

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cahill

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing portable benefit accounts for app-based-delivery drivers.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|----------------------|-------------------|------------------|
| <i>Daniel Cahill</i> | <i>10th Essex</i> | <i>1/20/2023</i> |

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act establishing portable benefit accounts for app-based-delivery drivers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws, as appearing in the 2020 Official Edition, are hereby
2 amended by inserting after chapter 175M the following chapter:-

3 CHAPTER 175N.

4 PORTABLE BENEFITS FOR APP-BASED-DELIVERY DRIVERS

5 Section 1. The General Court hereby finds and declares that:

6 App-based-delivery drivers are providing essential services to their communities. App-
7 based-delivery drivers retain full control over where, when, and how they perform app-based
8 services/work and are therefore classified as independent contractors.

9 App-based-delivery drivers may not be entitled to some of the protections of an
10 employee. In order to protect these workers, a portable benefits framework for app-based-
11 delivery drivers is created to enable the provision of benefits, such as income replacement, health
12 and wellness, and others, to one worker by multiple delivery platforms. In addition, delivery

13 network companies shall be required to purchase occupational accident insurance and maintain
14 automobile insurance coverage for app-based-delivery workers.

15 For the foregoing reasons, it is the General Court’s intent that the Director’s actions shall
16 displace competition among delivery network companies in the provision of benefits to app-
17 based-delivery drivers for the purpose of achieving the goals of creating a portable benefits
18 framework for app-based-delivery drivers and occupational accident insurance and automobile
19 insurance requirements for delivery network companies.

20 Section 2. For the purposes of this chapter, the following words shall have the following
21 meanings:-

22 “Allocation date”, the date following the last day of a quarter on which a delivery
23 network company makes a quarterly deposit into a portable benefit account, which in no case
24 shall be more than 30 days after such last day.

25 “App-based-delivery driver”, an individual who provides delivery services within the
26 Commonwealth through a delivery network company’s online-enabled application or platform.

27 “Delivery network company”, a business entity that maintains an online-enabled
28 application or platform used to facilitate delivery services within the Commonwealth.

29 “Delivery services”, the fulfillment of a delivery request, meaning the pickup from any
30 location of any item or items and the delivery of the items using a passenger vehicle, bicycle,
31 scooter, walking, public transportation, or other similar means of transportation, to a location
32 selected by the customer located within 50 miles of the pickup location. Delivery services may

33 include the selection, collection, or purchase of items by an app-based-delivery driver, as well as
34 other tasks incidental to a delivery.

35 “Earnings”, all earnings, including incentives and bonuses: (a) paid to the app-based-
36 delivery driver by the delivery network company; or (b) remitted to the app-based-delivery
37 driver from payment facilitated by a delivery network company, but not including amounts
38 charged for fees, taxes, or other similar charges. Earnings does not include any payments for
39 gratuities.

40 “Earnings loss”, a decrease of 50 per cent or more in an app-based-delivery driver’s
41 monthly earnings from the previous month that results through no fault of the app-based-delivery
42 driver.

43 “Eligibility date”, the first day of a quarter, occurring after December 31, 2023, during
44 which an app-based-delivery driver qualifies as an eligible driver.

45 “Eligible driver”, an app-based-delivery driver whose earnings from, or facilitated by, a
46 delivery network company total at least \$1,000 during a quarter. An app-based-delivery driver
47 who qualified as an eligible driver of a delivery network company under this definition shall
48 remain an eligible driver of the delivery network company for three quarters following the initial
49 quarter of eligibility, regardless of the amount of earnings the app-based-delivery driver has
50 during those three quarters. After such time, any such individual may requalify as an eligible
51 driver of the delivery network company at such time as the app-based-delivery driver earnings
52 paid or facilitated by the delivery network company total or exceed \$1,000 in a quarter.

