

2022 South Dakota Legislature

House Bill 1118**AMENDMENT 1118A FOR THE INTRODUCED BILL**

1 **An Act to clarify when a delivery facilitation contractor may be considered an**
2 **independent contractor.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That chapter 60-1 be amended with a NEW SECTION:**

5 A delivery facilitation contractor is an independent contractor of a delivery
6 facilitation platform if:

7 (1) The delivery facilitation contractor and delivery facilitation platform agree in writing
8 that the delivery facilitation contractor is an independent contractor of the delivery
9 facilitation platform;

10 (2) The delivery facilitation platform does not unilaterally prescribe specific hours
11 during which the delivery facilitation contractor must be available to accept service
12 requests submitted through the delivery facilitation platform's digital network;

13 (3) The delivery facilitation platform does not prohibit the delivery facilitation
14 contractor from engaging in outside employment or performing services through
15 another delivery facilitation platform except while the delivery facilitation
16 contractor is performing services through the delivery facilitation platform's digital
17 network; and

18 (4) The delivery facilitation platform may not terminate the contract of a delivery
19 facilitation contractor for failure or refusal to accept service requests.

20 For services performed before July 1, 2022, a delivery facilitation contractor is
21 considered an independent contractor of the delivery facilitation platform if the
22 requirements of this section were satisfied at the time the services were performed.

23 **Section 2. That chapter 60-1 be amended with a NEW SECTION:**

24 Terms used in section 1 of this Act mean:

- 1 (1) "Delivery facilitation contractor," a person who:
2 (a) Enters into a written agreement with a delivery facilitation platform to use
3 the delivery facilitation platform's digital network to connect with customers
4 seeking services offered by a delivery facilitation contractor;
5 (b) Performs services for customers through a delivery facilitation platform's
6 digital network in exchange for value; and
7 (c) Does not perform services at a physical business location operated by the
8 delivery facilitation platform, if any, in this state.

9 The term does not include a person transporting freight, sealed or closed
10 envelopes, boxes, parcels, or other similar sealed or closed containers for
11 compensation. The term includes a transportation network company driver as
12 defined in § 32-40-1;

- 13 (2) "Delivery facilitation platform," a person who:
14 (a) Maintains a digital network to facilitate services by a delivery facilitation
15 contractor to customers seeking those services; and
16 (b) Accepts requests from customers only through the delivery facilitation
17 platform's digital network.

18 The term includes a transportation network company as defined in § 32-40-1.
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