

2021 -- H 5346 SUBSTITUTE A

LC000962/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS

Introduced By: Representative Robert E. Craven

Date Introduced: February 05, 2021

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 6 of the General Laws entitled "COMMERCIAL LAW - GENERAL  
2 REGULATORY PROVISIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 58

4 THIRD PARTY DELIVERY SYSTEMS

5 **6-58-1. Definitions.**

6 As used in this title, unless the context otherwise requires:

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

9 (2) "Customer" means the person, business or other entity that places an order for merchant  
10 products through the marketplace.

11 (3) "Likeness" means identifiable symbols attributed and easily identified as belonging to  
12 a specific merchant or retailer.

13 (4) "Marketplace" means the third party's proprietary online communication platform  
14 where customers can view and search the menus of merchants and place an order for merchant  
15 products via the third party's website or mobile application for delivery or by the third-party  
16 delivery service, or an independent contractor of the third-party delivery service, to the customer.

17 (5) "Merchant" means a food service establishment as set forth in § 21-27-1(9) or other  
18 retail entity.

19 (6) "Third-party delivery service" means a company, organization, or entity, outside of the

1 operation of the merchant's business that facilitates delivery or online ordering services to  
2 customers.

3 **6-58-2. Third-Party use of merchant trademarks and likeness.**

4 A third-party delivery service may not use the likeness, registered trademark, or any  
5 intellectual property belonging to the merchant to falsely suggest sponsorship or endorsement by,  
6 or affiliation with the merchant.

7 **6-58-3. Merchant consent.**

8 A third-party delivery service may not take orders and arrange for the delivery of merchant  
9 products through the third-party delivery service's marketplace without obtaining the written  
10 consent of the merchant.

11 **6-58-4. Indemnity Agreement Void.**

12 No agreement entered into in accordance with this chapter, shall include a provision, clause  
13 or covenant that requires a merchant to indemnify a third-party delivery service, any independent  
14 contractor or agent of the third-party delivery service, for any damages or harm caused by the third-  
15 party delivery service or any independent contractor or agent of the third-party delivery service.

16 **6-58-5. Enforcement and Penalties.**

17 (a) Any merchant whose likeness was used by the third-party delivery service, or who  
18 appears on a third-party delivery service's marketplace, in violation of this chapter, may bring an  
19 action in the superior court of the county in which the merchant or third-party delivery service is  
20 found, or in the superior court of the county as is otherwise provided by law, to recover actual  
21 damages or five thousand dollars (\$5,000), whichever is greater. The court may, in its discretion,  
22 and where the conduct involves reckless or callous indifference to statutorily protected rights,  
23 award punitive damages and other equitable relief it deems appropriate.

24 (b) Any third-party delivery service who violates this chapter shall pay to the state a civil  
25 penalty of not more than one thousand dollars (\$1,000) per violation. Each day a violation occurs  
26 shall count as a separate violation.

27 **6-58-6. Uniformity.**

28 No municipality shall establish, mandate, or implement any law inconsistent with the  
29 provisions of this chapter.

30 SECTION 2. This act shall take effect ninety (90) days after passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO COMMERCIAL LAW -- GENERAL REGULATORY PROVISIONS

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1           This act would prevent a third-party delivery service from using the likeness, registered  
2 trademark, or any intellectual property belonging to a merchant to falsely suggest sponsorship or  
3 endorsement by, or affiliation with said merchant without the merchant's consent. Penalties for  
4 violations of the provisions of the chapter would consist of the greater of actual damages or five  
5 thousand dollars (\$5,000) and punitive damages may be awarded in the court's discretion.

6           This act would take effect ninety (90) days after passage.

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