

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

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 20B-0028.01 Sarah Lozano x2439

HOUSE BILL 20B-1005

HOUSE SPONSORSHIP

Bird, Becker, Benavidez, Buckner, Buentello, Coleman, Cutter, Duran, Esgar, Exum, Froelich, Garnett, Gonzales-Gutierrez, Hooton, Jackson, Jaquez Lewis, Kipp, Lontine, McCluskie, Melton, Michaelson Jenet, Mullica, Singer, Sirota, Snyder, Sullivan, Valdez D., Weissman, Woodrow

SENATE SPONSORSHIP

Rodriguez,

House Committees
Finance

Senate Committees

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.**

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.*

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.

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. [redacted] [redacted] [redacted]

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

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

23 **31-15-904. Third-party food delivery service fee restrictions**
24 **- definitions.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
25 OTHERWISE REQUIRES:

26 (a) "RETAIL FOOD ESTABLISHMENT" MEANS A RETAIL FOOD
27 ESTABLISHMENT , AS DEFINED IN SECTION 25-4-1602 (14), THAT PAYS AN

1 ANNUAL LICENSE FEE AS REQUIRED BY SECTION 25-4-1607 (1)(a),
2 (1.5)(a)(I), OR (1.5)(b)(I). "RETAIL FOOD ESTABLISHMENT" DOES NOT
3 INCLUDE GROCERY STORES OR CONVENIENCE STORES.

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

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

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

19 (b) RESTRICT THE ABILITY OF A THIRD-PARTY FOOD DELIVERY
20 SERVICE TO REDUCE THE COMPENSATION RATE PAID TO A DELIVERY
21 SERVICE DRIVER OR WITHHOLD GRATUITIES OR TIPS TO A RETAIL FOOD
22 ESTABLISHMENT, ITS STAFF, OR ANY DELIVERY SERVICE DRIVER TO OFFSET
23 REVENUE REDUCTIONS RESULTING FROM ANY ORDINANCE OR RESOLUTION
24 ENACTED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION;

25 (c) REQUIRE A THIRD-PARTY FOOD DELIVERY SERVICE TO DISCLOSE
26 TO A CONSUMER USING THE THIRD-PARTY FOOD DELIVERY SERVICE TO
27 MAKE A PURCHASE FROM A RETAIL FOOD ESTABLISHMENT ANY

1 COMMISSION, FEE, OR OTHER MONETARY PAYMENT CHARGED BY THE
2 THIRD-PARTY FOOD DELIVERY SERVICE TO THE RETAIL FOOD
3 ESTABLISHMENT FOR A PURCHASE FROM THE RETAIL FOOD
4 ESTABLISHMENT; AND

5 (d) RESTRICT A THIRD-PARTY FOOD DELIVERY SERVICE'S ABILITY
6 TO PERFORM A SERVICE FOR A RETAIL FOOD ESTABLISHMENT WITHOUT THE
7 RETAIL FOOD ESTABLISHMENT'S CONSENT.

8

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

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