

24104927D

**HOUSE BILL NO. 734**

Offered January 10, 2024

Prefiled January 9, 2024

A *BILL to amend the Code of Virginia by adding in Chapter 3 of Title 40.1 an article numbered 2.3, consisting of sections numbered 40.1-33.13 through 40.1-33.20, relating to delivery network companies; portable benefit accounts.*

Patron—Thomas

Referred to Committee on Labor and Commerce

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 3 of Title 40.1 an article numbered 2.3, consisting of sections numbered 40.1-33.13 through 40.1-33.20, as follows:**

*Article 2.3.**Delivery Network Companies.***§ 40.1-33.13. Definitions.***As used in this article:*

"Allocation date" means the date following the last day of a quarter on which a delivery 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 delivery driver" means an individual who provides delivery services within the Commonwealth through a delivery network company's online-enabled application or platform.

"Average weekly earnings" means the app-based delivery driver's total earnings from all delivery network companies during the 28 days prior to a covered accident divided by four.

"Delivery network company" means a business entity that maintains an online-enabled application or platform used to facilitate delivery services within the Commonwealth.

"Delivery services" means 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 an app-based delivery driver, as well as other tasks incidental to a delivery.

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

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

"Eligible driver" means an app-based delivery driver who qualifies as eligible for a portable benefit account under the provisions of § 40.1-33.14.

"Maximum weekly compensation rate" means 100 percent of the average weekly wage of the Commonwealth as determined by the Workers' Compensation Commission in accordance with subsection B of § 65.2-500.

"Minimum weekly compensation rate" means 25 percent of the average weekly wage of the Commonwealth as determined by the Workers' Compensation Commission in accordance with subsection B of § 65.2-500.

"Permissible use" means the use of funds to (i) compensate for lost income due to (a) an illness or accident, (b) the birth or adoption of a child of the app-based delivery driver, (c) a federal or Governor-declared state of emergency, or (d) an earnings loss; (ii) transfer funds to an individual retirement account; or (iii) cover expenses incurred for premiums for health insurance coverage in the individual market.

"Portable benefit account" means a financial account (i) from which amounts may be withdrawn for a permissible use, (ii) that meets the requirements of this article, and (iii) that is administered by a portable benefit account provider.

"Portable benefit account provider" means a bank, as defined in § 6.2-800, credit union, as defined in § 6.2-1300, investment management firm, technology provider or program manager that offers services through a bank or investment management firm, or any other person who demonstrates to the satisfaction of the Commissioner of Financial Institutions that the manner in which such bank or person will administer the portable benefit account will be consistent with the portable benefit account

INTRODUCED

HB734

requirements under this article.

**§ 40.1-33.14. Portable benefit accounts.**

A. Beginning January 1, 2025, a delivery network company shall, by each allocation date, contribute to the portable benefit account of each eligible driver an amount equal to four percent of such eligible driver's earnings in the immediately preceding quarter earned through that delivery network company.

B. Each delivery 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 eligible driver's earnings and designate such amount for contribution to the portable benefit account. A delivery network company shall deposit any such deductions elected into the eligible driver's portable benefit account on a quarterly basis, no later than seven days following the allocation date for the quarter.

C. An app-based delivery driver shall be eligible for a portable benefit account if such driver's earnings from, or facilitated by, a delivery network company total at least \$1,000 during a quarter. An app-based delivery driver who qualifies as an eligible driver of a delivery network company shall remain an eligible driver of the delivery network company for three quarters following the initial quarter of eligibility, regardless of the amount of earnings the app-based delivery driver earns during those three quarters. After such time, any such individual may requalify as an eligible driver of the delivery network company at such time as the app-based delivery driver's earnings paid or facilitated by the delivery network company total or exceed \$1,000 in a quarter. No app-based delivery driver shall qualify as an eligible driver before the first quarter of 2025.

D. Contributions made by a delivery network company under subsection A or B shall be made in cash and, with respect to contributions made under subsection A, come from the delivery network company's general assets and shall not be deducted or drawn from an eligible driver's earnings.

E. Any contribution under subsection A or B shall be made to the default portable benefit account the delivery network company elects on behalf of the eligible driver, unless an eligible driver elects a different portable benefit account and informs the delivery network company of such election at least 30 days prior to the allocation date.

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

G. Notwithstanding any other provision of this article, 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 taxable year in which the transfer is made.

**§ 40.1-33.15. Use of portable benefit account funds.**

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 such individual shall be immediately distributed in the form of a direct trustee-to-trustee transfer to the individual retirement account of such individual under the portable benefit account.

**§ 40.1-33.16. Portable benefit account; taxation.**

A. A portable benefit account shall be exempt from taxation under Title 58.1.

B. No contributions to a portable benefit account on behalf of an eligible driver by a delivery network company pursuant to § 40.1-33.14 shall be included in calculating gross income of the eligible driver under § 58.1-322.

