

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>2/18/2021</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

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

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

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

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

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

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

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

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

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

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

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

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

"Network company", a DNC or TNC.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 175O

OCCUPATIONAL ACCIDENT INSURANCE FOR APP-BASED DRIVERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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