

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3004

BY DELEGATES YOUNG, THOMPSON, WALKER, AND BATES

[Introduced March 09, 2021; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §16-63-1, §16-63-2, §16-63-3, §16-63-4, and §16-63-5, all relating to creating
 3 the “Third-Party Food Delivery Services Act;” providing definitions; requiring express
 4 authorization from food facilities to third-party delivery services; establishing fee limits
 5 during declared emergencies; providing for penalties and enforcement; and providing an
 6 effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 63. THIRD-PARTY FOOD DELIVERY SERVICES ACT.

§16-63-1. Definitions.

1 For the purposes of this article, the following terms have the following meanings:

2 “Declared emergency” means the period during which a state disaster emergency has
 3 been declared by the Governor of the State of West Virginia or a state of emergency has been
 4 declared by the mayor, such declaration is in effect in the city, and all food service establishments
 5 in the city are prohibited from providing food for consumption on-premises.

6 “Delivery fee” means a fee charged by a third-party food delivery service for providing
 7 a food service establishment with a service that delivers food from such establishment to
 8 customers. The term does not include any other fee that may be charged by a third-
 9 party food delivery service to a food service establishment, such as fees for listing or advertising
 10 the food service establishment on the third-party food delivery service platform or fees related to
 11 processing the online order.

12 “Food delivery platform” means an online business that acts as an intermediary between
 13 consumers and multiple food facilities to submit food orders from a consumer to a participating
 14 food facility, and to arrange for the delivery of the order from the food facility to the consumer.

15 “Food facility” means an operation that stores, prepares, packages, serves, vends, or
 16 otherwise provides food for human consumption at the retail level, including, but not limited to,
 17 the following:

18 (a) An operation where food is consumed on or off the premises, regardless of whether
19 there is a charge for the food.

20 (b) A place used in conjunction with the operations described in this subdivision, including,
21 but not limited to, storage facilities for food-related utensils, equipment, and materials.

22 (c) "Food facility" includes permanent and nonpermanent food facilities, including, but not
23 limited to, the following:

24 (1) Public and private school cafeterias.

25 (2) Restricted food service facilities.

26 (3) Licensed health care facilities.

27 (4) Commissaries.

28 (5) Mobile food facilities.

29 (6) Mobile support units.

30 (7) Temporary food facilities.

31 (8) Vending machines.

32 (9) Certified farmers' markets, for purposes of permitting and enforcement.

33 (10) Farm stands.

34 (11) Fishermen's markets.

35 (12) Microenterprise home kitchen operations.

36 (13) Catering operation.

37 (14) Host facility.

38 (d) "Food facility" does not include any of the following:

39 (1) A cooperative arrangement wherein no permanent facilities are used for storing or
40 handling food.

41 (2) A private home when used for private, noncommercial purposes or when used as a
42 cottage food operation that is registered or has a permit.

43 (3) A church, private club, or other nonprofit association that gives or sells food to its

44 members and guests, and not to the general public, at an event that occurs not more than three
45 days in any 90-day period.

46 (4) A for-profit entity that gives or sells food at an event that occurs not more than three
47 days in a 90-day period for the benefit of a nonprofit association, if the for-profit entity receives no
48 monetary benefit, other than that resulting from recognition from participating in an event.

49 (5) Premises set aside for wine tasting, or premises set aside by a beer manufacturer,
50 regardless of whether there is a charge for the wine or beer tasting, if no other beverage, except
51 for bottles of wine or beer and prepackaged nonpotentially hazardous beverages, is offered for
52 sale or for onsite consumption and no food, except for crackers, pretzels, or prepackaged food
53 that is not potentially hazardous food is offered for sale or for onsite consumption.

54 (6) An outlet or location, including, but not limited to, premises, operated by a producer,
55 selling or offering for sale only whole produce grown by the producer or shell eggs, or both,
56 provided the sales are conducted at an outlet or location controlled by the producer.

57 (7) A commercial food processing establishment.

58 (8) A child day care facility.

59 (9) A community care facility.

60 (10) A residential care facility for the elderly.

61 (11) A residential care facility for the chronically ill, which has the same meaning as a
62 residential care facility.

