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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 949 Session of  
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INTRODUCED BY ROBINSON, STREET, BARTOLOTTA, COLLETT, FONTANA,  
PITTMAN, COSTA, MUTH, REGAN, BREWSTER, LAUGHLIN AND YUDICHAK,  
NOVEMBER 22, 2021

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REFERRED TO LABOR AND INDUSTRY, NOVEMBER 22, 2021

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AN ACT

1 Establishing the Portable Benefits for App-Based Workers Fund  
2 within the Treasury Department and the Portable Benefits Fund  
3 Board within the Pennsylvania Public Utility Commission.

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9 The General Assembly of the Commonwealth of Pennsylvania  
10 hereby enacts as follows:

11 CHAPTER 1

12 PRELIMINARY PROVISIONS

13 Section 101. Short title.

14 This act shall be known and may be cited as the App-Based  
15 Workers Benefits and Protections Act.

16 Section 102. Findings and declarations.

17 The General Assembly finds and declares as follows:

18 (1) App-based workers who are drivers or couriers are  
19 providing essential services to their communities.

20 (2) App-based workers who are drivers or couriers retain  
21 full control over where, when and how they perform app-based  
22 services or work and are therefore classified as independent  
23 contractors.

24 (3) Independent contractors may not be entitled to some  
25 of the protections of an employee. To protect all of our  
26 Pennsylvania workers:

27 (i) A portable benefits fund for app-based workers  
28 should be established to enable the provision of income  
29 replacement, health and wellness and other benefits to  
30 workers by multiple platforms.

1           (ii) A separate occupational accident insurance  
2           requirement for network companies to purchase should be  
3           established.

4 Section 103. Definitions.

5           The following words and phrases when used in this act shall  
6           have the meanings given to them in this section unless the  
7           context clearly indicates otherwise:

8           "App-based worker." An individual who is a DNC courier or  
9           TNC driver or provides services through a network company's  
10          online-enabled application or platform if the network company:

11           (1) does not unilaterally prescribe specific dates,  
12          times of day or a minimum number of hours during which the  
13          app-based worker must be logged into the network company's  
14          online-enabled application or platform;

15           (2) does not terminate the contract of the app-based  
16          worker for not accepting any specific request for covered  
17          services;

18           (3) does not restrict the app-based worker from  
19          performing services through other network companies except  
20          while performing services through the network company's  
21          online-enabled platform; and

22           (4) does not restrict the app-based worker from working  
23          in any other lawful occupation or business.

24          "Board." The Portable Benefits Fund Board.

25          "Commission." The Pennsylvania Public Utility Commission.

26          "Covered services." As follows:

27           (1) Work performed by an app-based worker from when an  
28          app-based worker accepts a rideshare, delivery or other  
29          request generated by a network company to when the app-based  
30          worker completes that request.

1           (2) The term does not include services performed using a  
2 commercial motor vehicle as defined in 49 CFR 390.5 (relating  
3 to definitions).

4 "Customer." One or more individuals or business entities.

5 "Delivery network company" or "DNC." A business entity that  
6 maintains an online-enabled application or platform used to  
7 facilitate delivery services within this Commonwealth.

8 "Delivery network company courier" or "DNC courier." An  
9 individual who provides delivery services through a DNC's  
10 online-enabled application or platform.

11 "Delivery services." As follows:

12           (1) The fulfillment of a delivery request constituting  
13 the pickup of an item from one location and the delivery of  
14 the item to another location that is selected by the customer  
15 and located within 50 miles of the pickup location, by  
16 walking or using a passenger vehicle, bicycle, scooter,  
17 public transportation or other similar means of  
18 transportation.

19           (2) The term may include the selection, collection or  
20 purchase of an item by a DNC courier, if the selection,  
21 collection or purchase is done in connection with a delivery  
22 that the DNC courier has agreed to make.

23 "Fund." The Portable Benefits for App-Based Workers Fund.

24 "Network company." A DNC or TNC.

