



State of Wisconsin
2023 - 2024 LEGISLATURE

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2023 SENATE BILL 559

October 23, 2023 - Introduced by Senators BRADLEY and MARKLEIN, cosponsored by Representatives DALLMAN, BROOKS, DITTRICH, DRAKE, ORTIZ-VELEZ, RETTINGER, ROZAR, SNYDER, TITTL, WICHGERS and WITKE. Referred to Committee on Utilities and Technology.

1 **AN ACT to amend** 102.07 (8) (a) and 108.02 (12) (a); and **to create** 102.01 (2) (ae),
2 102.01 (2) (an), 102.01 (2) (ann), 102.01 (2) (anp), 102.01 (2) (dc), 102.01 (2) (ds),
3 102.01 (2) (gh), 102.07 (8) (bs), 103.08, 104.01 (2) (b) 6., 108.02 (12) (ds), 224.55
4 and 632.985 of the statutes; **relating to:** delivery network couriers and
5 transportation network drivers, Department of Financial Institutions'
6 approval to offer portable benefit accounts, providing for insurance coverage,
7 modifying administrative rules related to accident and sickness insurance, and
8 granting rule-making authority.

Analysis by the Legislative Reference Bureau

DELIVERY AND TRANSPORTATION NETWORK COMPANIES

General

This bill provides that under specific circumstances, delivery network couriers and drivers for transportation network companies (application-based drivers) are not employees of the delivery network companies and transportation network companies (network companies) for the purposes of worker's compensation insurance, minimum wage laws, and unemployment insurance. In the bill, "application-based driver" is defined as a delivery network courier or participating

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driver who provides services through the online-enabled application, software, or system of a network company.

Under the bill, if a network company does not engage in all of the following practices, an application-based driver is not an employee of the company: 1) prescribe specific dates, times of day, or a minimum number of hours during which the driver must be logged into the network company's online-enabled application, software, or system; 2) terminate the contract of the driver for not accepting a specific request for transportation or delivery service request; 3) restrict the driver from performing services through other network companies except while performing services through that network company; and 4) restrict the driver from working in any other lawful occupation or business.

Portable benefit accounts

Under the bill, if certain conditions are satisfied, a financial institution or other person may obtain approval from the Department of Financial Institutions to offer portable benefit accounts. A "portable benefit account" is an account administered by such an approved financial institution or other person (portable benefit account provider) from which an individual may receive distributions for the purposes described below. A network company may contribute to a portable benefit account of an application-based driver who meets certain eligibility requirements (eligible driver) a percentage of the driver's earnings, and the driver may also contribute to the portable benefit account. An eligible driver may receive a distribution from a portable benefit account for the following purposes: 1) to compensate for lost income due to an illness or accident or loss of work due to certain other events; 2) to transfer the money to an individual retirement account; or 3) to pay health insurance premiums. A portable benefit account provider may include an income replacement benefit to be made available to eligible drivers upon the occurrence of an event under 1) above.

Insurance coverage

The bill provides that a network company may carry, provide, or otherwise make available group or blanket accident and sickness insurance for its application-based drivers. A network company that purchases such a policy must provide a copy of the policy to the Department of Safety and Professional Services no later than 30 days after the commencement of the policy. In addition, the network company must notify DSPS at least five days prior to the effective date of the policy's cancellation or nonrenewal, and DSPS is treated as a certificate holder for purposes of receiving the notice. The bill specifies that the state's worker's compensation laws do not apply to such a policy.

The bill also provides that a network company may carry, provide, or otherwise make available group or blanket occupational accident insurance to cover the medical expenses and lost income resulting from an injury suffered by an application-based driver while engaged on the network company's online-enabled application, software, or system. The bill requires that the policy provide, in aggregate, at least \$1,000,000 of coverage for the medical expenses, short-term disability, long-term disability, and survivor benefits. The bill allows the policy to prohibit stacking the coverage limit under the policy with coverage limits under

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policies provided by other network companies to increase the coverage limit available for a particular injury. The bill provides that if a claim is covered by occupational accident insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to a contribution for the pro rata share of coverage attributable to one or more other network companies.

Under the bill, any benefit provided to an application-based driver under an occupational accident insurance policy is treated as amounts payable under a worker's compensation law or disability benefit for the purpose of determining amounts payable under uninsured or underinsured motorist coverage.