63 (12) (A) An intermediate care facility for the developmentally disability, with a capacity of
64 six beds or fewer.

65 (B) A facility described in subparagraph (A) shall report any foodborne illness or outbreak
66 to the local health department and to the State Department of Public Health within 24 hours of the
67 illness or outbreak.

68 (13) A community food producer.

69 (14) A limited-service charitable feeding operation.

70 “Food service establishment” is defined as a place where food is prepared and intended
71 for individual portion service and includes the site at which the individual portions are provided,
72 whether consumption occurs on or off the premises. The term excludes food processing
73 establishments, retail food stores, private homes where food is prepared or served for family
74 consumption, and food service operations where a distinct group mutually provides, prepares,
75 serves and consumes the food such as a “covered-dish supper” limited to a congregation, club or
76 fraternal organization.

77 “Online order” means any order placed by a customer through or with the assistance of a
78 platform provided by a third-party food delivery service, including a telephone order.

79 “Purchase price” means the total price of the items contained in an online order that are
80 listed on the menu of the food service establishment where such order is placed. Such term does
81 not include taxes, gratuities and any other fees that may make up the total cost to the customer
82 of an online order.

83 “Third-party food delivery service” means any website, mobile application or other internet
84 service that offers or arranges for the sale of food and beverages prepared by, and the same-
85 day delivery or same-day pickup of food and beverages from, no fewer than 20 food service
86 establishments located in the city that are owned and operated by different persons.

§16-63-2. Express authorization required.

1 A food delivery platform shall not arrange for the delivery of an order from a food facility
2 without first obtaining an agreement with the food facility expressly authorizing the food delivery
3 platform to take orders and deliver meals prepared by the food facility.

§16-63-3. Fee limits during declared emergencies.

1 (a) It shall be unlawful for a third-party food delivery service to charge a food service
2 establishment a delivery fee that totals more than 15 percent of the purchase price of each online
3 order.

4 (b) It shall be unlawful for a third-party food delivery service to charge a food service

5 establishment any fee or fees other than a delivery fee for the use of their service greater than 5
6 percent of the purchase price of each online order. Any fees or other charges from a third-
7 party food delivery service to a food service establishment beyond such maximum 5 percent fee
8 per order, and a delivery fee collected pursuant to subsection (a) of this section, are unlawful.

9 (c) The requirements of this section apply only during a declared emergency and for a
10 period of 90 days after the end of a declared emergency.

§16-63-4. Penalties and enforcement.

1 (a) Any person that violates any provision of this article or any rule promulgated pursuant
2 to this article shall be subject to a civil penalty that shall not exceed \$1,000 per violation. Violations
3 under this article shall accrue on a daily basis for each day and for each food service
4 establishment charged a fee in violation of this article or any rule promulgated pursuant to this
5 article. A proceeding to recover any civil penalty authorized pursuant to this article may be brought
6 in any tribunal established within the office of administrative trials and hearings or within any
7 agency of the city designated to conduct such proceedings.

8 (b) A civil action may be brought by the corporation counsel on behalf of the city in any
9 court of competent jurisdiction to recover any or all of the following:

10 (1) Any civil penalty authorized pursuant to this section;

11 (2) Injunctive relief to restrain or enjoin any activity in violation of this section;

12 (3) Restitution of an amount not to exceed the amount of fees collected by a third-
13 party food delivery service that exceeded the maximum amounts permitted pursuant to this
14 article;

15 (4) Attorneys' fees and costs, and such other remedies as a court may deem appropriate.

16 (c) The corporation counsel may initiate any investigation to ascertain such facts as may
17 be necessary for the commencement of a civil action pursuant to this section, and in connection
18 therewith shall have the power to issue subpoenas to compel the attendance of witnesses and
19 the production of documents, to administer oaths and to examine such persons as are deemed

20 necessary.

§16-63-5. Effective date.

1 This article shall be effective 90 days after passage, and shall not expire.

NOTE: The purpose of this bill is to create the Third-Party Food Delivery Services Act; to provide definitions; to require the express authorization from food facilities to third-party delivery services; to create fee limits during declared emergencies; to provide for penalties and enforcement; and to provide an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.