

By: Senator(s) McMahan

To: Business and Financial
Institutions

SENATE BILL NO. 2218

1 AN ACT TO PROVIDE DEFINITIONS RELATING TO THIRD-PARTY
2 DELIVERY SERVICES THAT ADVERTISE, PROMOTE OR CONVEY ANY
3 RELATIONSHIP WITH A MERCHANT OR USE THE NAME, LIKENESS, TRADEMARK,
4 OR INTELLECTUAL PROPERTY BELONGING TO A MERCHANT ON THE
5 THIRD-PARTY DELIVERY PLATFORM; TO PROHIBIT THIRD-PARTY DELIVERY
6 SERVICES FROM USING THE NAME OR LIKENESS OR ANY INTELLECTUAL
7 PROPERTY OF A MERCHANT WITHOUT AN AGREEMENT; TO PROHIBIT AN
8 INDEMNITY CLAUSE IN SUCH AGREEMENT; TO PROVIDE A RIGHT TO BRING
9 ACTION RELATING TO THIRD-PARTY DELIVERY SERVICES THAT USE THE
10 NAME, LIKENESS, TRADEMARK, OR INTELLECTUAL PROPERTY OF A MERCHANT
11 IN VIOLATION OF THIS ACT; TO PROVIDE PENALTIES RELATING TO
12 THIRD-PARTY DELIVERY SERVICES THAT USE THE NAME, LIKENESS,
13 TRADEMARK, OR INTELLECTUAL PROPERTY OF A MERCHANT IN VIOLATION OF
14 THIS ACT; AND FOR RELATED PURPOSES.

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

16 **SECTION 1.** As used in this act, the following words and
17 phrases have the following meanings, unless the context clearly
18 indicates otherwise:

19 (a) "Agreement" means a written contractual agreement
20 between the merchant and the third-party delivery service.

21 (b) "Consumer" means a person, business, or other
22 entity that places an order for merchant products through the
23 third-party delivery platform.



24 (c) "Likeness" means the logo, motto, or any
25 identifiable symbols attributed and easily identified as belonging
26 to a specific merchant.

27 (d) "Merchant" means a restaurant or other retail
28 entity.

29 (e) "Third-party delivery platform" means the online
30 communication platform of the third-party delivery service on
31 which a consumer can view and search the menus of merchants and
32 place an order for merchant products through internet-enabled
33 technology and digital media, including websites and consumer
34 applications accessible through smart phones and other mobile
35 devices.

36 (f) "Third-party delivery service" means a company,
37 organization, or other entity, other than a merchant, that is
38 licensed to do business in this state and provides limited
39 delivery services to a consumer.

40 **SECTION 2.** (1) In the absence of an agreement, a
41 third-party delivery service shall not advertise, promote, or
42 otherwise convey any relationship with a merchant or use the name,
43 likeness, trademark, or intellectual property belonging to a
44 merchant on the third-party delivery platform.

45 (2) An agreement executed in accordance with this act shall
46 not include a provision, clause, or covenant that requires a
47 merchant to indemnify a third-party delivery service, any
48 independent contractor acting on behalf of the third-party



49 delivery service, or any registered agent of the third-party
50 delivery service, for any damages or harm that may occur after the
51 merchant product leaves the place of business of the merchant.

52 (3) A merchant whose name, likeness, trademark, or
53 intellectual property is used by a third-party delivery service in
54 violation of this chapter shall have the right to bring an action
55 in a court of competent jurisdiction.

56 (4) Upon a finding by a court of competent jurisdiction that
57 a third-party delivery service used the name, likeness, trademark,
58 or intellectual property of a merchant in violation of this act,
59 the court may impose a civil penalty in an amount not to exceed
60 five thousand dollars (\$5,000.00), or the amount of the merchant's
61 actual damages, whichever is greater. The court may, in its
62 discretion, award attorney fees to the prevailing party.

63 **SECTION 3.** This act shall take effect and be in force from
64 and after July 1, 2023.

