

BUSINESS AND COMMERCE CODE

TITLE 5. REGULATION OF BUSINESSES AND SERVICES

SUBTITLE C. BUSINESS OPERATIONS

Chapter 114, consisting of Secs. 114.0001 to 114.0005, was added by Acts 2021, 87th Leg., R.S., Ch. 305 (S.B. 911), Sec. 6.

For another Chapter 114, consisting of Secs. 114.0001 to 114.0104, added by Acts 2021, 87th Leg., R.S., Ch. 47 (H.B. 390), Sec. 1, see Sec. 114.0001 et seq., post.

CHAPTER 114. THIRD-PARTY FOOD DELIVERY SERVICES

Sec. 114.0001. DEFINITIONS. In this chapter:

(1) "Mark" and "trade name" have the meanings assigned by Section 16.001.

(2) "Restaurant" has the meaning assigned by Section 1.04, Alcoholic Beverage Code.

(3) "Third-party food delivery service" means a website, mobile application, or other service that acts as an intermediary between consumers and multiple restaurants not owned or operated by the service to arrange for the delivery or pickup of food or beverages from those restaurants.

Added by Acts 2021, 87th Leg., R.S., Ch. 305 (S.B. 911), Sec. 6, eff. January 1, 2022.

Sec. 114.0002. PROHIBITED ACTS. A third-party food delivery service may not:

(1) arrange for the delivery or pickup of food or beverages from a restaurant in this state unless the service has filed a certificate of formation or registration with the secretary of state;

(2) use a restaurant's mark or trade name in connection with the service in a misleading way that suggests the restaurant sponsors or endorses the service;

(3) add a restaurant removed from the service under Section 114.0003 to the service unless the service has received written consent from the restaurant to add the restaurant to the service; or

(4) charge a restaurant a fee or require the

restaurant to absorb a fee in connection with the service's arrangement of an order from that restaurant unless the restaurant has agreed to pay or absorb the fee under an agreement that meets the requirements of Section [114.0004](#).

Added by Acts 2021, 87th Leg., R.S., Ch. 305 (S.B. [911](#)), Sec. 6, eff. January 1, 2022.

Sec. 114.0003. REQUIREMENTS FOR SERVICE. A third-party food delivery service shall:

(1) provide a consumer a clearly identified mechanism for the consumer to express concerns or complaints directly to the service regarding an order arranged through the service; and

(2) remove a restaurant from the service not later than the 10th day after the date the service receives a request from the restaurant to be removed from the service if the service does not have an agreement with the restaurant that meets the requirements of Section [114.0004](#).

Added by Acts 2021, 87th Leg., R.S., Ch. 305 (S.B. [911](#)), Sec. 6, eff. January 1, 2022.

Sec. 114.0004. TERMS OF AGREEMENT WITH RESTAURANT. (a) An agreement between a third-party food delivery service and a restaurant must:

(1) be in writing;

(2) expressly authorize the service to arrange for the delivery or pickup of food or beverages from that restaurant; and

(3) clearly state each fee, including a commission or other charge, that the restaurant will be required to pay to the service or absorb in connection with an order arranged through the service.

(b) The agreement may not include any provision that requires the restaurant to indemnify the third-party food delivery service, including an employee or independent contractor of the service, for claims or liabilities resulting from acts or omissions of the service or of an employee or independent contractor of the service.

(c) A provision in an agreement that violates Subsection (b)

is void and unenforceable.

Added by Acts 2021, 87th Leg., R.S., Ch. 305 (S.B. 911), Sec. 6, eff. January 1, 2022.

Sec. 114.0005. PRIVATE CAUSE OF ACTION. (a) If a third-party food delivery service violates this chapter, a restaurant aggrieved by the violation may bring an action against the service for:

- (1) injunctive relief; and
- (2) damages in an amount equal to:

(A) the restaurant's actual damages arising from the violation; or

(B) the service's profits arising from the violation.

(b) If the court finds that the defendant committed the violation knowingly or in bad faith, the court may award the plaintiff:

(1) exemplary damages in an amount that is not more than three times the sum of:

(A) the plaintiff's actual damages; and

(B) the defendant's profits arising from the violation; and

(2) the plaintiff's reasonable attorney's fees.

Added by Acts 2021, 87th Leg., R.S., Ch. 305 (S.B. 911), Sec. 6, eff. January 1, 2022.