

Date of Hearing: March 21, 2023

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Jesse Gabriel, Chair

AB 502 (Lee) – As Introduced February 7, 2023

As Proposed to be Amended

**SUBJECT:** Food delivery platforms: disclosure

**SYNOPSIS**

*Once amended, this bill is intended to prohibit websites from substituting a restaurant's actual phone number for a different phone number that would result in calls being routed through a third party that charges a commission to forward the phone call. This bill stems from a practice instituted by Yelp several years ago where that company swapped out restaurant telephone numbers on its website for an alternative number that required calls to be forwarded to the restaurant for a fee. Yelp has since stopped the practice. However, this bill would insure that other platforms do not reroute calls in order to receive a commission from restaurants.*

*This bill appears to be a commonsense measure that will protect small businesses and consumers by allowing customers to contact restaurants directly without going through a third party.*

*This bill is opposed by the Latino Restaurant Association. However author's amendments address the concern expressed in their letter.*

*A substantially similar bill, AB 1444 (Lee) passed out of this committee in 2021 on a 9-0-2 vote. That bill was subsequently vetoed by the Governor.*

**SUMMARY:** Prohibits listing websites, as defined, from posting on their app or website a telephone number that the listing website knows will result in a forwarded call. Specifically, **this bill:**

- 1) Prohibits a listing website from posting on their internet website or application a telephone number that the listing website knows will result in a forwarded call.
- 2) Defines a "listing website" as an internet website or application that lists, or produces through search results, telephone numbers associated with food facilities and that has 100,000,000 or more unique monthly visitors.

**EXISTING LAW:**

- 1) Prohibits a food delivery platform, as defined, from arranging for the delivery of an order from a food facility, as defined, without first obtaining an agreement with the food facility expressly authorizing the food delivery platform to take orders and deliver meals prepared by the food facility. (Bus. & Prof. Code § 22599.)
- 2) Prohibits a food delivery platform from doing either of the following:
  - a) Charging customers any purchase price for food or beverage that is higher than the price posted on the platform's internet website.

- b) Retaining any portion of amounts designated as a tip or gratuity. (Bus. & Prof. Code § 22599.1(a))
- 3) Requires a food delivery platform to disclose to the customer and to the food facility an accurate, clearly identified, and itemized cost breakdown of each transaction, including, but not limited to, the following information:
  - a) The purchase price of the food and beverage.
  - b) A notice, if applicable, that the food delivery platform charges a fee, commission, or cost to the food facility, unless the food facility directs that the food delivery platform disclose to customers the delivery fee charged to the food facility and each fee, commission, or cost charged to the food facility.
  - c) Each fee, commission, or cost charged to the customer by the food delivery platform.
  - d) Any tip or gratuity. (Bus. & Prof. Code § 22599.1(b))

**FISCAL EFFECT:** As currently in print, this bill is keyed non-fiscal.

**COMMENTS:**

1) **Purpose of the bill.** The intent of this bill is to prohibit internet websites, such as Yelp, from associating a telephone number with a restaurant that is different from the restaurant's actual telephone number.

2) **Author's statement.** According to the author:

Consumers have a right to know exactly where their money is going and AB 502, the Food Delivery Transparency Act, will protect consumers and small businesses by prohibiting the practice of a third party re-routing phone calls in order to collect a commission through listing websites, such as Yelp.

3) **Food delivery platforms, COVID-19, and the transition to digital dining.** According to the California Restaurant Association, the restaurant industry suffered the most significant sales and job losses of any industry once the COVID-19 outbreak began. (California Restaurant Association, *Coronavirus Information and Resources* (Apr. 30, 2020), available at <https://restaurant.org/Covid19>.) More than 8 million restaurant employees had been laid off or furloughed, and the industry lost approximately \$80 billion in sales, as of the end of April 2020. Coincident with the hardship faced by the restaurant industry, the use of food delivery platforms, which facilitate food orders, pick-up, and delivery from restaurants and other food facilities, saw a marked increase as food delivery continued to accommodate a population that was either sheltering-in-place or wary of in-person dining.

