

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4786

By Delegates Westfall and Hott

[Originating in the Committee on the Judiciary;

Reported on February 5, 2024]

1 A BILL to amend the Code of West Virginia 1931, as amended, by adding thereto a new article,
2 designated §33-63-1, §33-63-2, §33-63-3, §33-63-4, §33-63-5, and §33-63-6, all relating
3 to the Delivery Network Company Insurance Act; providing for definitions; defining
4 interaction with other laws; providing for insurance requirements; providing for disclosures
5 to Delivery Network Drivers; providing for exclusions in motor vehicle liability insurance
6 policies; and creating an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 63. DELIVERY NETWORK COMPANY INSURANCE ACT.

§33-63-1. 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. A
4 DNC shall not be deemed to control, direct, or manage the personal vehicles or delivery network
5 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 services
10 through a DNC's digital network using a personal vehicle.

11 (d) "Delivery available period" means the period when a delivery network driver:

12 (1) Is operating a personal vehicle;

13 (2) Has logged on to a digital network and is eligible to receive requests to provide delivery
14 services from a delivery network company, and

15 (3) Is not providing delivery services or operating in the delivery service period.

16 (e) "Delivery services" means the fulfillment of delivery requests made by a customer
17 through a digital network, including the pickup of any goods and the delivery of the goods by a
18 delivery network driver. Delivery services may include a series of deliveries to different customers,
19 or to different locations at the direction of a customer.

20 (f) "Delivery service period" means the period beginning when a driver starts operating a
21 personal vehicle enroute to pick up goods for a delivery or series of deliveries as documented via a
22 digital network controlled by a delivery network company, continuing while the driver transports the
23 requested deliveries, and ending upon delivery of the requested goods to:

24 (1) The customer or the last customer in a series of deliveries;

25 (2) A location designated by the customer, or the last location so designated in a series of
26 deliveries; or

27 (3) The location designated by the delivery network company, including for purposes of
28 returning the goods.

29 (g) "Digital network" means any online-enabled application, software, website, or system
30 offered or utilized by a delivery network company that enables deliveries with delivery network
31 drivers.

32 (h) "Personal vehicle" means a vehicle that is:

33 (1) Used by a Delivery Network Driver to provide delivery services via a digital network;

34 (2) A two axel vehicle the primary purpose of which is the transportation of passengers,
35 and motorcycles and mopeds;

36 (3) Owned, leased, or otherwise authorized for use by the delivery network driver; and

37 (4) Is otherwise classified as a "vehicle" in §17C-1-2 of this code.

§33-63-2. 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.

§33-63-3. Insurance Requirements.

1 (a) A delivery network company driver or delivery network company on the driver's behalf
2 shall maintain primary automobile insurance that recognizes that the driver is a delivery network
3 company driver or otherwise uses a personal vehicle to provide deliveries:

4 (1) During the delivery service period; and

5 (2) During the delivery available period.

6 (b) The following automobile insurance requirements apply while during the delivery
7 service period and the deliver available period:

8 (1) Primary automobile liability insurance in the amount of not less than \$50,000 for
9 damages arising out of bodily injury sustained by any one person in an accident, of not less than
10 \$100,000 for damages arising out of bodily injury sustained by all persons injured in an accident,
11 and of not less than \$25,000 for all damages arising out of damage to or destruction of property in
12 an accident. The requirements of §17A-1-1 et seq. and §17D-1-1 et seq. of this code shall also be
13 followed; and

14 (2) Uninsured or underinsured motorists' coverage as required by §33-6-31 of this code.

15 (3) The coverage requirements of this subsection may be satisfied by any of the following:

16 (A) Automobile insurance maintained by the delivery network company driver;

17 (B) Automobile insurance maintained by the delivery network company; or

18 (C) Any combination of paragraphs (A) and (B) of this subdivision.

19 (c) If the insurance coverage maintained by a delivery network driver pursuant to
20 subsections (a) and (b) of this section has lapsed or does not provide the required coverage,
21 insurance maintained by the delivery network company shall provide the coverage required by this

22 section beginning with the first dollar of a claim and the insurance maintained by the delivery
23 network company shall have the duty to defend the claim.