53 “Permissible use”, the use of funds to,

54 (a) compensate for lost income due to:
55 (1) an illness or accident;
56 (2) the birth or adoption of a child of the app-based-delivery driver;
57 (3) a federal or governor-declared state of emergency;
58 (4) an earnings loss;
59 (b) transfer funds to an individual retirement account; or
60 (c) cover expenses incurred for premiums for health insurance coverage in the individual
61 market.

62 “Portable benefit account”, a financial account (a) from which amounts may be
63 withdrawn for a permissible use; (b) that meets the requirements of this chapter; and (c) that is
64 administered by a portable benefit account provider.

65 “Portable benefit account provider”, a bank, as defined in section 1 of chapter 167, or
66 another person who demonstrates to the satisfaction of the commissioner of banks that the
67 manner in which such bank or person will administer the portable benefit account will be
68 consistent with the portable benefit account requirements under this chapter.

69 “Quarter”, each of the following 4 time periods: (a) January 1 through March 31; (b)
70 April 1 through June 30; (c) July 1 through September 30; (d) October 1 through December 31.

71 Section 3. (a) A delivery network company shall, by each allocation date, contribute to a
72 portable benefit account of an eligible driver an amount equal to 4 per cent of an eligible driver’s
73 earnings in the immediately preceding quarter earned through that delivery network company.

74 (b) The first contribution to an eligible driver's portable benefit account by a delivery
75 network company under subsection (a) shall be made on the first allocation date following such
76 individual's eligibility date with respect to the delivery network company.

77 (c) Each delivery network company shall allow an eligible driver to elect to also
78 contribute to the eligible driver's portable benefit account, and shall deduct the amount elected
79 by the eligible driver from the individual's earnings and designate such amount for contribution
80 to the portable benefit account.

81 (d) A delivery network company shall deposit any deductions elected under this
82 subsection (c) into the eligible driver's portable benefit account on a quarterly basis, no later than
83 7 days following the allocation date for the quarter.

84 (e) Contributions made by a delivery network company under subsections (a) or (c) shall
85 be made in cash and, with respect to contributions made under subsection (a), come from the
86 delivery network company's general assets and not be deducted or drawn from an eligible
87 driver's earnings.

88 (f) Any contribution under subsections (a) or (c) shall be made to the default portable
89 benefit account the delivery network company elects on behalf of the eligible driver, unless an
90 eligible driver elects a different portable benefit account and informs the delivery network
91 company at least 30 days prior to the allocation date.

92 (g) Each delivery network company shall ensure that the default portable benefit account
93 offered by the delivery network company makes available at least 3 individual retirement
94 account providers from which an eligible driver may select.

95 (h) Notwithstanding any other provision of this chapter, transfers made from a portable
96 benefit account to an individual retirement account offered under the portable benefit account
97 shall not exceed the annual contribution limit established by the Internal Revenue Service for
98 contributions to an individual retirement account for the tax year in which the transfer is made.

99 Section 4. (a) An eligible driver who has deposited funds in a portable benefit account
100 may receive a distribution of amounts for a permissible use.

101 (b) Assets in a portable benefit account shall not be commingled with other property
102 except in a common trust fund or common investment fund.

103 (c) In the case of the death of any eligible driver, the entire balance remaining in the
104 portable benefit account of the individual shall be immediately distributed in the form of a direct
105 trustee-to-trustee transfer to the individual retirement account of the individual under the portable
106 benefit account.

107 Section 5. (a) A portable benefit account shall be exempt from taxation under chapters 58
108 to 65c, inclusive.

109 (b) Contributions to a portable benefit account on behalf of an eligible driver by a
110 delivery network company under subsection (a) of section 3 shall not be included in calculating
111 gross income of the eligible driver under chapter 62.

112 (c) Pursuant to section 3 of chapter 62, amounts elected to be contributed by an app-
113 based-delivery driver shall be allowed as a deduction in determining taxable income.

