must also ensure that individuals delivering food for the third-party food delivery service have knowledge of basic food safety principles. Third-party food delivery services must also provide restaurant operators with access to anonymized information identifying various details related to orders involving the restaurant and must allow restaurant operators to view and respond to consumer feedback and reviews.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:
SECTION 1. 100.75 of the statutes is created to read:

100.75 Third-party food delivery services. (1) Definitions. In this section:

(a) “Digital network” means an Internet site or online-enabled application, software, or system that allows a consumer to view and search the menus of restaurants and purchase food from restaurants for delivery.

(b) “Likeness” means an identifiable symbol attributed and easily identified as belonging to a particular restaurant.

(c) “Restaurant” has the meaning given in s. 97.01 (14g).

(d) “Third-party food delivery service” means a person who operates a digital network and delivers food purchased through the digital network to consumers.

(2) Requirements. (a) 1. A 3rd-party food delivery service may not list a restaurant on its digital network or offer a restaurant’s food for delivery unless the 3rd-party food delivery service first obtains written consent from the operator of the restaurant to list the restaurant on its digital network; use the restaurant’s name, menu, likeness, and images; and offer the restaurant’s food to consumers.

2. A 3rd-party food delivery service shall work with a restaurant listed on its digital network to ensure that the menu, menu descriptions, and prices related to the restaurant are accurate.

3. If a 3rd-party food delivery service has not entered into a contract with a restaurant, the 3rd-party food delivery service may not represent that it has a contractual relationship with the restaurant and, if requested by the restaurant, may not list the restaurant on its digital network; use the restaurant’s name, menu, likeness, or images; or offer the restaurant’s food to consumers.
(b) A 3rd-party food delivery service shall disclose to restaurants the amount of any commissions, delivery fees, and promotional fees charged.

(c) The terms of a contract between a 3rd-party food delivery service and a restaurant related to fees, costs, marketing practices involving the restaurant or its likeness, insurance, and indemnification shall be clear.

(d) 1. An individual delivering food for a 3rd-party food delivery service may not touch food ordered by a consumer.
   
   2. A 3rd-party food delivery service shall ensure that individuals delivering food for the 3rd-party delivery service have knowledge of basic food safety principles, including personal hygiene, types of contamination, time and temperature control, cleaning, and sanitizing.

(e) 1. A 3rd-party food delivery service shall provide an operator of a restaurant that provides consent under par. (a) 1. with access to anonymized information that identifies all of the following related to orders placed with the 3rd-party food delivery service involving the restaurant:

   a. The contents of orders.

   b. The times that orders are placed.

   c. Whether orders originate from the 3rd-party’s application or Internet site.

   d. Whether orders involve a promotion.

   e. Average delivery times after orders leave the restaurant.

   f. Whether orders are from new customers or repeat customers.

   2. A 3rd-party food delivery service shall allow an operator of a restaurant that provides consent under par. (a) 1. to view and respond to consumer feedback and reviews.
3. At the request of an operator of a restaurant that provides consent under par. (a) 1., a 3rd-party food delivery service shall allow consumers while placing an order to elect to receive communications from the restaurant.

(3) Penalty. If a 3rd-party food delivery service violates sub. (2), the department may commence an action against the 3rd-party food delivery service in the name of the state to recover a civil forfeiture of not more than $10,000 for each violation.

SECTION 2. Initial applicability.

(1) This act first applies to a contract between a restaurant, as defined in s. 100.75 (1) (c), and a 3rd-party food delivery service, as defined in s. 100.75 (1) (d), that is entered into, renewed, or modified on the effective date of this subsection.

(END)