24 (d) Coverage under an automobile insurance policy maintained by the delivery network
25 company shall not be dependent upon another motor vehicle liability insurer first denying a claim,
26 nor shall another motor vehicle liability insurance policy be required to first deny a claim.

27 (e) Insurance coverage required by this section may be obtained from an insurance
28 company duly licensed to transact business under the insurance laws of this State or by an eligible
29 surplus lines broker under §33-12C-1 et seq. of this code.

30 (f) The coverage required pursuant to this section shall be deemed to meet the financial
31 responsibility law of this state.

32 (g) A delivery network driver shall carry proof of insurance required pursuant to this section
33 at all times during his or her use of a personal vehicle in connection with a delivery network
34 company's digital network. In the event of an accident, a transportation network company driver
35 shall provide this insurance coverage information to the directly interested parties, automobile
36 insurers, and investigating police officers, upon request pursuant to §17D-2A-4 of this code.

37 (h) The insurance coverage information may be displayed or provided in either paper or
38 electronic form as provided in §17A-1-1 et seq. and §17D-1-1 et seq. of this code. A delivery
39 network driver shall, upon request, disclose to the directly interested parties, automobile insurers,
40 and investigating law enforcement officers whether the driver was operating during the delivery
41 available period or the delivery service period at the time of the accident.

42 (i) In a claims coverage investigation, a delivery network company or its insurer shall
43 cooperate with all insurers that are involved in the claims coverage investigation to facilitate the
44 exchange of information and shall immediately provide upon request by directly involved parties or
45 any insurer the precise times that a delivery network driver began and ended the delivery available
46 period and/or the delivery service period on the delivery network company's digital network in the
47 twelve-hour period immediately preceding the accident and in the twelve-hour period immediately

48 following the accident. Insurers potentially providing the coverage required in section three of this
49 article shall disclose upon request by any other such insurer involved in the particular claim, the
50 applicable coverages, exclusions, and limits provided under any automobile insurance maintained
51 in order to satisfy the requirements of section three of this article.

52 (j) The insurer or insurers of a delivery network company providing coverage under
53 subsections (a) and (b) shall assume primary liability for a claim when a dispute exists as to when
54 the delivery available period and/or the delivery service period began or ended and the delivery
55 network company does not have available, did not retain, or fails to provide the information
56 required by subsection (h) of this section.

§33-63-4. Disclosures to Delivery Network Drivers.

1 A delivery network company shall disclose in writing to delivery network drivers the
2 following before they are allowed to accept a request for a delivery on the delivery network
3 company's digital network:

4 (1) The insurance coverage, including the types of coverage and the limits for each
5 coverage, that the delivery network company provides while the driver uses a personal vehicle in
6 connection with a delivery network company's digital network; and

7 (2) That the delivery network driver's own automobile insurance policy might not provide
8 any coverage during the delivery available period, if it applies, or the delivery service period.

§33-63-5. Exclusions in Motor Vehicle Liability Insurance Policies.

1 (a) An authorized insurer that writes motor vehicle liability insurance in this state may
2 exclude any and all coverage afforded under the policy issued to an owner or operator of a
3 personal vehicle for any loss or injury that occurs during the delivery service period or delivery
4 available period. The right to exclude all coverage may apply to any coverage included in an
5 automobile insurance policy including, but not limited to:

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

7 (2) Personal injury protection coverage as defined in §17A-1-1 *et seq.* and §17D-1-1 *et*
 8 *seq.* of this code;

9 (3) Uninsured and underinsured motorist coverage;

10 (4) Medical payments coverage;

11 (5) Comprehensive physical damage coverage; and

12 (6) Collision physical damage coverage.

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

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

19 (d) A motor vehicle liability insurer that defends or indemnifies a claim against a Delivery
 20 Network Driver that is excluded under the terms of its policy shall have the right to seek recovery
 21 against the insurer providing coverage under subsections 3(a) and 3(b) if the claim:

22 (1) Occurs during the delivery service period or the delivery available period; and

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

<u>§33-63-6.</u>	<u>Effective</u>	<u>Date.</u>
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1 This article shall take effect on July 1, 2025.