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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 4447

02/29/2024 Authored by Kotyza-Witthuhn The bill was read for the first time and referred to the Committee on Labor and Industry Finance and Policy

1.1 A bill for an act
1.2 relating to labor; delivery network companies; requiring delivery network
1.3 companies to create portable benefits accounts for app-based drivers; requiring
1.4 delivery network companies to purchase occupational accident insurance; providing
1.5 for income tax treatment of contributions to and distributions from portable benefits
1.6 accounts; authorizing rulemaking; amending Minnesota Statutes 2022, sections
1.7 290.0132, by adding a subdivision; 290.0133, by adding a subdivision; proposing
1.8 coding for new law as Minnesota Statutes, chapter 181C.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. 181C.01] DEFINITIONS.

1.11 Subdivision 1. Scope. For the purposes of sections 181C.01 to 181C.06, the terms defined
1.12 in this section have the meanings given.

1.13 Subd. 2. Allocation date. "Allocation date" means the date following the last day of a
1.14 calendar qualifying worker's quarter on which a network company makes any required
1.15 quarterly deposit into a portable benefit account, which in no case shall be more than 30
1.16 days after the end of a quarter.

1.17 Subd. 3. App-based driver. "App-based driver" means an individual who is a DNC
1.18 courier providing services within the state.

1.19 Subd. 4. Delivery network company. "Delivery network company" or "DNC" means
1.20 a business entity that maintains an online-enabled application or platform used to facilitate
1.21 delivery services within the state.

1.22 Subd. 5. Delivery network company courier. "Delivery network company courier" or
1.23 "DNC courier" means an individual who provides delivery services through a DNC's
1.24 online-enabled application or platform.

2.1 Subd. 6. **Delivery services.** "Delivery services" means the pickup from any location of  
2.2 any item or items and the delivery of the items using a passenger vehicle, bicycle, scooter,  
2.3 walking, public transportation, or other similar means of transportation, to a location selected  
2.4 by the customer located within 50 miles of the pickup location in response to a delivery  
2.5 request. Delivery services may include the selection, collection, or purchase of items by a  
2.6 DNC courier, as well as other tasks incidental to a delivery.

2.7 Subd. 7. **Earnings.** "Earnings" means all earnings, including incentives and bonuses:

2.8 (1) paid to the app-based driver by the network company related to the provision of  
2.9 delivery services; or

2.10 (2) remitted to the app-based driver from payment facilitated by a network company,  
2.11 but not including amounts charged for fees, taxes, customer pass-throughs, or other similar  
2.12 charges. Earnings do not include any payments for gratuities.

2.13 Subd. 8. **Earnings loss.** "Earnings loss" means a decrease of 50 percent or more in an  
2.14 app-based driver's monthly earnings from the previous month that results through no fault  
2.15 of the app-based driver.

2.16 Subd. 9. **Eligibility date.** "Eligibility date" means the first day of a quarter, occurring  
2.17 after December 31, 2024, during which an app-based driver qualifies as an eligible driver.

2.18 Subd. 10. **Eligible driver.** "Eligible driver" means an app-based driver whose earnings  
2.19 from, or facilitated by, a network company total at least \$750 during a calendar quarter. An  
2.20 app-based driver who qualified as an eligible driver of a network company under this  
2.21 definition remains an eligible driver of that network company for three quarters following  
2.22 the initial quarter of eligibility, regardless of the amount of earnings the app-based driver  
2.23 has during those three quarters. After such time, any such individual may requalify as an  
2.24 eligible driver of the network company at such time as the app-based driver earnings paid  
2.25 or facilitated by the network company total or exceed \$750 in a quarter.

2.26 Subd. 11. **Gratuities.** "Gratuities" means amounts specifically paid, given to, or left for  
2.27 an app-based driver in connection with the delivery service provided by that driver.

2.28 Subd. 12. **Network company.** "Network company" means a DNC.

2.29 Subd. 13. **Permissible use.** "Permissible use" means the use of money to:

2.30 (1) compensate for lost income due to:

2.31 (i) an illness or accident;

2.32 (ii) the birth or adoption of a child of the app-based driver;

3.1 (iii) a federal or governor-declared state of emergency; or

3.2 (iv) an earnings loss;

3.3 (2) transfer money to an individual retirement account;

3.4 (3) cover expenses incurred for premiums for health insurance coverage in the individual  
3.5 market;

3.6 (4) cover tuition expenses; or

3.7 (5) cover costs related to childcare.

3.8 Subd. 14. **Portable benefit account.** "Portable benefit account" means a financial  
3.9 account:

3.10 (1) from which amounts may be withdrawn for a permissible use;

3.11 (2) that meets the requirements of this chapter; and

3.12 (3) that is administered by a portable benefit account provider.

