

**First Extraordinary Session  
Seventy-second General Assembly  
STATE OF COLORADO**

**REVISED**

*This Version Includes All Amendments Adopted  
on Second Reading in the Second House*

LLS NO. 20B-0028.01 Sarah Lozano x2439

**HOUSE BILL 20B-1005**

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**A BILL FOR AN ACT**

101      **CONCERNING AUTHORIZATION FOR LOCAL GOVERNMENTS TO ENACT**  
102                    **RESTRICTIONS RELATING TO FEES CHARGED BY A THIRD-PARTY**  
103                    **FOOD DELIVERY SERVICE TO A RETAIL FOOD ESTABLISHMENT.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill authorizes counties and municipalities to enact ordinances and resolutions that:

- Limit the amount of the fee that a third-party delivery service may charge to a retail food establishment;
- Restrict the ability of a third-party food delivery service to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

SENATE  
Amended 2nd Reading  
December 1, 2020

HOUSE  
Amended 3rd Reading  
December 1, 2020

HOUSE  
Amended 2nd Reading  
November 30, 2020

reduce the compensation rate or tips paid to a delivery driver or retail food establishment to offset revenue reductions resulting from a fee limit;

- Require that any fee or commission charged to a retail food establishment be disclosed by the third-party food delivery service to the customer;
- Restrict a third-party food delivery service's ability to service, or disclose any information about, a retail food establishment without the retail food establishment's consent; and
- Impose civil penalties for a violation of any ordinance or resolution enacted.

The bill also immunizes any county or municipality that enacts an ordinance or a resolution as authorized by the bill from liability for economic damage suffered as a result of the ordinance or resolution.

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1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 hereby finds and declares that:

4 (a) The ongoing COVID-19 public health emergency is restricting  
5 retail food establishments from operating freely and at full on-premises  
6 capacity and is increasing the need for third-party food delivery services;

7 (b) These restrictions have caused significant financial harm to  
8 retail food establishments and consumers within the state, and these  
9 challenges are likely to continue in the future; and

10

11 (c) Based on the governor's call for the general assembly to take  
12 action to assist Colorado small businesses, statutory municipalities and  
13 counties should be given immediate and limited authority to enact  
14 restrictions on these fees.

15 **SECTION 2.** In Colorado Revised Statutes, add 30-11-129 as  
16 follows:

17 **30-11-129. Third-party food delivery service fee restrictions**

1 - **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT  
2 OTHERWISE REQUIRES:

3 (a) "RETAIL FOOD ESTABLISHMENT" MEANS A RETAIL FOOD  
4 ESTABLISHMENT, AS DEFINED IN SECTION 25-4-1602 (14), THAT PAYS AN  
5 ANNUAL LICENSE FEE AS REQUIRED BY SECTION 25-4-1607 (1)(a),  
6 (1.5)(a)(I), OR (1.5)(b)(I). "RETAIL FOOD ESTABLISHMENT" DOES NOT  
7 INCLUDE GROCERY STORES OR CONVENIENCE STORES.

8 (b) "THIRD-PARTY FOOD DELIVERY SERVICE" MEANS ANY PERSON,  
9 COMPANY, WEBSITE, MOBILE APPLICATION, OR OTHER INTERNET SERVICE  
10 THAT OFFERS OR ARRANGES FOR THE SALE AND THE SAME-DAY DELIVERY  
11 OR SAME-DAY PICKUP OF PREPARED FOOD OR BEVERAGES FROM A RETAIL  
12 FOOD ESTABLISHMENT.

13 (2) DURING A DECLARED PUBLIC HEALTH DISASTER EMERGENCY,  
14 THE BOARD OF COUNTY COMMISSIONERS OF EACH COUNTY MAY ADOPT,  
15 ADMINISTER, AND ENFORCE ORDINANCES AND RESOLUTIONS, APPLYING TO  
16 THE COUNTY'S UNINCORPORATED AREA ONLY, THAT:

17 (a) LIMIT THE AMOUNT OF THE FEE THAT A THIRD-PARTY FOOD  
18 DELIVERY SERVICE MAY CHARGE TO A RETAIL FOOD ESTABLISHMENT,  
19 EXCLUDING FEES RELATED TO CREDIT CARD PROCESSING, WITHIN THE  
20 COUNTY WHERE INDOOR DINING IS PROHIBITED AND UNTIL INDOOR DINING  
21 IS AGAIN PERMITTED IN THE COUNTY AT A CAPACITY OF AT LEAST FIFTY  
22 PERCENT OR BELOW AT THE DISCRETION OF THE COUNTY;

23 (b) RESTRICT THE ABILITY OF A THIRD-PARTY FOOD DELIVERY  
24 SERVICE TO REDUCE THE COMPENSATION RATE PAID TO A DELIVERY  
25 SERVICE DRIVER OR WITHHOLD GRATUITIES OR TIPS TO A RETAIL FOOD  
26 ESTABLISHMENT, ITS STAFF, OR ANY DELIVERY SERVICE DRIVER TO OFFSET  
27 REVENUE REDUCTIONS RESULTING FROM ANY ORDINANCE OR RESOLUTION

1 ENACTED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION;

2 (c) REQUIRE A THIRD-PARTY FOOD DELIVERY SERVICE TO DISCLOSE  
3 TO A CONSUMER USING THE THIRD-PARTY FOOD DELIVERY SERVICE TO  
4 MAKE A PURCHASE FROM A RETAIL FOOD ESTABLISHMENT ANY  
5 COMMISSION, FEE, OR OTHER MONETARY PAYMENT CHARGED BY THE  
6 THIRD-PARTY FOOD DELIVERY SERVICE TO THE RETAIL FOOD  
7 ESTABLISHMENT FOR A PURCHASE FROM THE RETAIL FOOD  
8 ESTABLISHMENT; AND

9 (d) RESTRICT A THIRD-PARTY FOOD DELIVERY SERVICE'S ABILITY  
10 TO PERFORM A SERVICE FOR A RETAIL FOOD ESTABLISHMENT WITHOUT THE  
11 RETAIL FOOD ESTABLISHMENT'S CONSENT.

12 [REDACTED]

13 (3) A BOARD OF COUNTY COMMISSIONERS THAT ADOPTS AN  
14 ORDINANCE OR RESOLUTION PURSUANT TO SUBSECTION (2) OF THIS  
15 SECTION IS IMMUNE FROM LIABILITY FOR ALL CLAIMS FOR INJURY  
16 RESULTING FROM ANY ECONOMIC DAMAGE THAT A PARTY MAY INCUR DUE  
17 TO THE ORDINANCE OR RESOLUTION EXCEPT TO THE EXTENT THAT THE  
18 ORDINANCE OR RESOLUTION IS HELD BY A COURT OF COMPETENT  
19 JURISDICTION TO CONSTITUTE A TAKING OF PRIVATE PROPERTY IN  
20 VIOLATION OF THE UNITED STATES OR STATE CONSTITUTION.

21 (4) AS USED IN THIS SECTION, A "DECLARED PUBLIC HEALTH  
22 DISASTER EMERGENCY" MEANS THE DECLARED PUBLIC HEALTH DISASTER  
23 EMERGENCY TO ADDRESS THE COVID-19 PANDEMIC OF 2020, AS DECLARED  
24 BY THE GOVERNOR BY EXECUTIVE ORDER.

25 **SECTION 3.** In Colorado Revised Statutes, **add** 31-15-904 as  
26 follows:

27 **31-15-904. Third-party food delivery service fee restrictions**

1 - **definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT  
2 OTHERWISE REQUIRES:

3 (a) "RETAIL FOOD ESTABLISHMENT" MEANS A RETAIL FOOD  
4 ESTABLISHMENT , AS DEFINED IN SECTION 25-4-1602 (14), THAT PAYS AN  
5 ANNUAL LICENSE FEE AS REQUIRED BY SECTION 25-4-1607 (1)(a),  
6 (1.5)(a)(I), OR (1.5)(b)(I). "RETAIL FOOD ESTABLISHMENT" DOES NOT  
7 INCLUDE GROCERY STORES OR CONVENIENCE STORES.