For further information see the state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 102.01 (2) (ae) of the statutes is created to read:

2 102.01 (2) (ae) "Application-based driver" means a delivery network courier
3 or participating driver who provides services through the online-enabled
4 application, software, or system of a network company.

5 **SECTION 2.** 102.01 (2) (an) of the statutes is created to read:

6 102.01 (2) (an) "Delivery network company" means a business that maintains
7 an online-enabled application, software, or system to facilitate delivery services
8 within this state.

9 **SECTION 3.** 102.01 (2) (ann) of the statutes is created to read:

10 102.01 (2) (ann) "Delivery network courier" means an individual who provides
11 delivery services through a delivery network company's online-enabled application,
12 software, or system.

13 **SECTION 4.** 102.01 (2) (anp) of the statutes is created to read:

14 102.01 (2) (anp) "Delivery services" means the fulfillment of a delivery request
15 by picking up from any location any item and delivering the item, by using a

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1 passenger vehicle, a bicycle, a scooter, public transportation, or other similar means
2 of transportation or by walking, to a location selected by the customer that is
3 typically located within 50 miles of the pickup location. “Delivery services” includes
4 the selection, collection, or purchase of items by a delivery network courier, as well
5 as other tasks incidental to the delivery.

6 **SECTION 5.** 102.01 (2) (dc) of the statutes is created to read:

7 102.01 (2) (dc) “Network company” means a delivery network company or a
8 transportation network company.

9 **SECTION 6.** 102.01 (2) (ds) of the statutes is created to read:

10 102.01 (2) (ds) “Participating driver” has the meaning given in s. 440.40 (3).

11 **SECTION 7.** 102.01 (2) (gh) of the statutes is created to read:

12 102.01 (2) (gh) “Transportation network company” has the meaning given in
13 s. 440.40 (6).

14 **SECTION 8.** 102.07 (8) (a) of the statutes is amended to read:

15 102.07 (8) (a) Except as provided in pars. (b) ~~and~~, (bm), and (bs), every
16 independent contractor is, for the purpose of this chapter, an employee of any
17 employer under this chapter for whom he or she is performing service in the course
18 of the trade, business, profession or occupation of such employer at the time of the
19 injury.

20 **SECTION 9.** 102.07 (8) (bs) of the statutes is created to read:

21 102.07 (8) (bs) An application-based driver is not an employee of a network
22 company if the company refrains from doing all of the following:

23 1. Prescribing specific dates, times of day, or a minimum number of hours
24 during which the application-based driver must be logged into the network
25 company’s online-enabled application, software, or system.

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1 2. Terminating the contract of the application-based driver for not accepting
2 a specific delivery service request or request for transportation, except as prohibited
3 by s. 440.45 (2).

4 3. Restricting the application-based driver from performing services through
5 other network companies except while performing services through that network
6 company.

7 4. Restricting the application-based driver from working in any other lawful
8 occupation or business.

9 **SECTION 10.** 103.08 of the statutes is created to read:

10 **103.08 Application-based drivers; portable benefits accounts. (1)**

11 DEFINITIONS. In this section:

12 (a) “Application-based driver” has the meaning given in s. 102.01 (2) (ae).

13 (b) “Delivery network company” has the meaning given in s. 102.01 (2) (an).

14 (c) “Earnings” means all moneys paid directly to an application-based driver,
15 including incentives and bonuses, by a delivery network company or a transportation
16 network company, or remitted to the application-based driver from a payment
17 facilitated by a delivery network company or transportation network company, but
18 not including amounts charged for fees, taxes, or other similar charges. “Earnings”
19 does not include any payments for gratuities.

20 (d) “Eligible driver” means an application-based driver whose earnings from
21 an individual delivery network company or transportation network company totaled
22 at least \$750, without combining earnings from delivery and rideshare services
23 provided through the same company, during a calendar quarter.

24 (e) “Network company” means a delivery network company or a transportation
25 network company.

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1 (f) “Portable benefit account” means an account from which an individual may
2 withdraw money for a permissible use under sub. (3) that is administered by a
3 portable benefit account provider.

4 (g) “Portable benefit account provider” means a financial institution or other
5 person authorized under s. 224.55 (3) to offer and administer portable benefit
6 accounts.

7 (h) “Transportation network company” has the meaning given in s. 440.40 (6).

