

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2539**

By Delegates Westfall, Hott, Barnhart and Espinosa

[Introduced January 13, 2023; Referred to the  
Committee on Banking and Insurance then the  
Judiciary]

1 A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a  
2 new article, designated §17D-7-1, §17D-7-2, §17D-7-3, §17D-7-4, §17D-7-5 and §17D-7-  
3 6, all relating to creating the Delivery Network Company Insurance Act; setting forth  
4 definitions; clarifying interaction with other code provisions; setting forth insurance  
5 requirements; providing for disclosures to delivery network drivers; providing for  
6 exclusions in motor vehicle liability insurance policies; and identifying the effective date.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 7. DELIVERY NETWORK COMPANY INSURANCE ACT.**

**§17D-7-1. Definitions.**

1 (a) "Delivery Network Company" or "DNC" means a corporation, partnership, sole  
2 proprietorship, or other entity that operates in West Virginia and uses a digital network to connect a  
3 Delivery Network Company Customer to a Delivery Network Driver to provide Delivery Services.

4 A DNC shall not be deemed to control, direct, or manage the Personal Vehicles or Delivery  
5 Network Drivers that connect to its Digital Network, except where agreed to by written contract.

6 (b) "Delivery Network Company Customer" or "Customer" means a person who orders the  
7 delivery of goods, where the Delivery Network Driver delivers such goods at the direction of the  
8 Customer.

9 (c) "Delivery Network Driver" or "Driver" means an individual who provides Delivery  
10 Services through a DNC's Digital Network using a personal vehicle.

11 (d) "Digital Network" means any online-enabled application, software, website, or system  
12 offered or utilized by a Delivery Network Company that enables deliveries with Delivery Network  
13 Drivers.

14 (e) "Personal Vehicle" means a vehicle that is:

15 (1) Used by a Delivery Network Driver to provide delivery services via a Digital Network;

16 (2) Owned, leased, or otherwise authorized for use by the Delivery Network Driver; and

17 (f) "Delivery Available Period" means the period:

18 (1) When a Driver has logged on to a Digital Network and is available to receive requests to  
19 provide Delivery Services from a Delivery Network Company;

20 (2) Is operating a Personal Vehicle; and

21 (3) Is not providing Delivery Services or operating in the Delivery Service Period.

22 (g) "Delivery Services" means the fulfillment of delivery requests made by a Customer  
23 through a Digital Network, including the pickup of any good(s) and the delivery of the good(s) to a  
24 Customer by a Delivery Network Driver. Delivery Services may include a series of deliveries to  
25 different Customers.

26 (h) "Delivery Service Period" means the period:

27 (1) Beginning when a Driver starts operating a Personal Vehicle enroute to pick up goods  
28 for a delivery or series of deliveries as documented via a Digital Network controlled by a Delivery  
29 Network Company;

30 (2) Continuing while the Driver transports the requested deliveries; and

31 (3) Ending upon delivery of the requested good(s) to (i) the Customer or the last Customer  
32 in a series of deliveries, or (ii) a location designated by the Delivery Network Company, including  
33 for purposes of returning the good(s).

#### **§17D-7-2. Interaction with Other Law.**

1 Nothing in this article limits the scope of federal or state law regarding delivery or transport  
2 of goods. Deliveries made under this article that are subject to such other law must also comply  
3 with the requirements of that law. In the event of a conflict between this article and another law  
4 dealing with the delivery or transport of goods, the other law prevails.

#### **§17D-7-3. Insurance Requirements.**

1 (a) A Delivery Network Company shall ensure that, during the Delivery Available Period, if  
2 it applies, and during the Delivery Service Period, primary automobile liability insurance is in place

3 that recognizes that the driver is a Delivery Network Driver or that does not exclude coverage for  
4 use of a personal vehicle to provide deliveries.

5 (b) During the Delivery Service Period and Delivery Available Period, the Delivery Network  
6 Driver, Delivery Network Company, or any combination of the two shall maintain insurance that  
7 insures the driver for liability to third parties of not less than \$50,000 for damages arising out of  
8 bodily injury sustained by any one person in an accident, of not less than \$100,000 for damages  
9 arising out of bodily injury sustained by all persons injured in an accident, and of not less than  
10 \$25,000 for all damages arising out of damage to or destruction of property in an accident.

11 (c) If the insurance coverage maintained by a Delivery Network Driver pursuant to this  
12 section has lapsed or does not provide the required coverage, insurance maintained by the  
13 Delivery Network Company shall provide the coverage required by this article beginning with the  
14 first dollar of a claim and the insurance maintained by the Delivery Network Company shall have  
15 the duty to defend the claim.