25 "Transportation network company" or "TNC." As defined in 53  
26 Pa.C.S. § 57A01 (relating to definitions).

27 "Transportation network company driver" or "TNC driver." As  
28 defined in 53 Pa.C.S. § 57A01.

29 "Worker earnings." As follows:

30           (1) All net earnings received by a DNC courier or TNC

1 driver for covered services beginning in this Commonwealth.

2 (2) The term includes incentives and bonuses.

3 (3) The term does not include network company fees,  
4 gratuities, tolls, cleaning fees, venue fees or other  
5 customer pass-through charges or costs.

6 CHAPTER 3

7 PORTABLE BENEFITS FOR APP-BASED

8 WORKERS FUND

9 Section 301. Establishment and operations of fund.

10 (a) Establishment.--The Portable Benefits for App-Based  
11 Workers Fund is established as a separate fund in the Treasury  
12 Department.

13 (b) Administration.--The fund shall be administered by the  
14 board:

15 (1) for the purpose of providing benefits to app-based  
16 workers; and

17 (2) without liability on the part of the Commonwealth or  
18 directors or the board.

19 (c) Custodian and disbursements.--

20 (1) The State Treasurer shall be the custodian of the  
21 fund.

22 (2) All disbursements from the fund shall be paid at the  
23 request of the board.

24 (3) For making payments without audit, the State  
25 Treasurer shall not be under any liability.

26 Section 302. Membership of fund.

27 The membership of the fund shall be composed of all the  
28 delivery network companies and transportation network companies  
29 operating within this Commonwealth.

30 Section 303. Initial registration and fee.

1 (a) General requirements.--Each network company shall:

2 (1) submit a completed registration form to the  
3 commission, in the form and manner designated by the  
4 commission; and

5 (2) pay the commission, as a condition of doing business  
6 within this Commonwealth, an initial fee of \$20,000.

7 (b) Purpose.--A submitted registration form and initial fee  
8 under subsection (a) shall serve to register a network company  
9 as a member of the fund. The commission shall provide a  
10 certificate of registration for the network company to that  
11 effect.

12 (c) Existing network companies.--Within 90 days of the  
13 effective date of this subsection, a network company that is  
14 operating on the effective date of this subsection shall submit  
15 to the commission a registration form and initial fee as  
16 specified under subsection (a).

17 Section 304. Quarterly contributions.

18 (a) Amount.--Each DNC and TNC member of the fund shall make  
19 a quarterly contribution into the fund in an amount equal to 2%  
20 of the annual worker earnings earned through the DNC's or TNC's  
21 platform for trips or deliveries that originated in this  
22 Commonwealth during the quarter. The quarterly contribution  
23 shall be paid on a schedule prescribed by the commission.

24 (b) Use.--Quarterly contributions collected in accordance  
25 with this act shall be applied to the costs associated with the  
26 administration of the fund and the benefits described in section  
27 504.

28 (c) Initial contribution.--The initial contribution under  
29 this section shall be assessed for the full calendar quarter in  
30 which this section takes effect and shall be due within seven

1 days of the effective date of this section.

2 Section 305. Operation of fund.

3 (a) Plan of operation.--Within 120 days of the effective  
4 date of this subsection, the board shall file with the  
5 commission a plan of operation, which shall be designed to  
6 assure the fair, reasonable and equitable administration of the  
7 fund. The following apply:

8 (1) The plan of operation and any subsequent amendments  
9 to the plan of operation shall become effective upon filing  
10 with the commission.

11 (2) The board shall provide to its members a copy of the  
12 plan of operation filed with the commission and shall inform  
13 its members of their rights and duties under this act.

14 (b) Bylaws.--The plan of operation as described in  
15 subsection (a) shall constitute the bylaws of the fund and  
16 shall, in addition to the requirements enumerated elsewhere in  
17 this act:

18 (1) Establish a single account and the pooling and  
19 administering of the contributions to the fund described in  
20 section 304.

21 (2) Establish the account procedures for collecting and  
22 managing the assets of the account.

