STATE OF NEW YORK

7318

2023-2024 Regular Sessions

IN ASSEMBLY

May 17, 2023

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Insurance

AN ACT to amend the general business law, in relation to insurance requirements for third-party food delivery apps

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 391-v of the general business law, as added by chapter 693 of the laws of 2021, is amended to read as follows:

§ 391-v. Third-party food delivery agreements **and insurance requirements**. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Agreement" means a written contractual agreement between a food service establishment and a third-party food delivery service authorizing the inclusion of the food service establishment's products on the third-party food delivery platform.

(b) "Food service establishment" means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

(c) "Third-party food delivery service" means any website, mobile application or other internet service that offers or arranges for the sale or delivery of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverage from, a food service establishment located in the state.

(d) "Third-party food delivery platform" means the online or mobile platform of the third-party food delivery service on which**: (i)** a consumer can view products available for sale and place an order for a food service establishment's products**; or (ii) a delivery person can view and accept delivery assignments**.

(e) "Delivery person" means any independent contractor or registered agent acting on behalf of a third-party food delivery service that

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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transports food or beverages from a food service establishment to the customer.

2. (a) A third-party food delivery service shall not list, advertise, promote, or sell a food service establishment's products, or arrange for the delivery of an order of such products, on a third-party food delivery platform without a valid agreement with the food service establishment authorizing the inclusion of their products on such platform.

(b) An agreement executed in accordance with this section shall not include a provision, clause, or covenant that requires a food service establishment to indemnify a third-party food delivery service, any independent contractor acting on behalf of the third-party food delivery service, or any registered agent of the third-party food delivery service, for any damages or harm by an act or omission occurring after the food service establishment's product leaves the place of business of the food service establishment. To the extent an agreement contains such a provision, such provision shall be deemed void and unenforceable.

(c) A food service establishment included on a third-party food delivery platform in violation of this section shall have the right to bring an action in a court of competent jurisdiction for damages, penalties as set forth in this section, and injunctive relief. Such court, in its discretion, may also award reasonable court costs and attorneys' fees.

[~~(d)~~] 3. (a) A delivery person, or a third-party delivery service on the delivery person's behalf through a group policy, shall maintain insurance that recognizes that the delivery person is acting on behalf of the third-party food delivery service and provides responsibility coverage:

(i) while the delivery person is logged onto the third-party food delivery platform; and

(ii) while the delivery person is engaged in a delivery arranged by the third-party food delivery platform.

(b) (i) The following financial responsibility insurance requirements shall apply while a delivery person is logged onto the third-party food delivery platform but is not engaged in a delivery arranged by the third-party food delivery platform: insurance against loss from the liability imposed by law for damages, including damages for care and loss of services, because of bodily injury to or death of any person, and injury to or destruction of property arising out of the ownership, maintenance, use or operation of a personal vehicle or vehicles, including bicycles and electric bicycles, within this state, or elsewhere in the United States in North America or Canada, subject to a limit, exclusive of interest and costs, with respect to each such occurrence, of at least seventy-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of at least one hundred fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and to a limit of at least twenty-five thousand dollars because of injury to or destruction of property of others in any one accident, provided however, that such policy need not be for a period coterminous with the registration period, if any, of the personal vehicle insured, and coverage, if any, in satisfaction of the financial responsibility requirements set forth in section three thousand four hundred twenty of the insurance law, article fifty-one of the insurance law, and such other requirements or regulations that may apply for the purposes of satisfying the financial responsibility requirements with respect to the use or operation of a motor vehicle.

(ii) The coverage requirements of subparagraph (i) of this paragraph may be satisfied by any of the following:

(A) insurance maintained by the delivery person; or

(B) insurance provided through a group policy maintained by the third-party food delivery service; or

(C) a combination of items (A) and (B) of this subparagraph.

(c) (i) The following financial responsibility insurance requirements shall apply while a delivery person is engaged in a delivery arranged by the third-party food delivery platform: insurance against loss from the liability imposed by law for damages, including damages for care and loss of services, because of bodily injury to or death of any person, and injury to or destruction of property arising out of the ownership, maintenance, use, or operation of a specific personal vehicle or vehicles, including bicycles and electric bicycles within this state, or elsewhere in the United States in North America or Canada, subject to a limit, exclusive of interest and costs, with respect to each such occurrence, of at least one million two hundred fifty thousand dollars because of bodily injury to or death of any person, and injury to or destruction of property, provided however, that such policy need not be for a period coterminous with the registration period, if any, of the personal vehicle insured, and coverage, if any, in satisfaction of the financial responsibility requirements set forth in section three thousand four hundred twenty of the insurance law, article fifty-one of the insurance law, coverage provided in accordance with subsection (f) of section three thousand four hundred twenty of the insurance law, providing supplementary uninsured/underinsured motorist insurance for bodily injury, in the amount of one million two hundred fifty thousand dollars because of bodily injury to or death of any person in any one accident; and such other requirements or regulations that may apply for the purposes of satisfying the financial responsibility requirements with respect to the use or operation of a motor vehicle, bicycle or electric bicycle.