8 **(2) CONTRIBUTIONS.** (a) A network company may contribute to a portable
9 benefit account of an eligible driver a percentage of an eligible driver’s earnings in
10 the preceding calendar quarter that the driver earned through that company.

11 (b) A network company may allow an eligible driver to elect to contribute to the
12 eligible driver’s portable benefit account, and may deduct the amount elected by the
13 eligible driver from the individual’s earnings and designate such amount for
14 contribution to the portable benefit account.

15 **(3) QUALIFYING EVENTS.** An eligible driver who has money in a portable benefit
16 account may receive a distribution of amounts for any of the following:

17 (a) To compensate for lost income due to an illness or accident of the driver, loss
18 of work due to the birth or adoption of a child of the driver, or loss of work due to a
19 declared federal or local state of emergency.

20 (b) To transfer the money to an individual retirement account.

21 (c) To pay premiums for health insurance coverage in the individual market.

22 **(4) ELIGIBILITY DURATION.** An eligible driver shall remain an eligible driver of
23 the delivery network company or transportation network company for 2 calendar
24 quarters following the initial quarter of eligibility, regardless of the amount of
25 earnings the application-based driver has during those 2 quarters.

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1 **SECTION 11.** 104.01 (2) (b) 6. of the statutes is created to read:

2 104.01 (2) (b) 6. An individual excluded under s. 102.07 (8) (bs).

3 **SECTION 12.** 108.02 (12) (a) of the statutes is amended to read:

4 108.02 (12) (a) “Employee” means any individual who is or has been performing
5 services for pay for an employing unit, whether or not the individual is paid directly
6 by the employing unit, except as provided in par. (bm), (c), (d), (dm), ~~or (dn)~~, or (ds).

7 **SECTION 13.** 108.02 (12) (ds) of the statutes is created to read:

8 108.02 (12) (ds) Paragraph (a) does not apply to an individual who is
9 performing services for an employing unit other than a government unit, an Indian
10 tribe, or a nonprofit organization and who is excluded under s. 102.07 (8) (bs).

11 **SECTION 14.** 224.55 of the statutes is created to read:

12 **224.55 Portable benefit accounts. (1)** In this section:

13 (a) “Eligible driver” has the meaning given in s. 103.08 (1) (d).

14 (b) “Financial institution” has the meaning given in s. 214.01 (1) (jn).

15 (c) “Portable benefit account” has the meaning given in s. 103.08 (1) (f).

16 (d) “Qualifying event” means an event described in s. 103.08 (3) (a).

17 **(2)** A financial institution or other person may request approval from the
18 department to offer portable benefit accounts. If the financial institution or other
19 person demonstrates to the satisfaction of the department that the manner in which
20 the financial institution or other person will administer the portable benefit account
21 will be consistent with s. 103.08 (2) and (3), and the financial institution or other
22 person satisfies any applicable rule under sub. (5), the department shall approve the
23 request.

24 **(3)** A financial institution or other person approved by the department under
25 sub. (2) may offer and administer portable benefit accounts.

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1 (4) A financial institution or other person authorized to offer and administer
2 portable benefit accounts under sub. (3) may include an income replacement benefit
3 to be made available to eligible drivers upon the occurrence of any qualifying event.

4 (5) The department may promulgate rules related to the process and
5 requirements for the department's approval under sub. (2).

6 **SECTION 15.** 632.985 of the statutes is created to read:

7 **632.985 Insurance coverage provided by network companies. (1)**

8 DEFINITIONS. In this section:

9 (a) "Application-based driver" has the meaning given in s. 102.01 (2) (ae).

10 (b) "Network company" means a delivery network company, as defined in s.
11 102.01 (2) (an), or a transportation network company, as defined in s. 440.40 (6).

12 (2) ACCIDENT AND SICKNESS INSURANCE. (a) A network company may carry,
13 provide, or otherwise make available group or blanket accident and sickness
14 insurance coverage for application-based drivers who provide covered services
15 through the network company's network.

16 (b) No later than 30 days after the commencement of a policy under this
17 subsection, a network company that purchases an insurance policy described in par.
18 (a) shall provide to the department of safety and professional services a copy of the
19 group or blanket insurance policy. At least 5 days prior to the effective date of a
20 cancellation or nonrenewal of the policy, the network company shall file with the
21 department of safety and professional services a notice of the cancellation or
22 nonrenewal, and the secretary of safety and professional services shall be treated as
23 a certificate holder for purposes of receiving the notice.