23 (3) Establish regular places and times for meetings of  
24 the fund's board of directors.

25 (4) Establish the procedure by which the fund shall  
26 determine the benefits to be provided.

27 (5) Establish accounting and recordkeeping procedures  
28 for all financial transactions of the fund, its agents and  
29 the board of directors.

30 (6) Establish procedures for determining and collecting

1 the appropriate amount of contributions under this act.

2 (7) Specify the procedures by which the fund may  
3 exercise the audit rights granted to it under this act.

4 (8) Contain additional provisions as the board may deem  
5 necessary or proper for the execution of the powers and  
6 duties of the fund.

7 Section 306. Occupational accident insurance.

8 (a) Purchase of insurance.--Within 240 days of the effective  
9 date of this subsection, each network company shall purchase  
10 occupational accident insurance. Blanket accident and sickness  
11 insurance, as specified in section 621.3(a) of the act of May  
12 17, 1921 (P.L.682, No.284), known as The Insurance Company Law  
13 of 1921, is hereby declared to be that form of accident and  
14 sickness insurance covering groups of persons under a policy  
15 issued to network companies under this section, for all app-  
16 based workers who provide covered services through their  
17 networks.

18 (b) Holder of insurance.--No later than 30 days after the  
19 commencement of a new policy year, each network company shall  
20 file with the commission a copy of the policy that it has  
21 purchased for DNC couriers and TNC drivers, respectively. The  
22 following apply:

23 (1) The commission shall be treated as a certificate  
24 holder for purposes of receiving notice of cancellation or  
25 nonrenewal of the policy.

26 (2) The policy shall be filed with the commission by the  
27 network company at least 30 days prior to the effective date  
28 of the cancellation or nonrenewal of the policy.

29 (c) Insurance necessary to operate business.--On or after  
30 the date that is 240 days after the effective date of this



1 subsection, a network company may not operate in this  
2 Commonwealth unless the network company carries, provides or  
3 otherwise makes available occupational accident insurance to  
4 cover medical expenses and lost income resulting from injuries  
5 suffered while the app-based worker engaged on the network  
6 company's online-enabled application or platform.

7 (d) Minimum coverage requirements.--An occupational accident  
8 insurance policy shall, at a minimum, provide the following  
9 regarding an app-based worker:

10 (1) Coverage for medical expenses incurred, for at least  
11 \$250,000 and 104 weeks following the injury.

12 (2) Continuous total disability payments and temporary  
13 total disability payments in an amount equal to 66% of the  
14 app-based worker's average weekly earnings from all network  
15 companies as of the date of injury, with minimum and maximum  
16 weekly payment amounts to be determined in accordance with  
17 sections 105.1 and 105.2 of the act of June 2, 1915 (P.L.736,  
18 No.338), known as the Workers' Compensation Act, for up to  
19 the first 104 weeks following the injury. For purposes of  
20 this paragraph, the term "average weekly earnings" means the  
21 app-based worker's total worker earnings from all network  
22 companies during the 28 days prior to the covered accident  
23 divided by four.

24 (3) For the benefit of spouses, children or other  
25 dependents of the app-based worker, accidental death  
26 insurance in an amount equal to 66% of the app-based worker's  
27 average weekly worker earnings from all network companies as  
28 of the date of injury, with minimum and maximum weekly  
29 payment amounts to be determined in accordance with sections  
30 105.1 and 105.2 of the Workers' Compensation Act, multiplied

1 by 104 weeks for injuries suffered by the app-based worker  
2 while the app-based worker is engaged on the network  
3 company's online-enabled application or platform that result  
4 in death. For purposes of this paragraph, an app-based worker  
5 is engaged on a network company's platform from when the app-  
6 based worker accepts a rideshare request or delivery request  
7 to when the app-based worker completes that rideshare request  
8 or delivery request.