16 (d) Coverage under an automobile insurance policy maintained by the Delivery Network  
17 Company shall not be dependent upon another motor vehicle liability insurer first denying a claim,  
18 nor shall another motor vehicle liability insurance policy be required to first deny a claim.

19 (e) Insurance coverage required by this article may be obtained from an insurance  
20 company duly licensed to transact business under the insurance laws of West Virginia or by an  
21 eligible surplus lines broker.

22 (f) The coverage required pursuant to this section shall be deemed to meet the  
23 requirements of §17D-4-1, et seq. of this code.

24 (g) A Delivery Network Driver shall carry proof of insurance required pursuant to this  
25 section at all times while using a Personal Vehicle in connection with a Digital Network. In the  
26 event of an accident, a Delivery Network Driver shall, upon request, provide insurance coverage  
27 information to the directly interested parties, automobile insurers, and investigating law

28 enforcement officers.

29 The insurance coverage information may be displayed or provided in either paper or  
30 electronic form. A Delivery Network Driver shall, upon request, disclose to the directly interested  
31 parties, automobile insurers, and investigating law enforcement officers whether the Driver was  
32 operating during the Delivery Available Period or the Delivery Service Period at the time of the  
33 accident.

34 (h) In a claims coverage investigation, a Delivery Network Company or its insurer shall  
35 cooperate with all insurers that are involved in the claims coverage investigation to facilitate the  
36 exchange of information and shall immediately provide upon request by directly involved parties or  
37 any insurer the precise times that a Delivery Network Driver began and ended the Delivery  
38 Available Period and/or the Delivery Service Period on the Delivery Network Company's Digital  
39 Network in the twelve-hour period immediately preceding the accident and in the twelve-hour  
40 period immediately following the accident. Insurers potentially providing the coverage required by  
41 this article shall disclose, upon request by any other such insurer involved in the particular claim,  
42 the applicable coverages, exclusions, and limits provided under any automobile insurance  
43 maintained in order to satisfy the requirements of this section.

44 (i) The insurer or insurers of a Delivery Network Company providing coverage under this  
45 section shall assume primary liability for a claim when a dispute exists as to when the Delivery  
46 Available Period and/or the Delivery Service Period began or ended and the Delivery Network  
47 Company does not have available, did not retain, or fails to provide the information required by this  
48 section.

**§17D-7-4. Disclosures to Delivery Network Drivers.**

1 (a) A Delivery Network Company shall not permit a Delivery Network Driver to engage in  
2 Delivery Services on the DNC's Digital Network until the DNC discloses in writing to the Driver:

3 (1) The insurance coverage, including the types of coverage and the limits for each

4 coverage, that the Delivery Network Company provides while the Driver uses a Personal Vehicle  
5 in connection with a Delivery Network Company's Digital Network; and

6 (2) That the Driver's own automobile insurance policy might not provide any coverage  
7 during the Delivery Available Period, if it applies, or the Delivery Service Period.

**§17D-7-5. Exclusions in Motor Vehicle Liability Insurance Policies.**

1 (a) An authorized insurer that writes motor vehicle liability insurance in West Virginia may  
2 exclude any and all coverage and the duty to defend or indemnify for any injury or loss that occurs  
3 during the Delivery Available Period and the Delivery Service Period, including but not limited to:

4 (1) Liability coverage for bodily injury and property damage;

5 (2) Personal injury protection coverage;

6 (3) Uninsured and underinsured motorist coverage;

7 (4) Medical payments coverage;

8 (5) Comprehensive physical damage coverage; and

9 (6) Collision physical damage coverage.

10 (b) Nothing in this article invalidates or limits an exclusion contained in a motor vehicle  
11 liability insurance policy, including any insurance policy in use or approved for use that excludes  
12 coverage for motor vehicles used for delivery or for any business use.

13 (c) Nothing in this article invalidates, limits or restricts an insurer's ability under existing law  
14 to underwrite any insurance policy. Nothing in this article invalidates, limits or restricts an insurer's  
15 ability under existing law to cancel and non-renew policies.

16 (d) A motor vehicle liability insurer that defends or indemnifies a claim against a Delivery  
17 Network Driver that is excluded under the terms of its policy shall have the right to seek recovery  
18 against the insurer providing coverage under §17D-7-3 of this code if the claim:

19 (1) Occurs during the Delivery Available Period or the Delivery Service Period; and

20 (2) Is excluded under the terms of its policy.

**§17D-7-6. Effective Date.**

1           This article shall take effect on July 1, 2024.

NOTE: The purpose of this bill is to create the Delivery Network Company Insurance Act. The bill sets forth definitions; clarifies the interaction with other code provisions; sets forth insurance requirements; provides for disclosures to delivery network drivers; provides for exclusions in motor vehicle liability insurance policies; and identifies an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.