114 (d) Any distribution from an eligible driver's portable benefit account shall not be
115 included in gross income of the eligible driver under chapter 62, to the extent such distributions

116 are for a permissible use, as certified by the eligible driver to the portable benefit account
117 provider.

118 (e) Notwithstanding subsections (a) to (d), inclusive, in the case of any distribution from
119 the health and paid leave account of an eligible driver's portable benefit account which is not for
120 a permissible use, the distribution shall be included in calculating gross income of the eligible
121 driver under chapter 62 and in addition the distribution amount shall be subject to an additional
122 10 per cent penalty tax.

123 Section 6. The director of the department of family and medical leave shall promulgate
124 rules and regulations pursuant to this chapter.

125 SECTION 2. The General Laws, as appearing in the 2020 Official Edition, are hereby
126 amended by inserting after chapter 175N the following chapter:

127 CHAPTER 175O

128 OCCUPATIONAL ACCIDENT INSURANCE FOR APP-BASED-DELIVERY
129 DRIVERS

130 Section 1. For the purposes of this chapter, the following words shall have the following
131 meanings:-

132 "App-based-delivery driver", has the same meaning as provided in section 2 of Chapter
133 175N.

134 "Average weekly earnings", the app-based-delivery driver's total earnings from all
135 delivery network companies during the 28 days prior to a covered accident divided by four.

136 “Earnings”, has the same meaning as provided in section 2 of Chapter 175N.

137 “Maximum weekly compensation rate”, has the same meaning as provided in section 1 of
138 chapter 152.

139 “Minimum weekly compensation rate”, has the same meaning as provided in section 1 of
140 chapter 152.

141 “Delivery network company”, has the same meaning as provided in section 2 of Chapter
142 175N.

143 Section 2. It is an unlawful practice, unless based upon a bona fide occupational
144 qualification or public or app-based-delivery driver safety need, for a delivery network company
145 to refuse to contract with, terminate the contract of, or deactivate from the delivery network
146 company’s online-enabled application or platform, any app-based-delivery driver or prospective
147 app-based-delivery driver based upon race, color, religious creed, national origin, sex, gender
148 identity, sexual orientation, which shall not include persons whose sexual orientation involves
149 minor children as the sex object, genetic information, pregnancy or a condition related to said
150 pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing
151 child, ancestry or status as a veteran.

152 Section 3. (a) Delivery network companies, within 240 days of the effective date of this
153 act, shall purchase occupational accident insurance, as described in subsection (c), for all app-
154 based-delivery drivers who provide services through their networks within the Commonwealth.

155 (b) Delivery network companies shall file with the division of insurance, no later than 30
156 days after the commencement of a new policy year, a copy of the policy it has purchased for app-

157 based-delivery drivers. The division of insurance shall be treated by the insurer as a certificate
158 holder for purposes of receiving notice of cancellation of the policy.

159 (c) The occupational accident insurance policy required under subsection (a) shall cover
160 medical expenses and lost income resulting from injuries suffered while the app-based-delivery
161 driver engaged on a delivery network company's online-enabled application or platform. Policies
162 shall at a minimum provide, in aggregate, at least \$1,000,000 of coverage and, at a minimum, the
163 following: (1) Coverage for medical expenses incurred, up to at least \$250,000; (2) Continuous
164 total disability payments, temporary total disability payments, and partial disability equal to 60
165 per cent of the app-based-delivery driver's average weekly earnings from all delivery network
166 companies as of the date of injury but not more than the maximum weekly compensation rate,
167 unless the average weekly wage of the app-based-delivery driver is less than the minimum
168 weekly compensation rate, in which case the weekly compensation shall be equal to the app-
169 based-delivery driver's average weekly wage. Payments under this paragraph shall be made for
170 up to the first 156 weeks following the injury; (3) For the benefit of spouses, children, or other
171 dependents of app-based-delivery drivers, accidental death insurance in the amount equal to 66
172 per cent of the app-based-delivery driver's average weekly earnings from all delivery network
173 companies as of the date of injury but not more than the maximum weekly compensation rate,
174 unless the average weekly wage of the app-based-delivery driver is less than the minimum
175 weekly compensation rate, in which case the weekly compensation shall be equal to the app-
176 based-delivery driver's average weekly wage, times 156 weeks for injuries suffered by an app-
177 based-delivery driver while the app-based-delivery driver is engaged on the delivery network
178 company's online-enabled application or platform that result in death.