Though accelerated by the COVID-19 pandemic, the transition away from in-person dining and to digital ordering for take-out or delivery long preceded the pandemic's limitations on dining-in. According to a report by NPD Group, a market research firm, from 2013-2019, restaurant digital orders grew at an average annual rate of 23%, and were expected to triple in volume by the end of 2020 even before any knowledge of the impending pandemic. (NPD Group, *Mobile Apps Now*

*Represent the Bulk of Restaurant Digital Orders and Restaurant Branded Apps Dominate* Press Release (Feb. 4, 2019) available at [https://www.npd.com/wps/portal/npd/us/news/press-releases/2019/mobile-apps-now-represent-the-bulk-of-restaurant-digital-orders-and-restaurant-branded-apps-dominate/.](https://www.npd.com/wps/portal/npd/us/news/press-releases/2019/mobile-apps-now-represent-the-bulk-of-restaurant-digital-orders-and-restaurant-branded-apps-dominate/)) However, often operating on razor-thin margins, and now facing post-pandemic economic hardship, many small restaurants lack the staff capacity and logistical resources to transition from primarily dine-in operations to in-house managed delivery services.

4) **Forwarded calls.** Despite the success of previous legislation in eliminating practices through which food delivery platforms capitalized on consumer relationships with restaurants without the knowledge of the restaurant or the consumer, one practice through which consumers may be unwittingly supporting food delivery platforms at the expense of restaurants is the use of forwarded calls. According to a 2019 *Vice* article, as part of their “marketing services,” some food delivery platforms create new phone numbers that automatically forward to the restaurant of interest in order to more effectively track the calls that resulted from their marketing. As the article describes:

As it turns out, the number listed for “General Questions” in the Yelp app is the restaurant’s real number. The number listed for “Delivery or Takeout” is owned by Yelp partner Grubhub. [...] Even though restaurants are capable of taking orders directly—after all, both numbers are routed to the same place—Yelp is pushing customers to Grubhub-owned phone numbers in order to facilitate what Grubhub calls a “referral fee” of between 15 percent and 20 percent of the order total.

Yelp has historically functioned like an enhanced Yellow Pages, listing direct phone numbers for restaurants along with photos, information about the space, menus, and user reviews. But Yelp began prompting customers to call Grubhub phone numbers in October 2018 after the two companies announced a “long-term partnership.” (Adrienne Jeffries, *Yelp is Screwing Over Restaurants By Quietly Replacing Their Phone Numbers* (Aug. 6, 2019) *Vice*, available at <https://www.vice.com/amp/en/article/wjwebw/yelp-is-sneakily-replacing-restaurants-phone-numbers-so-grubhub-can-take-a-cut.>)

A result of this practice is that many consumers who have no intention of doing business with a food delivery platform place an order from a restaurant that has no knowledge of the intervention of the platform, and the platform ultimately charges the restaurant a fee for that order. Though the platforms argue that the purchase was made due to the marketing provided by their posting of the phone number, that is not discernably true, since the consumer would have presumably called whichever number was listed on the website, where they were browsing to begin with. Additionally, some consumers will call a restaurant with the intention of ordering, but will not ultimately place an order. Even so, in these circumstances, the restaurant is often charged the same referral fee, and the onus is on them to dispute it, a costly and time-consuming endeavor. As the Hispanic Chamber of Commerce of Silicon Valley explains in support of the bill:

The current third-party ordering ecosystem is alarming; as fees have ratcheted up, restaurants and small business owners have been fighting a losing battle. California is leading in the number of restaurant closures in the nation, while market revenue for food delivery in the US has increased 205% over the past five years, totaling \$26.5 billion.

A few years ago, Yelp began rerouting customers calling restaurants on Yelp to Grubhub phone lines after the two companies agreed to a “long-term partnership.” While they

eventually stopped this practice, which resulted in numerous fees to restaurants, it is important to codify this in statute and prevent any other listing service from participating in this practice. Consumers may be financially benefiting food delivery platforms at the expense of restaurants without their consent or knowledge.