3.13 Subd. 15. **Portable benefit account provider.** "Portable benefit account provider" means  
3.14 a banking institution as defined in section 48.01, subdivision 2, or another person who  
3.15 demonstrates to the satisfaction of the commissioner of commerce that the manner in which  
3.16 such bank or person will administer the portable benefit account will be consistent with the  
3.17 portable benefit account requirements under this chapter.

3.18 Subd. 16. **Quarter.** "Quarter" means each of the following four time periods:

3.19 (1) January 1 to March 31;

3.20 (2) April 1 to June 30;

3.21 (3) July 1 to September 30; and

3.22 (4) October 1 to December 31.

3.23 Sec. 2. **[181C.02] PORTABLE BENEFIT ACCOUNTS.**

3.24 Subdivision 1. **Contribution requirements.** (a) A network company shall, by each  
3.25 allocation date, contribute to a portable benefit account of an eligible driver an amount equal  
3.26 to two percent of an eligible driver's earnings in the immediately preceding quarter earned  
3.27 through that network company.

3.28 (b) The first contribution to an eligible driver's portable benefit account by a network  
3.29 company under paragraph (a) shall be made on the first allocation date following an  
3.30 individual's eligibility date with respect to the network company.

4.1 (c) Each network company shall allow an eligible driver to elect to also contribute to  
4.2 the eligible driver's portable benefit account and shall deduct the amount elected by the  
4.3 eligible driver from the individual's earnings and designate such amount for contribution  
4.4 to the portable benefit account.

4.5 (d) A network company shall deposit any deductions elected under paragraph (c) into  
4.6 the eligible driver's portable benefit account on a quarterly basis, no later than seven days  
4.7 following the allocation date for the quarter.

4.8 (e) Contributions made by a network company under paragraph (a) shall come directly  
4.9 from the network company and not be deducted or drawn from an eligible driver's earnings.

4.10 (f) Any contribution under paragraphs (a) or (c) shall be made to the default portable  
4.11 benefit account the network company elects on behalf of the eligible driver, unless an eligible  
4.12 worker elects a different portable benefit account and informs the network company at least  
4.13 30 days prior to the allocation date.

4.14 (g) Each network company shall ensure that the default portable benefit account offered  
4.15 by the network company makes available at least one individual retirement account provider.

4.16 Subd. 2. **Distributions; commingling prohibited.** (a) An eligible driver who has  
4.17 deposited money in a portable benefit account may receive a distribution of amounts for a  
4.18 permissible use.

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

4.21 Sec. 3. **[181C.03] OCCUPATIONAL ACCIDENT INSURANCE REQUIREMENTS.**

4.22 Subdivision 1. **Definitions.** (a) For the purposes of this section, the following terms have  
4.23 the meanings given.

4.24 (b) "Average weekly earnings" means the app-based driver's total earnings from a  
4.25 particular network company during the 28 calendar days immediately prior to a covered  
4.26 accident divided by four.

4.27 (c) "Maximum weekly compensation rate" has the meaning given in section 176.101,  
4.28 subdivision 1, paragraph (b), clause (1).

4.29 (d) "Minimum weekly compensation rate" has the meaning given in section 176.101,  
4.30 subdivision 1, paragraph (c).

5.1 Subd. 2. Occupational accident insurance purchase requirement. (a) A network  
5.2 company must purchase occupational accident insurance, as described in paragraph (c), for  
5.3 all app-based drivers who provide services through their networks within the state.

5.4 (b) Network companies shall file with the Department of Commerce, no later than 30  
5.5 days after the commencement of a new policy year, a copy of the policy it has purchased  
5.6 for DNC couriers. The Department of Commerce shall be treated by the insurer as a certificate  
5.7 holder for purposes of receiving notice of cancellation of the policy.

5.8 (c) The occupational accident insurance policy required under paragraph (a) shall cover  
5.9 medical expenses and lost income resulting from injuries suffered while the app-based driver  
5.10 engaged on a network company's online-enabled application or platform. The policy shall  
5.11 at a minimum provide the following:

5.12 (1) coverage for medical expenses incurred, up to at least \$250,000;

5.13 (2) continuous total disability payments, temporary total disability payments, and partial  
5.14 disability equal to 66 percent of the app-based driver's average weekly earnings from all  
5.15 network companies as of the date of injury but not more than the maximum weekly  
5.16 compensation rate, unless the average weekly earnings of the app-based driver is less than  
5.17 the minimum weekly compensation rate, in which case the weekly compensation shall be  
5.18 equal to the app-based driver's average weekly wage. Payments under this paragraph shall  
5.19 be made for up to the first 130 weeks following the injury; and

5.20 (3) for the benefit of spouses, children, or other dependents of app-based drivers,  
5.21 accidental death insurance in the amount equal to 66 percent of the app-based driver's  
5.22 average weekly earnings from all network companies as of the date of injury but not more  
5.23 than the maximum weekly compensation rate, unless the average weekly wage of the  
5.24 app-based driver is less than the minimum weekly compensation rate, in which case the  
5.25 weekly compensation shall be equal to the app-based driver's average weekly wage, times  
5.26 130 weeks for injuries suffered by an app-based driver while the app-based driver is engaged  
5.27 on the network company's online-enabled application or platform that resulted in death.