9 (e) Multiple insurance policies.--If an accident is covered  
10 by occupational accident insurance maintained by more than one  
11 network company, the insurer of the network company against whom  
12 a claim is filed is entitled to contribution for the pro rata  
13 share of coverage attributable to one or more other network  
14 companies up to the coverages and limits specified in this  
15 section.

16 (f) Benefits.--Benefits provided to an app-based worker  
17 under this section shall be considered amounts payable under a  
18 worker's compensation law or disability benefit for the purpose  
19 of determining amounts payable under insurance provided under 75  
20 Pa.C.S. Ch. 17 Subch. C (relating to uninsured and underinsured  
21 motorist coverage).

22 (g) Exemption.--Notwithstanding any other provision of law,  
23 any provision of this act shall be exempted from the Workers'  
24 Compensation Act.

## 25 CHAPTER 5

### 26 PORTABLE BENEFITS FUND BOARD

27 Section 501. Establishment of board.

28 The Portable Benefits Fund Board is established within the  
29 commission.

30 Section 502. Directors of board.

1 The board shall consist of the following directors:

2 (1) Three members of the DNC and TNC industries  
3 appointed by the Governor. The following apply:

4 (i) At least one member shall represent the DNC  
5 industry.

6 (ii) At least one member shall represent the TNC  
7 industry.

8 (iii) The members may not be from the same business  
9 entity.

10 (2) An individual appointed by the President pro tempore  
11 of the Senate.

12 (3) An individual appointed by the Speaker of the House  
13 of Representatives.

14 (4) An individual appointed by the Minority Leader of  
15 the Senate.

16 (5) An individual appointed by the Minority Leader of  
17 the House of Representatives.

18 Section 503. Operations of board.

19 (a) Compensation and expenses.--Directors of the board shall  
20 serve without compensation but may be reimbursed for their  
21 expenses from the fund.

22 (b) Transacting business.--The affirmative vote of a  
23 majority of the directors of the board shall be necessary to  
24 transact business and shall constitute a quorum.

25 (c) Chairperson and vice chairperson.--The directors of the  
26 board shall annually elect a chairperson and vice chairperson of  
27 the board. The vice chairperson shall serve as chairperson in  
28 the absence of the chairperson.

29 (d) Terms.--

30 (1) The term of each director of the board shall be

1 three years.

2 (2) At the expiration of a director's term, the director  
3 may be reappointed for an additional term or a new director  
4 may be appointed for the subsequent term, in the same manner  
5 as the original appointment.

6 (3) An individual may not serve for more than three  
7 successive terms.

8 (e) Delegation.--The board may delegate to one or more of  
9 its directors, officers, agents or employees such powers and  
10 duties as it deems proper.

11 Section 504. Portable benefits delivery.

12 (a) Establishment of delivery of benefits.--Within 240 days  
13 of the effective date of this subsection, the board shall  
14 establish a system for the delivery of portable benefits for  
15 qualifying DNC couriers and TNC drivers who provide services  
16 through the fund's members from their respective accounts as  
17 described in section 305(b).

18 (b) Qualifying events.--The portable benefits provided shall  
19 include an income replacement benefit to be made available to  
20 app-based workers upon qualifying events. The following apply:

21 (1) The board shall determine what constitutes a  
22 qualifying event.

23 (2) The board shall issue standards for DNC couriers and  
24 TNC drivers respectively, specifying:

25 (i) How an app-based worker's eligibility for the  
26 income replacement benefits shall be determined.

27 (ii) How the amount of the benefit shall be  
28 determined.

29 (iii) The duration for which workers will receive  
30 the benefit for each qualifying event.

1 (c) Additional benefits.--The fund may provide additional  
2 portable benefits that the board determines to be in the  
3 interest of app-based workers and within the financial capacity  
4 of the fund given its current assets and expected contributions.

5 The following apply:

6 (1) The provisions of additional portable benefits may  
7 take into account:

8 (i) The different needs of DNC couriers and TNC  
9 drivers, if any.

10 (ii) The number of hours that an app-based worker  
11 provides covered services through the fund's member  
12 companies over a set period of time.

