

2020 Regular Session

HOUSE BILL NO. 458

BY REPRESENTATIVE GREGORY MILLER

COMMERCIAL REGULATIONS: Provides relative to the execution of agreements between merchants and third-party delivery services

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.

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

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

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

10 §3172. Agreement; indemnity; penalties

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

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

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

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

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 458 Reengrossed

2020 Regular Session

Gregory Miller

Abstract: Prohibits a third-party delivery service from advertising, promoting, or conveying a relationship with a merchant or using the name, likeness, trademark, or intellectual property of a merchant without an agreement.

Proposed law provides definitions for "agreement", "consumer", "likeness", "merchant", "third-party delivery platform", and "third-party delivery service".

Proposed law prohibits a third-party delivery service from advertising, promoting, or conveying a relationship with a merchant or using the name, likeness, trademark, or intellectual property of a merchant on the third-party delivery platform without an agreement with the merchant.

Proposed law prohibits a third-party delivery service and merchant from entering an agreement pursuant to proposed law that includes a clause or provision that requires the merchant to indemnify the third-party delivery service or independent contractors or agents of the third-party delivery service for damages or harm that occurs after the product leaves the merchant's place of business.

Proposed law establishes the merchant's right to bring an action in a court of competent jurisdiction when a third-party delivery service uses the name, likeness, trademark, or intellectual property of the merchant in violation of proposed law.

Proposed law allows a court of competent jurisdiction to impose a civil penalty, not to exceed \$5,000 or the amount of the merchant's actual damages, whichever is greater, against a third-party delivery service found to be in violation of proposed law. Further, proposed law allows the court to award attorney fees to the prevailing party.

(Adds R.S. 51:3171 and 3172)