179 (d) If an accident is covered by occupational accident insurance maintained by more than
180 one delivery network company, the insurer of the delivery network company against whom a
181 claim is filed is entitled to contribution for the pro-rata share of coverage attributable to one or
182 more other delivery network companies up to the coverages and limits in subdivision (c).

183 (e) For purposes of this section, an app-based-delivery driver is engaged on a delivery
184 network company's platform from when the app-based-delivery driver accepts a delivery request
185 to when the app-based-delivery driver completes that delivery request.

186 (f) Any benefits provided to an app-based-delivery driver under subsection (a) or
187 subsection (c) of this section shall be considered amounts payable under a driver's compensation
188 law or disability benefit for the purpose of determining amounts payable under any insurance
189 provided under section 113L of chapter 175 or under any personal injury protection coverage, as
190 defined in section 34A of chapter 90.

191 SECTION 3. The General Laws, as appearing in the 2020 Official Edition, are hereby
192 amended by inserting after chapter 175O the following chapter:

193 CHAPTER 175P

194 AUTOMOBILE INSURANCE FOR DELIVERY NETWORK COMPANIES AND
195 DRIVERS

196 Section 1. For the purposes of this chapter, the following words shall have the following
197 meanings:-

198 "App-based-delivery driver", has the same meaning as provided in section 2 of Chapter
199 175N.

200 “Delivery network company”, has the same meaning as provided in section 2 of Chapter
201 175N.

202 “Delivery services,” has the same meaning as provided in section 2 of Chapter 175N.

203 “Delivery service period”, means the period: (a) beginning when an app-based-delivery
204 driver starts operating a personal vehicle enroute to pick up any item or items for a delivery or
205 series of deliveries as documented via a digital network controlled by a delivery network
206 company, (b) continuing while the app-based-delivery driver transports the item or items, and (c)
207 ending upon delivery of the requested item or items to (i) the customer or the last customer in a
208 series of deliveries, or (ii) a location designated by the delivery network company, including for
209 purposes of returning the item or items.

210 “Digital network” means any online-enabled application, software, website, or system
211 offered or utilized by a delivery network company that enables deliveries with app-based-
212 delivery drivers.

213 “Personal vehicle” means a vehicle that is: (a) used by an app-based-delivery driver to
214 provide delivery services via a digital network, and (b) owned, leased, or otherwise authorized
215 for use by the app-based-delivery driver.

216 Section 2. (a) A delivery network company shall ensure that, during the delivery service
217 period, primary automobile liability insurance is in place that recognizes that the driver is an app-
218 based-delivery driver or that does not exclude coverage for use of a personal vehicle to provide
219 deliveries.

220 (b) During the delivery service period, the app-based-delivery driver, delivery network
221 company, or any combination of the two shall maintain automobile insurance that insures the
222 driver for liability to third parties of not less than \$50,000 for damages arising out of bodily
223 injury sustained by any one person in an accident, of not less than \$100,000 for damages arising
224 out of bodily injury sustained by all persons injured in an accident, and of not less than \$25,000
225 for all damages arising out of damage to or destruction of property in an accident, uninsured
226 motorist coverage, to the extent required by section 113L of chapter 175, and personal injury
227 protection, to the extent required by section 34A of chapter 90.