13 (iii) The duration of the app-based worker's  
14 relationship with the fund's member companies.

15 (2) If the board determines that data relating to  
16 activity such as the amount of covered services performed is  
17 required for the provision of additional benefits, the board  
18 may enter into agreements with member companies governing the  
19 provision of data.

20 (d) Benefits study.--Within the first year of operation of  
21 the fund, the board shall be required to study the need for  
22 health and wellness benefits under this section and submit a  
23 report to the following:

24 (1) The Governor.

25 (2) The President pro tempore of the Senate.

26 (3) The Speaker of the House of Representatives.

27 Section 505. Financial accounting of fund.

28 (a) Preparation of statements.--The board shall prepare  
29 financial statements on an annual basis, in accordance with  
30 generally accepted accounting principles and the accounting

1 standards issued by the Governmental Accounting Standards Board.

2 (b) Access to DNC and TNC member records.--To the extent  
3 necessary for the calculation of the required fund  
4 contributions, the DNC and TNC members of the fund shall provide  
5 the board and agents of the board access to books, records and  
6 other documents necessary to calculate and verify the amounts of  
7 the required fund contributions.

8 CHAPTER 7

9 MISCELLANEOUS PROVISIONS

10 Section 701. App-based worker status.

11 (a) Discrimination prohibited.--It shall be unlawful for a  
12 network company, unless based upon a bona fide occupation  
13 qualification or public or worker safety need, to refuse to  
14 contract with, terminate the contract of or deactivate from the  
15 network company's online-enabled application or platform, any  
16 app-based worker based upon age, race, creed, color, national  
17 origin, sexual orientation, gender identity or expression,  
18 military status, sex, disability, predisposing genetic  
19 characteristics, familial status, marital status or status as a  
20 victim of domestic violence.

21 (b) Independent contractor.--Notwithstanding any other  
22 provision of law, including specifically the act of June 2, 1915  
23 (P.L.736, No.338), known as the Workers' Compensation Act, the  
24 act of December 5, 1936 (2nd Sp.Sess., 1937 P.L.2897, No.1),  
25 known as the Unemployment Compensation Law, and the act of  
26 January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act  
27 of 1968, and any orders, regulations or opinions, an app-based  
28 worker shall be deemed an independent contractor and not an  
29 employee or agent, whether actual, apparent or otherwise, with  
30 respect to the app-based worker's relationship with a network

1 company if the following conditions are met:

2 (1) The network company does not unilaterally prescribe  
3 specific dates, times of day or a minimum number of hours  
4 during which the app-based worker must be logged into the  
5 network company's online-enabled application or platform.

6 (2) The network company does not terminate the contract  
7 of the app-based worker for not accepting any specific  
8 request for covered services.

9 (3) The network company does not restrict the app-based  
10 worker from performing covered services through other network  
11 companies except while performing services through the  
12 network company.

13 (4) The network company does not restrict the app-based  
14 worker from working in any other lawful occupation or  
15 business.

16 Section 702. Severability.

17 (a) General rule.--Except as provided in subsection (b), the  
18 provisions of this act are severable. If any provision of this  
19 act or its application to any person or circumstance is held  
20 invalid, the invalidity shall not affect other provisions or  
21 applications of this act which can be given effect without the  
22 invalid provision or application.

23 (b) Exception.--Notwithstanding subsection (a), if section  
24 701 of this act is for any reason held to be invalid by a  
25 decision of any court of competent jurisdiction, that decision  
26 shall apply to the entirety of the remaining provisions of this  
27 act, and no provision of this act shall be deemed valid or given  
28 force of law.

29 Section 703. Statewide uniformity.

30 A provision of a local law or ordinance, or a rule or

1 regulation promulgated on or after the enactment of this act,  
2 which governs the relationship between a network company and an  
3 app-based worker shall upon the effective date of this act be  
4 preempted.

5 Section 704. Effective date.

6 This act shall take effect in 30 days.