

2020 Regular Session

HOUSE BILL NO. 458

BY REPRESENTATIVE GREGORY MILLER

1 AN ACT

2 To enact Chapter 59-A of Title 51 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 51:3171 and 3172, relative to third-party delivery services; to
4 provide definitions; to prohibit third-party delivery services from using the name or
5 likeness or any intellectual property of a merchant without agreement; to prohibit an
6 indemnity clause in an agreement; to provide right to bring action; to provide
7 penalties; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 59-A of Title 51 of the Louisiana Revised Statutes of 1950,
10 comprised of R.S. 51:3171 and 3172, is hereby enacted to read as follows:

11 CHAPTER 59-A. THIRD-PARTY DELIVERY SERVICES

12 §3171. Definitions

13 As used in this Chapter, the following words have the meaning ascribed to
14 them in this Section unless the context clearly indicates otherwise:

15 (1) "Agreement" means a written contractual agreement between the
16 merchant and the third-party delivery service.

17 (2) "Consumer" means a person, business, or other entity who places an
18 order for merchant products through the third-party delivery platform.

19 (3) "Likeness" means the logo, motto, or any identifiable symbols attributed
20 and easily identified as belonging to a specific merchant.

21 (4) "Merchant" means a restaurant or other retail entity.

22 (5) "Third-party delivery platform" means the online communication
23 platform of the third-party delivery service on which a consumer can view and
24 search the menus of merchants and place an order for merchant products through
25 internet-enabled technology and digital media, including websites and consumer
26 applications accessible through smart phones and other mobile devices.

1 (6) "Third-party delivery service" means a company, organization, or other
2 entity, other than a merchant, that is licensed to do business in this state and provides
3 limited delivery services to a consumer.

4 §3172. Agreement; indemnity; penalties

5 A. In the absence of an agreement, a third-party delivery service shall not
6 advertise, promote, or otherwise convey any relationship with a merchant or use the
7 name, likeness, trademark, or intellectual property belonging to a merchant on the
8 third-party delivery platform.

9 B. An agreement executed in accordance with this Chapter shall not include
10 a provision, clause, or covenant that requires a merchant to indemnify a third-party
11 delivery service, any independent contractor acting on behalf of the third-party
12 delivery service, or any registered agent of the third-party delivery service, for any
13 damages or harm that may occur after the merchant product leaves the place of
14 business of the merchant.

15 C. A merchant whose name, likeness, trademark, or intellectual property is
16 used by a third-party delivery service in violation of this Chapter shall have the right
17 to bring an action in a court of competent jurisdiction.

18 D. Upon a finding by a court of competent jurisdiction that a third-party
19 delivery service used the name, likeness, trademark, or intellectual property of a
20 merchant in violation of this Chapter, the court may impose a civil penalty in an
21 amount not to exceed five thousand dollars or the amount of the merchant's actual
22 damages, whichever is greater. The court may, in its discretion, award attorney fees
23 to the prevailing party.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____