228 (c) If the insurance coverage maintained by an app-based-delivery driver pursuant to
229 subsections (a) and (b) of this section has lapsed or does not provide the required coverage,
230 insurance maintained by the delivery network company shall provide the coverage required by
231 subsections (a) and (b) of this section beginning with the first dollar of a claim and the insurance
232 maintained by the delivery network company shall have the duty to defend the claim.

233 (d) Coverage under an automobile insurance policy maintained by the delivery network
234 company shall not be dependent upon another motor vehicle liability insurer first denying a
235 claim, nor shall another motor vehicle liability insurance policy be required to first deny a claim.

236 (e) Insurance coverage required by this section may be obtained from an insurance
237 company duly licensed to transact business under the insurance laws of this State or by an
238 eligible surplus lines broker under section 168 of chapter 175.

239 (f) The coverage required pursuant to subsections (a) and (b) of this section shall be
240 deemed to satisfy the financial responsibility requirement for a motor vehicle established by
241 section 34A of chapter 90 and section 113L of chapter 175.

242 SECTION 4. Section 2 of chapter 62 of the General Laws, as appearing in the 2020
243 Official Edition, is hereby amended by inserting after paragraph (1)(Q) of subsection (a)
244 the following subparagraph:-

245 (R) Any amount contributed to a portable benefit account by a delivery network company
246 for an eligible driver under subsection (a) of section 3 of Chapter 175N.

247 SECTION 5. Section 3 of Chapter 62 of the General Laws, as appearing in the 2020
248 Official Edition, is hereby amended by inserting after paragraph (19) of subsection (a) the
249 following paragraph:-

250 (20) An amount equal to the total contributions elected by an eligible driver under
251 subsection (c) of section 3 of Chapter 175N.

252 SECTION 6. Section 148B of Chapter 149 of the General Laws, as appearing in the 2020
253 Official Edition, is hereby amended by inserting after subsection (e) the following
254 subsections: -

255 (f) Notwithstanding subsection (a), for the purpose of this chapter and chapter 151, and
256 all other purposes, an app-based-delivery driver is an independent contractor and not an
257 employee with respect to his or her relationship with a delivery network company so long as: (1)
258 the delivery network company does not unilaterally prescribe specific dates, times of day, or a
259 minimum number of hours during which the app-based-delivery driver must be logged into the
260 delivery network company's online-enabled application or platform; (2) the delivery network
261 company may not terminate the contract of the app-based-delivery driver for not accepting a

262 delivery service request; (3) the delivery network company does not restrict the app-based-
263 delivery driver from performing services through other delivery network companies except while
264 performing services through the delivery network company's online-enabled application or
265 platform; and (4) the delivery network company does not restrict the app-based-delivery driver
266 from working in any other lawful occupation or business.

267 (g) For purposes of subsection (f), the following words shall have the following
268 meanings:

269 "App-based-delivery driver", has the same meaning as provided in section 2 of Chapter
270 175N.

271 "Delivery network company", has the same meaning as provided in section 2 of Chapter
272 175N.

273 SECTION 7. Severability. (a) In accordance with section 6 of chapter 4, if any section or
274 subsection of this act or its application to any person or circumstance is adjudged
275 unconstitutional or invalid, such judgment shall not affect other provisions or applications of this
276 act, which can be given effect without the invalid provision or application.

277 (b) Notwithstanding subsection (a), if Section 6 of this act is for any reason held to be
278 invalid in its entirety by a decision of any court of competent jurisdiction, that decision shall
279 apply to the entirety of the remaining provisions of this act, and no provision of this act shall be
280 deemed valid or given force of law.

281 SECTION 8. Preemption. Jurisdiction in all matters concerning delivery network
282 companies and app-based-delivery drivers is vested exclusively in the state. Notwithstanding any

283 other provision of law, no municipality or other local entity shall establish or enforce any
284 provision of law concerning delivery network companies or app-based-delivery drivers. Any
285 provision of any local law or ordinance that on its face or as applied regulates delivery network
286 companies or app-based-delivery drivers shall be preempted.