

HOUSE No. 1234

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack and Carlos González

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 drivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>	<i>2/17/2021</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>2/26/2021</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>3/10/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>9/7/2021</i>

HOUSE No. 1234

By Messrs. Cusack of Braintree and González of Springfield, a petition (accompanied by bill, House, No. 1234) of Mark J. Cusack, Carlos González and Joseph W. McGonagle, Jr. relative to establishing portable benefit accounts for app-based drivers. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act establishing portable benefit accounts for app-based 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 2018 Official Edition, are hereby
2 amended by inserting after chapter 175M the following chapter:-

3 CHAPTER 175N.

4 PORTABLE BENEFITS FOR APP-BASED DRIVERS

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

6 App-based drivers are providing essential services to their communities. App-based
7 drivers retain full control over where, when, and how they perform app-based services/work and
8 are therefore classified as independent contractors. App-based drivers may not be entitled to
9 some of the protections of an employee. In order to protect these workers, a portable benefits
10 framework for App-based Drivers is created to enable the provision of benefits, such as income
11 replacement, health and wellness, and others, to one worker by multiple platforms. In addition, a

12 separate Occupational Accident Insurance requirement for Network Companies to purchase is
13 created. For the foregoing reasons, it is the General Court’s intent that the Director’s actions
14 shall displace competition among Network Companies in the provision of benefits to App-based
15 drivers for the purpose of achieving the goals of creating a portable benefits framework for App-
16 based drivers and an Occupational Accident Insurance requirement for Network Companies.

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

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

22 “App-based driver”, an individual who is a DNC courier or TNC driver providing
23 services within the Commonwealth.

24 “Delivery Network Company” or “DNC”, a business entity that maintains an online-
25 enabled application or platform used to facilitate delivery services within the Commonwealth.

26 “Delivery Network Company Courier” or “DNC courier”, an individual who provides
27 delivery services through a DNC’s online-enabled application or platform.

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

32 include the selection, collection, or purchase of items by a DNC courier, as well as other tasks
33 incidental to a delivery.

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

38 "Earnings loss", a decrease of 50 per cent or more in an app-based driver's monthly
39 earnings from the previous month that results through no fault of the app-based driver.

40 "Eligibility date" means the first day of a quarter, occurring after December 31, 2021,
41 during which an app-based driver qualifies as an eligible driver.

42 "Eligible driver", an app-based driver whose earnings from, or facilitated by, a network
43 company total at least \$2,550 during a quarter. An app-based driver who qualified as an eligible
44 driver of a network company under this definition shall remain an eligible driver of the network
45 company for three quarters following the initial quarter of eligibility, regardless of the amount of
46 earnings the app-based driver has during those three quarters. After such time, any such
47 individual may requalify as an eligible driver of the network company at such time as the app-
48 based driver earnings paid or facilitated by the network company total or exceed \$2,550 in a
49 quarter.

50 "Network company", a DNC or TNC.

51 “Permissible use”, the use of funds to, (a) compensate for lost income due to: (1) an
52 illness or accident; (2) the birth or adoption of a child of the app-based driver; (3) a federal or
53 governor-declared state of emergency; (4) an earnings loss;

54 (b) transfer funds to an individual retirement account; or

55 (c) cover expenses incurred for premiums for health insurance coverage in the individual
56 market.

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

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

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

66 “Transportation network company” or “TNC”, has the same meaning as provided in
67 section 1 of chapter 159A 1/2.

68 “Transportation network company driver” or “TNC driver”, has the same meaning as
69 provided in section 1 of chapter 159A 1/2.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112 (d) Any distribution from an eligible driver's portable benefit account shall not be
113 included in gross income of the eligible driver under chapter 62, to the extent such distributions
114 are for a permissible use, as certified by the eligible driver to the portable benefit account
115 provider.

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

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

123 SECTION 2. The General Laws, as appearing in the 2018 Official Edition, are hereby
124 amended by inserting after chapter 175N, the following chapter:

125 CHAPTER 175O

126 OCCUPATIONAL ACCIDENT INSURANCE FOR APP-BASED DRIVERS

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

129 "App-based driver", has the same meaning as provided in section 2 of Chapter 174N.

130 “Average weekly earnings”, the app-based driver’s total earnings from all network
131 companies during the 28 days prior to a covered accident divided by four.

132 “Earnings”, has the same meaning as provided in section 2 of Chapter 174N.

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

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

137 “Network company”, has the same meaning as provided in section 2 of Chapter 174N.