5.28 (d) If an accident is covered by occupational accident insurance maintained by more  
5.29 than one network company, the insurer of the network company against whom a claim is  
5.30 filed is entitled to contribution for the pro rata share of coverage attributable to one or more  
5.31 other network companies up to the coverages and limits in paragraph (c).

5.32 (e) For purposes of this section, an app-based driver is engaged on a network company's  
5.33 platform from when the app-based driver commences work related to a specific delivery  
5.34 request to when the app-based driver completes that delivery request.

6.1 (f) Any benefits provided to an app-based driver under this section are considered  
6.2 amounts payable under a workers' compensation law or disability benefit for the purpose  
6.3 of determining amounts payable under any insurance provided under chapter 176 or under  
6.4 any personal injury protection coverage policy.

6.5 **Sec. 4. [181C.04] INDEPENDENT CONTRACTOR STATUS.**

6.6 For the purposes of this chapter, an app-based driver is an independent contractor and  
6.7 not an employee or agent with respect to the driver's relationship with a network company  
6.8 so long as:

6.9 (1) the network company does not unilaterally prescribe specific dates, times of day, or  
6.10 a minimum number of hours during which the app-based driver must be logged into the  
6.11 network company's online-enabled application or platform;

6.12 (2) the network company may not terminate the contract of the app-based driver for not  
6.13 accepting a specific delivery service request, except where refusal constitutes a violation  
6.14 of governing federal, state, or local regulations;

6.15 (3) the network company does not restrict the app-based driver from performing services  
6.16 through other network company's platforms except while performing services through the  
6.17 network company's online-enabled application or platform; and

6.18 (4) the network company does not contractually restrict the app-based driver from  
6.19 working in any other lawful occupation.

6.20 **Sec. 5. [181C.05] DISCRIMINATION PROHIBITED.**

6.21 It is an unlawful practice, unless based upon a bona fide occupational qualification or  
6.22 public or app-based driver safety need, for a network company to refuse to contract with,  
6.23 terminate the contract of, or deactivate from the network company's online-enabled  
6.24 application or platform any app-based driver or prospective app-based driver based upon  
6.25 race, color, creed, religion, national origin, sex, marital status, status with regard to public  
6.26 assistance, familial status, membership or activity in a local commission, disability, sexual  
6.27 orientation, or age.

6.28 **Sec. 6. [181C.06] RULEMAKING AUTHORITY.**

6.29 The commissioner of labor and industry may promulgate rules and regulations to  
6.30 implement this chapter.

7.1 Sec. 7. **[181C.07] PREEMPTION.**

7.2 Jurisdiction in all matters concerning network companies and app-based drivers is vested  
 7.3 exclusively in the state. Notwithstanding any other provision of law, no municipality or  
 7.4 other local government entity shall establish or enforce any provision of law concerning  
 7.5 network companies or app-based drivers. Any provision of local law or ordinance that on  
 7.6 its face or as applied regulates network companies or app-based drivers shall be preempted.

7.7 Sec. 8. Minnesota Statutes 2022, section 290.0132, is amended by adding a subdivision  
 7.8 to read:

7.9 Subd. 36. **Portable benefit accounts.** (a) For purposes of this subdivision:

7.10 (1) "eligible driver" has the meaning given in section 181C.01, subdivision 10;

7.11 (2) "network company" has the meaning given in section 181C.01, subdivision 12; and

7.12 (3) "portable benefit account" has the meaning given in section 181C.01, subdivision  
 7.13 14.

7.14 (b) The sum of the amount of contributions to a portable benefit account made by a  
 7.15 network company on behalf of an eligible driver and the amount of contributions to a portable  
 7.16 benefit account made by an eligible driver is a subtraction.

7.17 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December  
 7.18 31, .....

7.19 Sec. 9. Minnesota Statutes 2022, section 290.0133, is amended by adding a subdivision  
 7.20 to read:

7.21 Subd. 16. **Disallowed distributions; portable benefit accounts.** The sum of the  
 7.22 following amounts is an addition:

7.23 (1) the amount of any distribution from a portable benefit account, as defined in section  
 7.24 181.01, subdivision 14, not used for the purposes described in section 181.01, subdivision  
 7.25 13; plus

7.26 (2) an amount equal to ten percent of the amount calculated in clause (1).

7.27 **EFFECTIVE DATE.** This section is effective for taxable years beginning after December  
 7.28 31, .....