24 (c) Chapter 102 does not apply to a group or blanket accident and sickness
25 insurance policy described in par. (a).

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1 **(3) OCCUPATIONAL ACCIDENT INSURANCE.** (a) A network company may carry,
2 provide, or otherwise make available group or blanket occupational accident
3 insurance to cover the medical expenses and lost income resulting from an injury
4 suffered by an application-based driver while engaged on the network company's
5 online-enabled application, software, or system. For purposes of this paragraph, an
6 application-based driver is engaged on the network company's online-enabled
7 application, software, or system during the time beginning when the
8 application-based driver accepts a rideshare request or delivery request and ending
9 when the application-based driver completes that rideshare request or delivery
10 request.

11 (b) A policy under this subsection shall provide, in aggregate, at least
12 \$1,000,000 of coverage for the medical expenses, short-term disability, long-term
13 disability, and survivor benefits.

14 (c) If a claim is covered by occupational accident insurance maintained by more
15 than one network company, the insurer of the network company against whom a
16 claim is filed shall be entitled to a contribution for the pro rata share of coverage
17 attributable to one or more other network companies.

18 (d) A policy issued or maintained by a network company may provide that,
19 regardless of the number of policies involved, claims made, premiums shown on the
20 policy, or premiums paid, the limits for any coverage under the policy may not be
21 added to the limits for similar occupational accident insurance coverage provided by
22 another network company to determine the limit of occupational accident insurance
23 coverage available arising from any one injury.

24 (e) Any benefit provided to an application-based driver under an occupational
25 accident insurance policy described in par. (a) shall be treated as amounts payable

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1 under a worker's compensation law or disability benefit for the purpose of
2 determining amounts payable under insurance provided under s. 632.32 (4) or (4m).

3 **SECTION 16.** INS 3.14 (6) (intro.), (a), (b) and (c) of the administrative code are
4 amended to read:

5 INS 3.14 (6) (intro.) ELIGIBLE GROUPS. In accordance with s. 600.03 (23), Stats.,
6 an eligible group includes any of the following:

7 (a) The members of the board of directors of a corporation ~~are eligible to be~~
8 covered under a group accident and sickness policy issued to such ~~corporation,~~
9 corporation.

10 (b) The individual members of member organizations of an association, as
11 defined in s. 600.03 (23), Stats., ~~are eligible to be~~ covered under a group accident and
12 sickness policy issued to such association insuring employees of such association and
13 employees of member organizations of such association, ~~and.~~

14 (c) The individuals supplying raw materials to a single processing plant and
15 the employees of such processing plant ~~are eligible to be~~ covered under a group
16 accident and sickness policy issued to such processing plant.

17 **SECTION 17.** INS 3.14 (6) (d) of the administrative code is created to read:

18 INS 3.14 (6) (d) Application-based drivers, as defined in s. 632.985 (1) (a),
19 Stats., of a network company, as defined in s. 632.985 (1) (b), Stats., covered under
20 a group accident and sickness policy issued to the network company.

21 **SECTION 18.** INS 3.15 (4) (a) of the administrative code is amended to read:

22 INS 3.15 (4) (a) In accordance with the provisions of s. 600.03 (4), Stats., the
23 following are eligible for blanket accident and health insurance: 1. Volunteer fire
24 departments, 2. National guard units, 3. Newspaper delivery carriers, 4. Dependents
25 of students, 5. Volunteer civil defense organizations, 6. Volunteer auxiliary police

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1 organizations, 7. Law enforcement agencies, 8. Cooperatives organized under ch.
2 185, Stats., on a membership basis without capital stock, 9. Registered guests in a
3 motel, hotel, or resort, 10. Members or members and advisors of fraternal
4 organizations including women's auxiliaries of such organizations and fraternal
5 youth organizations, 11. Associations of sports officials, 12. Purchasers of protective
6 athletic equipment, 13. Migrant workers, 14. Participants in racing meets, 15.
7 Patrons or guests of a recreational facility or resort, 16. Application-based drivers,
8 as defined in s. 102.01 (2) (ae), Stats., of a network company, as defined in s. 632.985
9 (1) (b), Stats.

10 **SECTION 19. Effective dates.** This act takes effect on the day after publication,
11 except as follows:

12 (1) The treatment of administrative rules takes effect as provided in s. 227.265.

13 (END)