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

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

150 (b) Network companies shall file with the division of insurance, no later than 30 days
151 after the commencement of a new policy year, a copy of the policy it has purchased for DNC
152 couriers and TNC drivers, respectively. The division of insurance shall be treated by the insurer
153 as a certificate holder for purposes of receiving notice of cancellation of the policy.

154 (c) The occupational accident insurance policy required under subsection (a) shall cover
155 medical expenses and lost income resulting from injuries suffered while the app-based driver
156 engaged on a network company's online-enabled application or platform. Policies shall at a
157 minimum provide the following: (1) Coverage for medical expenses incurred, up to at least
158 \$250,000; (2) Continuous total disability payments, temporary total disability payments, and
159 partial disability equal to 60 per cent of the app-based driver's average weekly earnings from all
160 network companies as of the date of injury but not more than the maximum weekly
161 compensation rate, unless the average weekly wage of the app-based driver is less than the
162 minimum weekly compensation rate, in which case the weekly compensation shall be equal to
163 the app-based driver's average weekly wage. Payments under this paragraph shall be made for
164 up to the first 156 weeks following the injury. (3) For the benefit of spouses, children, or other
165 dependents of app-based drivers, accidental death insurance in the amount equal to 66 per cent of
166 the app-based driver's average weekly earnings from all network companies as of the date of
167 injury but not more than the maximum weekly compensation rate, unless the average weekly
168 wage of the app-based driver is less than the minimum weekly compensation rate, in which case
169 the weekly compensation shall be equal to the app-based driver's average weekly wage, times
170 156 weeks for injuries suffered by an app-based driver while the app-based driver is engaged on
171 the network company's online-enabled application or platform that result in death. For purposes
172 of this section, an app-based driver is engaged on a network company's platform from when the

173 app-based driver accepts a rideshare request or delivery request to when the app-based driver
174 completes that rideshare request or delivery request.

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

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

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

187 SECTION 3. Section 2 of chapter 62 of the General Laws, as appearing in the 2018
188 Official Edition, is hereby amended by inserting after paragraph (1)(Q) of subsection (a) the
189 following subparagraph:-

190 (R) Any amount contributed to a portable benefit account by a Network Company for an
191 eligible driver under subsection (a) of section 3 of Chapter 175N.

192 SECTION 4. Section 3 of Chapter 62 of the General Laws, as appearing in the 2018
193 Official Edition, is hereby amended by inserting after paragraph (19) of subsection (a), the
194 following paragraph:-

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

197 SECTION 5. Section 148B of Chapter 149 of the General Laws, as appearing in the
198 2018 Official Edition, is hereby amended by inserting after subsection (e) the following
199 subsections: -

200 (f) Notwithstanding subsection (a), for the purpose of this chapter and chapter 151, and
201 all other purposes, an app-based driver is an independent contractor and not an employee with
202 respect to his or her relationship with a network company so long as: (1) the network company
203 does not unilaterally prescribe specific dates, times of day, or a minimum number of hours
204 during which the app-based driver must be logged into the network company's online-enabled
205 application or platform; and (2) the network company may not terminate the contract of the app-
206 based driver for not accepting a specific rideshare service or delivery service request; and (3) the
207 network company does not restrict the app-based driver from performing services through other
208 network companies except while performing services through the network company's online-
209 enabled application or platform; and (4) the network company does not restrict the app-based
210 driver from working in any other lawful occupation or business.

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

213 "App-based driver", has the same meaning as provided in section 2 of Chapter 174N.

214 “Network company”, has the same meaning as provided in section 2 of Chapter 174N.

215 SECTION 8. Severability. (a) In accordance with section 6 of chapter 4, if any section or
216 subsection of this Act or its application to any person or circumstance is adjudged
217 unconstitutional or invalid, such judgment shall not affect other provisions or applications of this
218 Act, which can be given effect without the invalid provision or application.

219 (b) Notwithstanding subsection (a), if Section 5 of this act is for any reason held to be
220 invalid by a decision of any court of competent jurisdiction, that decision shall apply to the
221 entirety of the remaining provisions of this act, and no provision of this act shall be deemed valid
222 or given force of law.

223 SECTION 9. Preemption. Jurisdiction in all matters concerning network companies and
224 app-based drivers is vested exclusively in the state. Notwithstanding any other provision of law,
225 no municipality or other local entity shall establish or enforce any provision of law concerning
226 network companies or app-based drivers. Any provision of any local law or ordinance, that on its
227 face or as applied regulates network companies or app-based drivers shall be preempted.