Ensuring consumers have adequate information to support businesses they want to support, and not those they do not, is a significant consumer protection issue. That consumers may be misled by postings on listing websites to believe they are calling the restaurant directly, when they are actually unknowingly facilitating fee payment to a food delivery platform, is anathema to this objective of consumer choice. AB 502 seeks to address this issue by prohibiting a food delivery platform from charging a fee for a call that does not result in an order, and by prohibiting a listing website from posting a phone number that they know will result in a forwarded call.

5) **Author's amendments.** Author's amendments to the bill delete the text of the original bill that would have required food delivery platforms to disclose any fee, commission, or cost the food delivery platform charges to the food facility, regardless of whether the food facility directs the food delivery platform disclose to customers fees, commissions, or costs charged to the food facility.

**22599.1.** [...]

(b) A food delivery platform shall disclose to the customer and to the food facility an accurate, clearly identified, and itemized cost breakdown of each transaction, including, but not limited to, the following information:

(1) The purchase price of the food and beverage.

(2) ~~Any A notice, if applicable that the food delivery platform charges a fee, commission, or cost the food delivery platform charges to the~~ to the food facility, unless the food facility directs that the food delivery platform disclose to customers the delivery fee charged to the food facility and each, fee, commission or cost charged to the food facility.

(3) Each fee, commission, or cost charged to the customer by the food delivery platform.

[...]

With these amendments, Business and Professions Code § 22599.1(b)(2) will remain unchanged.

6) **Related legislation.** AB 1444 (Lee, 2021), a substantially similar bill would have expanded the Fair Food Delivery Act of 2020 by regulating the practice in which consumer communications intended for food facilities placed through a listing website are re-routed to a food delivery platform. That bill passed the Legislature but was vetoed by the Governor.

AB 286 (Lorena Gonzalez, Ch. 513, Stat. 2021), among other provisions, prohibited a food delivery platform from charging a customer any purchase price for food or beverage higher than the price set by the food facility and prohibited a food delivery platform from retaining any portion of amounts designated as a tip or gratuity. The bill also required any tip or gratuity for a delivery order to be paid by a food delivery platform, in its entirety, to the person delivering the food or beverage.

AB 2149 (Lorena Gonzalez, Ch. 125, Stats. 2020) prohibited a food delivery platform, as defined, from arranging for the delivery of an order from a food facility without first obtaining an agreement with the food facility expressly authorizing the food delivery platform to take orders and deliver meals prepared by the food facility.

AB 3336 (Carrillo, Ch. 105, Stats. 2020) required ready-to-eat food delivered by third-party food delivery services to be transported in a manner that protects the food from contamination and spoilage, including by requiring the interior floor, sides, and top of the food holding area to be clean, requiring the food to be maintained at a holding temperature necessary to prevent spoilage, and by requiring bags or containers to be closed with a tamper-evident method prior to the food deliverer taking possession of the ready-to-eat food.

AB 1360 (Ting, 2019) would have established requirements on food delivery platforms that deliver food to consumers from a grocery establishment, a retail store with a grocery department, or a grocery warehouse, including requiring that a food delivery driver has specified training, and that the food delivery platform maintains liability insurance. The bill died on the Senate floor.

#### ***ARGUMENTS IN SUPPORT:***

In support of the bill, the Digital Restaurant Association echoes the sentiment of others in support when it writes:

A few years ago, Yelp began rerouting customers calling restaurants on Yelp to Grubhub phone lines after the two companies agreed to a “long-term partnership.” While they eventually stopped this practice, which resulted in numerous fees to restaurants, it is important to codify this in statute and prevent any other listing service from participating in this practice. Consumers may be financially benefiting food delivery platforms at the expense of restaurants without their consent or knowledge.

#### ***ARGUMENTS IN OPPOSITION:***

In opposition to the bill, the Latino Restaurant Association writes:

When restaurants choose to partner with delivery companies, they agree to pay fees for a wide range of optional services, not just for delivery and pick-up service, but for services such as advertising and marketing to reach new customers. All of the fees a restaurant pays are voluntary and confidential, and thus, disclosure of these fees is unnecessary.

This concern is addressed by the author’s amendments discussed above.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Digital Restaurant Association  
Hispanic Chamber of Commerce Silicon Valley  
Para

**Opposition**

Latino Restaurant Association

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