

A BILL TO BE ENTITLED

AN ACT

relating to the use by third-party delivery services of merchants' marks or other intellectual property; authorizing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 114 to read as follows:

CHAPTER 114. THIRD-PARTY DELIVERY SERVICES

Sec. 114.0001. DEFINITIONS. In this chapter:

(1) "Mark" has the meaning assigned by Section 16.001.

(2) "Merchant" means a restaurant or other business entity that sells food or other goods directly to consumers.

(3) "Third-party delivery service" means a business entity that:

(A) allows a consumer to purchase food or other goods from a merchant through the entity's proprietary Internet website, mobile application, or other Internet-based platform;

(B) delivers, including through use of an independent contractor or agent of the entity, the purchased goods to the consumer for a fee that is in addition to the fee charged by the merchant for the goods; and

(C) operates outside of the merchant's business.

Sec. 114.0002. CONSENT REQUIRED FOR USE OF MERCHANT'S MARKS OR INTELLECTUAL PROPERTY. (a) A third-party delivery service may not use a merchant's mark or other intellectual property on the

1 service's Internet website or application without the prior written  
2 consent of the merchant.

3 (b) To receive valid consent from a merchant under  
4 Subsection (a), a third-party delivery service must be authorized  
5 to conduct business in this state.

6 Sec. 114.0003. CIVIL PENALTY; INJUNCTIVE RELIEF. (a) A  
7 third-party delivery service that violates Section 114.0002 is  
8 liable to this state for a civil penalty in an amount not to exceed  
9 \$1,000 for each violation. Each day of a continuing violation is a  
10 separate violation.

11 (b) The attorney general may bring an action in the name of  
12 the state against the third-party delivery service for:

13 (1) injunctive relief;

14 (2) recovery of a civil penalty imposed under this  
15 section; or

16 (3) both injunctive relief and a civil penalty.

17 (c) An action under this section may be brought in a  
18 district court in:

19 (1) Travis County; or

20 (2) a county in which any part of the violation or  
21 threatened violation occurs.

22 (d) A civil penalty collected under this section shall be  
23 deposited in the state treasury to the credit of the general revenue  
24 fund.

25 Sec. 114.0004. PRIVATE CAUSE OF ACTION. (a) If a  
26 third-party delivery service violates Section 114.0002, a merchant  
27 aggrieved of the violation may bring an action for:

1           (1) injunctive relief;

2           (2) damages in an amount equal to the greater of:

3                   (A) the merchant's actual damages arising from  
4 the violation; or

5                   (B) \$5,000, as exemplary damages, irrespective  
6 of whether the merchant has actual damages; or

7           (3) both injunctive relief and damages.

8           (b) A merchant that is awarded actual damages under  
9 Subsection (a)(2)(A) may also be awarded exemplary damages.

10           SECTION 2. This Act takes effect September 1, 2021.