



2022 South Dakota Legislature
House Bill 1118
ENROLLED

AN ACT

ENTITLED An Act to clarify when a delivery facilitation contractor may be considered an independent contractor.

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

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

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

- (1) The delivery facilitation contractor and delivery facilitation platform agree in writing that the delivery facilitation contractor is an independent contractor of the delivery facilitation platform;
- (2) The delivery facilitation platform does not unilaterally prescribe specific hours during which the delivery facilitation contractor must be available to accept service requests submitted through the delivery facilitation platform's digital network;
- (3) The delivery facilitation platform does not prohibit the delivery facilitation contractor from engaging in outside employment or performing services through another delivery facilitation platform except while the delivery facilitation contractor is performing services through the delivery facilitation platform's digital network; and
- (4) The delivery facilitation platform may not terminate the contract of a delivery facilitation contractor for failure or refusal to accept service requests.

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

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

Terms used in section 1 of this Act mean:

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

- (a) Enters into a written agreement with a delivery facilitation platform to use the delivery facilitation platform's digital network to connect with customers seeking services offered by a delivery facilitation contractor;
- (b) Performs services for customers through a delivery facilitation platform's digital network in exchange for value; and
- (c) Does not perform services at a physical business location operated by the delivery facilitation platform, if any, in this state.

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

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

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

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I certify that the attached Act originated in
the:
House as Bill No. 1118

Received at this Executive Office
this ____ day of _____,
2022 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this _____ day of
_____, A.D., 2022

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2022
at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1118
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State