

CHAPTER 4

GOVERNMENT - COUNTY

HOUSE BILL 20B-1005

BY REPRESENTATIVE(S) Bird, 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, Becker;
also SENATOR(S) Rodriguez and Tate, Bridges, Danielson, Fenberg, Fields, Foote, Ginal, Gonzales, Holbert, Lee, Moreno, Pettersen, Story, Todd, Williams A., Winter, Zenzinger, Garcia.

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

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

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

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

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

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

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

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

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DECLARED PUBLIC HEALTH DISASTER EMERGENCY" MEANS THE DECLARED

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

PUBLIC HEALTH DISASTER EMERGENCY TO ADDRESS THE COVID-19 PANDEMIC OF 2020, AS DECLARED BY THE GOVERNOR BY EXECUTIVE ORDER.

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

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

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

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

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

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

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

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

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

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

(1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DECLARED PUBLIC HEALTH DISASTER EMERGENCY" MEANS THE DECLARED PUBLIC HEALTH DISASTER EMERGENCY TO ADDRESS THE COVID-19 PANDEMIC OF 2020, AS DECLARED BY THE GOVERNOR BY EXECUTIVE ORDER.

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

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

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

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

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

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

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

(3) A GOVERNING BODY OF A MUNICIPALITY THAT ADOPTS AN ORDINANCE OR RESOLUTION PURSUANT TO SUBSECTION (2) OF THIS SECTION IS IMMUNE FROM LIABILITY FOR ALL CLAIMS FOR INJURY RESULTING FROM ANY ECONOMIC DAMAGE

THAT A PARTY MAY INCUR DUE TO THE ORDINANCE OR RESOLUTION EXCEPT TO THE EXTENT THAT THE ORDINANCE OR RESOLUTION IS HELD BY A COURT OF COMPETENT JURISDICTION TO CONSTITUTE A TAKING OF PRIVATE PROPERTY IN VIOLATION OF THE UNITED STATES OR STATE CONSTITUTION.

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

Approved: December 7, 2020