



2022 South Dakota Legislature

House Bill 1118

HOUSE COMMERCE AND ENERGY ENGROSSED

Introduced by: **Representative Reed**

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:

25 (1) "Delivery facilitation contractor," a person who:

1 (a) Enters into a written agreement with a delivery facilitation platform to use
2 the delivery facilitation platform's digital network to connect with customers
3 seeking services offered by a delivery facilitation contractor;

4 (b) Performs services for customers through a delivery facilitation platform's
5 digital network in exchange for value; and

6 (c) Does not perform services at a physical business location operated by the
7 delivery facilitation platform, if any, in this state.

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

12 (2) "Delivery facilitation platform," a person who:

13 (a) Maintains a digital network to facilitate services by a delivery facilitation
14 contractor to customers seeking those services; and

15 (b) Accepts requests from customers only through the delivery facilitation
16 platform's digital network.

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