



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4259/1
MM/MD/AG/EL:amn

2021 SENATE BILL 485

August 5, 2021 - Introduced by Senator ROTH, cosponsored by Representatives AUGUST, ROZAR, DITTRICH, KUGLITSCH, THIESFELDT, BEHNKE, WICHGERS, BROOKS, BRANDTJEN, DRAKE, TITTL, NEYLON, ORTIZ-VELEZ and SCHRAA. Referred to Committee on Labor and Regulatory Reform.

1 **AN ACT to amend** 102.07 (8) (a), 108.02 (12) (a) and 600.03 (4); and **to create**
2 102.01 (2) (ae), 102.01 (2) (an), 102.01 (2) (ann), 102.01 (2) (anp), 102.01 (2) (dc),
3 102.01 (2) (ds), 102.01 (2) (gh), 102.07 (8) (bs), 103.08, 104.01 (2) (b) 6., 108.02
4 (12) (ds), 224.55 and 632.985 of the statutes; **relating to:** delivery network
5 couriers and transportation network drivers, Department of Financial
6 Institutions' approval to offer portable benefit accounts, providing for
7 insurance coverage, and 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 driver who provides services through the online-enabled application, software, or system of a network company.

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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 purchase blanket accident and sickness insurance for its application-based drivers. A network company that purchases such a policy must file a copy of it with the Office of the Commissioner of Insurance within 30 days of the beginning of the policy year. Additionally, the network company must notify OCI at least 30 days prior to the effective date of the policy's cancellation or nonrenewal, and OCI 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 the blanket accident and sickness insurance policy.

The bill also provides that a network company may carry, provide, or otherwise make available 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 company's online-enabled application, software, or system. The bill requires that the policy provide, in aggregate, at least \$1,000,000 of coverage and, at a minimum, all of the following:

1. Coverage for medical expenses incurred of at least \$250,000 and for up to 104 weeks following the injury.
2. Continuous total disability payments and temporary total disability payments for up to 104 weeks following the injury that equal one-sixth of the

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application-based driver's total earnings from all network companies during the 28 days prior to the accident, subject to limitations in worker's compensation law.

3. For the benefit of a spouse, child, or other dependent of an application-based driver who suffers an injury that results in death, an accidental death benefit equal to the death benefit provided under worker's compensation law.

The bill provides that if an accident is covered by occupational accident insurance maintained by more than one network company, the insurer of the 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, up to the above coverages and limits.

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:

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1 102.01 (2) (anp) “Delivery services” means the fulfillment of a delivery request
2 by picking up from any location any item and delivering the item, by using a
3 passenger vehicle, a bicycle, a scooter, public transportation, or other similar means
4 of transportation or by walking, to a location selected by the customer located within
5 50 miles of the pickup location. “Delivery services” includes the selection, collection,
6 or purchase of items by a delivery network courier, as well as other tasks incidental
7 to the delivery.

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

9 102.01 (2) (dc) “Network company” means a delivery network company or a
10 transportation network company.

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

12 102.01 (2) (ds) “Participating driver” has the meaning given in s. 440.40 (3).

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

14 102.01 (2) (gh) “Transportation network company” has the meaning given in
15 s. 440.40 (6).

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

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

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

23 102.07 (8) (bs) An application-based driver is not an employee of a network
24 company if the company refrains from doing all of the following:

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

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

7 3. Restricting the application-based driver from performing services through
8 other network companies except while performing services through that network
9 company.

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

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

13 **103.08 Application-based drivers; portable benefits accounts. (1)**

14 DEFINITIONS. In this section:

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

16 (b) "Delivery network company" has the meaning given in s. 102.01 (2) (an).

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

23 (d) "Eligible driver" means an application-based driver whose earnings from
24 an individual delivery network company or transportation network company totaled

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1 at least \$750, without combining earnings from delivery and rideshare services
2 provided through the same company, during a calendar quarter.

3 (e) "Network company" means a delivery network company or a transportation
4 network company.

5 (f) "Portable benefit account" means an account from which an individual may
6 withdraw money for a permissible use under sub. (3) that is administered by a
7 portable benefit account provider.

8 (g) "Portable benefit account provider" means a financial institution or other
9 person authorized under s. 224.55 (3) to offer and administer portable benefit
10 accounts.

11 (h) "Transportation network company" has the meaning given in s. 440.40 (6).

12 **(2) CONTRIBUTIONS.** (a) A network company may contribute to a portable
13 benefit account of an eligible driver a percentage of an eligible driver's earnings in
14 the preceding calendar quarter that the driver earned through that company.

15 (b) A network company may allow an eligible driver to elect to contribute to the
16 eligible driver's portable benefit account, and may deduct the amount elected by the
17 eligible driver from the individual's earnings and designate such amount for
18 contribution to the portable benefit account.

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

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

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

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

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

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

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

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

8 108.02 **(12)** (a) “Employee” means any individual who is or has been performing
9 services for pay for an employing unit, whether or not the individual is paid directly
10 by the employing unit, except as provided in par. (bm), (c), (d), (dm), ~~or (dn)~~, or (ds).