8 (b) "THIRD-PARTY FOOD DELIVERY SERVICE" MEANS ANY PERSON,  
9 COMPANY, WEBSITE, MOBILE APPLICATION, OR OTHER INTERNET SERVICE  
10 THAT OFFERS OR ARRANGES FOR THE SALE AND THE SAME-DAY DELIVERY  
11 OR SAME-DAY PICKUP OF PREPARED FOOD OR BEVERAGES FROM A RETAIL  
12 FOOD ESTABLISHMENT.

13 (2) DURING A DECLARED PUBLIC HEALTH DISASTER EMERGENCY,  
14 THE GOVERNING BODY OF EACH MUNICIPALITY MAY ADOPT, ADMINISTER,  
15 AND ENFORCE ORDINANCES AND RESOLUTIONS THAT:

16 (a) LIMIT THE AMOUNT OF THE FEE THAT A THIRD-PARTY FOOD  
17 DELIVERY SERVICE MAY CHARGE TO A RETAIL FOOD ESTABLISHMENT,  
18 EXCLUDING FEES RELATED TO CREDIT CARD PROCESSING, WITHIN THE  
19 MUNICIPALITY WHERE INDOOR DINING IS PROHIBITED AND UNTIL INDOOR  
20 DINING IS AGAIN PERMITTED IN THE MUNICIPALITY AT A CAPACITY OF AT  
21 LEAST FIFTY PERCENT OR BELOW AT THE DISCRETION OF THE  
22 MUNICIPALITY;

23 (b) RESTRICT THE ABILITY OF A THIRD-PARTY FOOD DELIVERY  
24 SERVICE TO REDUCE THE COMPENSATION RATE PAID TO A DELIVERY  
25 SERVICE DRIVER OR WITHHOLD GRATUITIES OR TIPS TO A RETAIL FOOD  
26 ESTABLISHMENT, ITS STAFF, OR ANY DELIVERY SERVICE DRIVER TO OFFSET  
27 REVENUE REDUCTIONS RESULTING FROM ANY ORDINANCE OR RESOLUTION

1 ENACTED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION;

2 (c) REQUIRE A THIRD-PARTY FOOD DELIVERY SERVICE TO DISCLOSE  
3 TO A CONSUMER USING THE THIRD-PARTY FOOD DELIVERY SERVICE TO  
4 MAKE A PURCHASE FROM A RETAIL FOOD ESTABLISHMENT ANY  
5 COMMISSION, FEE, OR OTHER MONETARY PAYMENT CHARGED BY THE  
6 THIRD-PARTY FOOD DELIVERY SERVICE TO THE RETAIL FOOD  
7 ESTABLISHMENT FOR A PURCHASE FROM THE RETAIL FOOD  
8 ESTABLISHMENT; AND

9 (d) RESTRICT A THIRD-PARTY FOOD DELIVERY SERVICE'S ABILITY  
10 TO PERFORM A SERVICE FOR A RETAIL FOOD ESTABLISHMENT WITHOUT THE  
11 RETAIL FOOD ESTABLISHMENT'S CONSENT.

12

13 (3) A GOVERNING BODY OF A MUNICIPALITY THAT ADOPTS AN  
14 ORDINANCE OR RESOLUTION PURSUANT TO SUBSECTION (2) OF THIS  
15 SECTION IS IMMUNE FROM LIABILITY FOR ALL CLAIMS FOR INJURY  
16 RESULTING FROM ANY ECONOMIC DAMAGE THAT A PARTY MAY INCUR DUE  
17 TO THE ORDINANCE OR RESOLUTION EXCEPT TO THE EXTENT THAT THE  
18 ORDINANCE OR RESOLUTION IS HELD BY A COURT OF COMPETENT  
19 JURISDICTION TO CONSTITUTE A TAKING OF PRIVATE PROPERTY IN  
20 VIOLATION OF THE UNITED STATES OR STATE CONSTITUTION.

21 (4) AS USED IN THIS SECTION, A "DECLARED PUBLIC HEALTH  
22 DISASTER EMERGENCY" MEANS THE DECLARED PUBLIC HEALTH DISASTER  
23 EMERGENCY TO ADDRESS THE COVID-19 PANDEMIC OF 2020, AS DECLARED  
24 BY THE GOVERNOR BY EXECUTIVE ORDER.

25 **SECTION 4. Safety clause.** The general assembly hereby finds,  
26 determines, and declares that this act is necessary for the immediate  
27 preservation of the public peace, health, or safety.