C. Pursuant to § 58.1-322.02, amounts elected to be contributed by an app-based delivery driver shall be allowed as a deduction in determining taxable income.

D. No distribution from an eligible driver's portable benefit account shall be included in calculating gross income of the eligible driver under § 58.1-322 to the extent such distributions are for a permissible use, as certified by the eligible driver to the portable benefit account provider.

E. Notwithstanding the provisions of this section, in the case of any distribution from the health and paid leave account of an eligible driver's portable benefit account that is not for a permissible use, the distribution shall be included in calculating gross income of the eligible driver under § 58.1-322 and in addition the distribution amount shall be subject to a 10 percent penalty tax.

**§ 40.1-33.17. Discrimination prohibited.**

No delivery network company shall refuse to contract with, terminate the contract of, or deactivate from the delivery network company's online-enabled application or platform any app-based delivery driver or prospective app-based delivery driver based upon the app-based delivery driver's race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status,

sexual orientation, gender identity, disability, or military status unless such refusal, termination, or deactivation is based upon a bona fide occupational qualification or public or app-based delivery driver safety need.

**§ 40.1-33.18. Insurance required.**

A. Beginning March 1, 2025, a delivery network company shall purchase an occupational accident insurance policy, as described in subsection C, for all app-based delivery drivers who provide services through such company's networks within the Commonwealth.

B. A delivery network company shall file with the State Corporation Commission, no later than 30 days after the commencement of a new policy year, a copy of the policy it has purchased for app-based delivery drivers. The State Corporation Commission shall be treated by the insurer as a certificate holder for purposes of receiving notice of cancellation of the policy.

C. Such occupational accident insurance policy shall cover medical expenses and lost income resulting from injuries suffered while the app-based delivery driver engaged on a delivery network company's online-enabled application or platform. Policies shall at a minimum provide, in aggregate, at least \$1 million of coverage and, at a minimum:

1. Coverage for medical expenses incurred, up to at least \$250,000;

2. Continuous total disability payments, temporary total disability payments, and partial disability payments equal to sixty-six and two-thirds percent of the app-based delivery driver's average weekly earnings from all delivery network companies as of the date of injury but not more than the maximum weekly compensation rate, unless the average weekly earnings of the app-based delivery driver is less than the minimum weekly compensation rate, in which case the weekly compensation shall be equal to the app-based delivery driver's average weekly earnings. Payments under this subdivision shall be made for up to the first 156 weeks following the injury; and

3. For the benefit of spouses, children, or other dependents of app-based delivery drivers, accidental death insurance in the amount equal to sixty-six and two-thirds percent of the app-based delivery driver's average weekly earnings from all delivery network companies as of the date of injury but not more than the maximum weekly compensation rate, unless the average weekly earnings of the app-based delivery driver is less than the minimum weekly compensation rate, in which case the weekly compensation shall be equal to the app-based delivery driver's average weekly earnings, times 156 weeks for injuries suffered by an app-based delivery driver while the app-based delivery driver engaged on the delivery network company's online-enabled application or platform that result in death.

D. If an accident is covered by occupational accident insurance maintained by more than one delivery network company, the insurer of the delivery network company against whom a claim is filed is entitled to contribution for the pro rata share of coverage attributable to one or more other delivery network companies up to the coverages and limits in subsection C.

E. For the purposes of this section, an app-based delivery driver shall be considered engaged on a delivery network company's platform from when the app-based delivery driver accepts a delivery request to when the app-based delivery driver completes such delivery request.

**§ 40.1-33.19. App-based delivery driver classification.**

Notwithstanding any other provision of law, an app-based delivery driver shall be considered an independent contractor and not an employee or agent with respect to his relationship with a delivery network company provided that (i) the delivery network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based delivery driver must be logged into the delivery network company's online-enabled application or platform; (ii) the delivery network company does not terminate the contract of the app-based delivery driver for not accepting a delivery service request; (iii) the delivery network company does not restrict the app-based delivery driver from performing services through other delivery network companies except while performing services through the delivery network company's online-enabled application or platform; and (iv) the delivery network company does not restrict the app-based delivery driver from working in any other lawful occupation or business.

**§ 40.1-33.20. Preemption.**

Jurisdiction in all matters concerning delivery network companies and app-based delivery drivers shall be exclusively vested in the state. Notwithstanding any other contrary provision of law, general or special, no local governing body or other local entity shall establish or enforce any provision of law concerning delivery network companies or app-based delivery drivers. Any provision of a local ordinance that on its face or as applied regulates delivery network companies shall be preempted.

2. That the provisions of this act are severable in accordance with the provisions of § 1-243 of the Code of Virginia; however, if the provisions of § 40.1-33.19 of the Code of Virginia, as created by this act, are held invalid by a decision of any court of competent jurisdiction, then such decision shall apply to the entirety of this act and no provision of this act shall be given effect or considered valid.