(ii) The coverage requirements of subparagraph (i) of this paragraph may be satisfied by any of the following:

(A) insurance maintained by the delivery person; or

(B) insurance provided through a group policy maintained by the third-party food delivery service; or

(C) a combination of items (A) and (B) of this subparagraph.

(d) A third-party food delivery service, upon entering into a contractual agreement with a delivery person, provide notice to the delivery person that they may need additional insurance coverage including motor vehicle physical damage coverage as described in paragraph nineteen of subsection (a) of section one thousand one hundred thirteen of the insurance law if the vehicle being used by the delivery person is subject to a lease or loan. A third-party food delivery service shall also post this notice on its website in a prominent place, and provide contact information for the department of financial services.

(e) If insurance maintained by a delivery person pursuant to paragraphs (b) and (c) of this subdivision has lapsed or does not provide the required coverage, then the group policy maintained by a third-party food delivery service shall provide the coverage required by this section beginning with the first dollar of a claim and have the duty to defend such claim.

(f) Coverage under a group policy maintained by the third-party food delivery service shall not be dependent on the denial of a claim by the insurer that issued the insurance policy used to register a delivery

person's motor vehicle, nor shall that insurer be required to first deny a claim.

(g) (i) Except as provided in subparagraph (ii) of this paragraph, a group policy maintained by a third-party food delivery service pursuant to item (B) of subparagraph (ii) of paragraph (b) or item (B) of subparagraph (ii) of paragraph (c) of this subdivision shall be placed with an insurer authorized to write insurance in this state.

(ii) If a third-party food delivery service is unable to purchase a group policy pursuant to item (B) of subparagraph (ii) of paragraph (b) or (c) of this subdivision because such insurance is unavailable from authorized insurers, the third-party food delivery service may acquire such group insurance with an excess line broker pursuant to section two thousand one hundred eighteen of the insurance law.

(iii) The obligation to determine whether the insurance required by this section is unavailable from insurers authorized to write insurance in this state shall be made prior to the initial placement and at each renewal of a policy.

(h) A delivery person who, while operating a vehicle, including a bicycle or electric bicycle, was logged on to the third-party food delivery platform but not engaged in a delivery arranged by the third-party food delivery service or was engaged in a delivery arranged by the third-party food delivery service, and has in effect the insurance required pursuant to this section, shall not be deemed to be in violation of article six of the vehicle and traffic law during such time that he or she was logged onto the third-party food delivery platform but not engaged in a delivery arranged by the third-party food delivery service or was engaged in a delivery arranged by the third-party food delivery service.

(i) A delivery person shall carry proof of coverage satisfying the requirements of paragraphs (b) and (c) of this subdivision with him or her at all times during his or her use or operation of a vehicle, including a bicycle or electric bicycle, in connection with a third-party food delivery service. Such proof of coverage shall be in such form as the commissioner of the department of motor vehicles shall prescribe, which may be in the form of an insurance identification card as defined in section three hundred eleven of the vehicle and traffic law. Any insurance identification card issued pursuant to the provisions of this section shall be in addition to the insurance identification card required pursuant to article six of the vehicle and traffic law, and nothing contained in this article shall be deemed to supersede the requirements of such article six. Whenever the production of an insurance identification card is required by law, a delivery person shall (i) produce the insurance identification card issued pursuant to article six of the vehicle and traffic law, and (ii) if such delivery person (A) was logged onto the third-party food delivery platform but not engaged in a delivery arranged by the third-party food delivery service; or (B) was engaged in a delivery arranged by the third-party food delivery service, such driver shall also produce the insurance identification card required pursuant to this section.

(j) The superintendent of financial services is authorized to issue such rules and regulations necessary to implement this section.

(k) The superintendent of financial services may promulgate regulations to address insurance coverage under this section when a delivery person uses multiple third-party food delivery services or platforms simultaneously.

(l) An insurer shall not include a mandatory arbitration clause in a policy issued pursuant to this section. Nothing in this section supersedes the mandatory arbitration requirements contained in section five thousand one hundred five of the insurance law.

4. Any person that violates any provision of this section shall be subject to a civil penalty of up to one thousand dollars per violation**, except that the third-party food delivery service shall be the sole liable party for violations of subdivision three of this section**. Each day a food service establishment is included on a third-party food delivery platform and each food service establishment included on a third-party food delivery platform shall be considered a separate violation. **Each delivery begun or completed without the financial responsibility requirements required by subdivision three of this section shall be considered a separate violation.**

§ 2. This act shall take effect on the ninetieth day after it shall have become a law.