

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 Assem-
bly, do enact as follows:

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

3 § 391-v. Third-party food delivery agreements and insurance require-
4 ments. 1. For the purposes of this section, the following terms shall
5 have the following meanings:

6 (a) "Agreement" means a written contractual agreement between a food
7 service establishment and a third-party food delivery service authoriz-
8 ing the inclusion of the food service establishment's products on the
9 third-party food delivery platform.

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

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

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

24 (e) "Delivery person" means any independent contractor or registered
25 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.

LBD10975-01-3

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

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

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

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

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

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

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

31 (b) (i) The following financial responsibility insurance requirements
32 shall apply while a delivery person is logged onto the third-party food
33 delivery platform but is not engaged in a delivery arranged by the
34 third-party food delivery platform: insurance against loss from the
35 liability imposed by law for damages, including damages for care and
36 loss of services, because of bodily injury to or death of any person,
37 and injury to or destruction of property arising out of the ownership,
38 maintenance, use or operation of a personal vehicle or vehicles, includ-
39 ing bicycles and electric bicycles, within this state, or elsewhere in
40 the United States in North America or Canada, subject to a limit, exclu-
41 sive of interest and costs, with respect to each such occurrence, of at
42 least seventy-five thousand dollars because of bodily injury to or death
43 of one person in any one accident and, subject to said limit for one
44 person, to a limit of at least one hundred fifty thousand dollars
45 because of bodily injury to or death of two or more persons in any one
46 accident, and to a limit of at least twenty-five thousand dollars
47 because of injury to or destruction of property of others in any one
48 accident, provided however, that such policy need not be for a period
49 coterminous with the registration period, if any, of the personal vehi-
50 cle insured, and coverage, if any, in satisfaction of the financial
51 responsibility requirements set forth in section three thousand four
52 hundred twenty of the insurance law, article fifty-one of the insurance
53 law, and such other requirements or regulations that may apply for the
54 purposes of satisfying the financial responsibility requirements with
55 respect to the use or operation of a motor vehicle.

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

3 (A) insurance maintained by the delivery person; or

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

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

7 (c) (i) The following financial responsibility insurance requirements
8 shall apply while a delivery person is engaged in a delivery arranged by
9 the third-party food delivery platform: insurance against loss from the
10 liability imposed by law for damages, including damages for care and
11 loss of services, because of bodily injury to or death of any person,
12 and injury to or destruction of property arising out of the ownership,
13 maintenance, use, or operation of a specific personal vehicle or vehi-
14 cles, including bicycles and electric bicycles within this state, or
15 elsewhere in the United States in North America or Canada, subject to a
16 limit, exclusive of interest and costs, with respect to each such occur-
17 rence, of at least one million two hundred fifty thousand dollars
18 because of bodily injury to or death of any person, and injury to or
19 destruction of property, provided however, that such policy need not be
20 for a period coterminous with the registration period, if any, of the
21 personal vehicle insured, and coverage, if any, in satisfaction of the
22 financial responsibility requirements set forth in section three thou-
23 sand four hundred twenty of the insurance law, article fifty-one of the
24 insurance law, coverage provided in accordance with subsection (f) of
25 section three thousand four hundred twenty of the insurance law, provid-
26 ing supplementary uninsured/underinsured motorist insurance for bodily
27 injury, in the amount of one million two hundred fifty thousand dollars
28 because of bodily injury to or death of any person in any one accident;
29 and such other requirements or regulations that may apply for the
30 purposes of satisfying the financial responsibility requirements with
31 respect to the use or operation of a motor vehicle, bicycle or electric
32 bicycle.

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

35 (A) insurance maintained by the delivery person; or

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (1) An insurer shall not include a mandatory arbitration clause in a
2 policy issued pursuant to this section. Nothing in this section super-
3 cedes the mandatory arbitration requirements contained in section five
4 thousand one hundred five of the insurance law.

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

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