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

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

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

16 **224.55 Portable benefit accounts. (1)** In this section:

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

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

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

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

21 **(2)** A financial institution or other person may request approval from the
22 department to offer portable benefit accounts. If the financial institution or other
23 person demonstrates to the satisfaction of the department that the manner in which
24 the financial institution or other person will administer the portable benefit account
25 will be consistent with s. 103.08 (2) and (3), and the financial institution or other

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1 person satisfies any applicable rule under sub. (5), the department shall approve the
2 request.

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

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

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

10 **SECTION 15.** 600.03 (4) of the statutes is amended to read:

11 600.03 (4) A "blanket insurance policy" is a group policy covering unscheduled
12 classes of persons, with the persons insured to be determined by definition of the
13 class with or without designation of the persons covered but without any individual
14 underwriting. A blanket insurance policy includes a blanket accident and sickness
15 insurance policy issued to a network company, as defined in s. 632.985 (1) (b),
16 covering application-based drivers, as defined in s. 102.01 (2) (ae).

17 **SECTION 16.** 632.985 of the statutes is created to read:

18 **632.985 Insurance coverage provided by network companies. (1)**

19 DEFINITIONS. In this section:

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

21 (b) "Network company" means a delivery network company, as defined in s.
22 102.01 (2) (an), or a transportation network company, as defined in s. 440.40 (6).

23 (2) **BLANKET ACCIDENT AND SICKNESS INSURANCE.** (a) A network company may
24 purchase blanket accident and sickness insurance coverage for all application-based
25 drivers who provide covered services through the company's network.

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1 (b) No later than 30 days after the commencement of a policy year, a network
2 company that purchases an insurance policy described in par. (a) shall file with the
3 commissioner a copy of the policy. At least 30 days prior to the effective date of a
4 cancellation or nonrenewal of the policy, the network company shall file with the
5 commissioner a notice of the cancellation or nonrenewal, and the commissioner shall
6 be treated as a certificate holder for purposes of receiving the notice.

7 (c) Except as provided in this section, ch. 102 does not apply to a blanket
8 accident and sickness insurance policy described in par. (a).

9 **(3) OCCUPATIONAL ACCIDENT INSURANCE.** (a) A network company may carry,
10 provide, or otherwise make available occupational accident insurance to cover the
11 medical expenses and lost income resulting from an injury suffered by an
12 application-based driver while engaged on the network company's online-enabled
13 application, software, or system. For purposes of this paragraph, an
14 application-based driver is engaged on the network company's online-enabled
15 application, software, or system during the time beginning when the
16 application-based driver accepts a rideshare request or delivery request and ending
17 when the application-based driver completes that rideshare request or delivery
18 request. A policy under this paragraph shall provide, in aggregate, at least
19 \$1,000,000 of coverage and, at a minimum, all of the following:

20 1. Coverage for medical expenses incurred of at least \$250,000 and for up to 104
21 weeks following the injury.

22 2. Continuous total disability payments and temporary total disability
23 payments for up to 104 weeks following the injury that equal one-sixth of the
24 application-based driver's total earnings from all network companies during the 28

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1 days prior to the accident, subject to the minimum and maximum weekly amount of
2 benefits under s. 102.11.

3 3. For the benefit of a spouse, child, or other dependent, as described in s.
4 102.51, of an application-based driver who suffers an injury that results in death
5 while engaged on the network company's online-enabled application, software, or
6 system, an accidental death benefit equal to the death benefit provided under s.
7 102.46.

8 (b) If an accident is covered by occupational accident insurance maintained by
9 more than one network company, the insurer of the network company against whom
10 a claim is filed shall be entitled to a contribution for the pro rata share of coverage
11 attributable to one or more other network companies, up to the coverages and limits
12 under par. (a).

13 (c) Any benefit provided to an application-based driver under an occupational
14 accident insurance policy described in par. (a) shall be treated as amounts payable
15 under a worker's compensation law or disability benefit for the purpose of
16 determining amounts payable under insurance provided under s. 632.32. (4) or (4m).

17 **SECTION 17.** INS 3.15 (4) (a) of the administrative code is amended to read:

18 INS 3.15 (4) (a) In accordance with the provisions of s. 600.03 (4), Stats., the
19 following are eligible for blanket accident and health insurance: 1. Volunteer fire
20 departments, 2. National guard units, 3. Newspaper delivery carriers, 4. Dependents
21 of students, 5. Volunteer civil defense organizations, 6. Volunteer auxiliary police
22 organizations, 7. Law enforcement agencies, 8. Cooperatives organized under ch.
23 185, Stats., on a membership basis without capital stock, 9. Registered guests in a
24 motel, hotel, or resort, 10. Members or members and advisors of fraternal
25 organizations including women's auxiliaries of such organizations and fraternal

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1 youth organizations, 11. Associations of sports officials, 12. Purchasers of protective
2 athletic equipment, 13. Migrant workers, 14. Participants in racing meets, 15.
3 Patrons or guests of a recreational facility or resort, 16. Application-based drivers,
4 as defined in s. 102.01 (2) (ae), Stats., of a network company, as defined in s. 632.985
5 (1) (b), Stats.

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(END)