STATE OF NEW YORK

6760--A

2023-2024 Regular Sessions

IN SENATE

May 9, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the insurance 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) **"Delivery available period" means the period when a delivery network driver:**

(i) has logged on to a digital network;

(ii) is available to receive requests to provide delivery services from a delivery network company;

(iii) is operating a personal vehicle; and

(iv) is not providing delivery services or operating in the delivery service period.

(c) "Delivery network company" means a corporation, partnership, sole proprietorship, or other entity that operates in this state and uses a digital network to connect a delivery network company customer to a delivery network driver to provide delivery services.

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

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(d) "Delivery network company customer" means a person who orders goods that are delivered by a delivery network driver at the direction of the person.

(e) "Delivery network driver" means an individual who provides delivery services through a digital network using a personal vehicle.

(f) "Delivery services" means the fulfillment of delivery requests made by a customer through a digital network, including the pickup of any goods and the delivery of the goods to a customer by a delivery network driver. Delivery services may include a series of deliveries to different customers, or to different locations at the direction of a customer.

(g)"Delivery service period" means the period:

(i) beginning when a delivery network driver starts operating a personal vehicle en route to pick up goods for a delivery or series of deliveries as documented via a digital network controlled by a delivery network company;

(ii) continuing while the delivery network driver transports the requested delivery or deliveries; and

(iii) ending upon delivery of the requested goods to:

(A) the delivery network company customer or the last delivery network company customer in a series of deliveries or to a location designated by the delivery network company customer or the last location so designated in a series of deliveries; or

(B) a location designated by the delivery network company, including for purposes of returning the goods.

(h) "Digital network" means any online-enabled application, software, website, or system offered or utilized by a delivery network company that enables deliveries with delivery network drivers.

(i) "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)~~](j) "Personal vehicle" means a motor vehicle, a limited use motorcycle as defined in section one hundred twenty-one-b of the vehicle and traffic law, an electric scooter as defined in section one hundred fourteen-e of the vehicle and traffic law or bicycle with electric assist as defined in section one hundred two-c of the vehicle and traffic law and that is:

(i) used by a delivery network driver to provide delivery services; and

(ii) owned, leased, or otherwise authorized for use by the delivery network driver.

(k) "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)~~] (1) "Third-party food delivery platform" means the online or mobile platform of the third-party food delivery service on which a consumer can view products available for sale and place an order for a food service establishment's products.

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 network company shall ensure that, during the delivery available period, if it applies, and during the delivery service period, primary automobile liability insurance is in place that recognizes that the driver is a delivery network driver or that does not exclude coverage for use of a personal vehicle to provide deliveries.**

(b) During the delivery service period and delivery available period, the delivery network driver, delivery network company, or any combination of the two shall maintain a motor vehicle liability insurance policy that provides the coverage required under article fifty-three of the insurance law during the delivery available period and delivery service period in amounts not less than:

(i) For bodily injury and property damage to third parties:

(A) fifty thousand dollars ($50,000) or the amount required under paragraph one of subsection (a) of section fifty-three hundred three of the insurance law, whichever is greater, for all damages arising out of bodily injury sustained by any one person as a result of any one accident;

(B) one hundred thousand dollars ($100,000) or the amount required under paragraph one of subsection (a) of section fifty-three hundred three of the insurance law, whichever is greater, for all damages arising out of bodily injury sustained by all persons as a result of any one accident; and

(C) twenty-five thousand dollars ($25,000) or the amount required under paragraph two of subsection (a) of section fifty-three hundred three of the insurance law, whichever is greater, for all damages arising out of damage to or destruction of property as a result of any one accident.

(ii) For basic reparation benefits, the amount set forth in paragraphs three and four of subsection (a) of section fifty-three hundred three of the insurance law.

(c) If the insurance coverage maintained by a delivery network driver in accordance with paragraphs (a) and (b) of this subdivision has lapsed or does not provide the required coverage, insurance maintained by the delivery network company shall:

(i) provide the coverage required by paragraphs (a) and (b) of this subdivision beginning with the first dollar of a claim; and

(ii) have the duty to defend a claim made under the coverage provided under paragraph (b) of this subdivision.

(d) Coverage under an automobile insurance policy maintained by the delivery network company shall not be dependent upon another motor vehicle liability insurer first denying a claim, nor shall another motor vehicle liability insurance policy be required to first deny a claim.

(e) Insurance coverage required by this section may be obtained from an insurance company duly licensed to transact business under the insurance laws of this state or by an eligible excess lines broker licensed under section two thousand one hundred five of the insurance law.

(f) The coverage required pursuant to paragraphs (a) and (b) of this subdivision shall be deemed to meet the requirements for financial responsibility under the vehicle and traffic law.

(g) A delivery network driver shall carry proof of insurance required pursuant to paragraphs (a) and (b) of this subdivision at all times while using a personal vehicle in connection with a digital network. In the event of an accident, a delivery network driver shall, upon request, provide insurance coverage information to the directly interested parties, automobile insurers, and investigating law enforcement officers. The insurance coverage information may be displayed or provided in either paper or electronic form as provided by regulation of the commissioner of motor vehicles. A delivery network driver shall, upon request, disclose to the directly interested parties, automobile insurers, and investigating law enforcement officers whether the driver was operating during the delivery available period or the delivery service period at the time of the accident.

(h) In a claims coverage investigation, a delivery network company or its insurer shall cooperate with all insurers that are involved in the claims coverage investigation to facilitate the exchange of information and shall immediately provide upon request by directly involved parties or any insurer the precise times that a delivery network driver began and ended the delivery available period and/or the delivery service period on the delivery network company's digital network in the twelve-hour period immediately preceding the accident and in the twelve-hour period immediately following the accident. Insurers potentially providing the coverage required by this subdivision shall disclose upon request by any other such insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any automobile insurance maintained in order to satisfy the requirements of this subdivision.

(i) The insurer or insurers of a delivery network company providing coverage under paragraphs (a) and (b) of this subdivision shall assume primary liability for a claim when a dispute exists as to when the delivery available period and/or the delivery service period began or ended and the delivery network company does not have available, did not retain, or fails to provide the information required by paragraph (h) of this subdivision.

4. (a) A delivery network company shall not be deemed to control, direct, or manage a personal vehicle or delivery network driver that connects to the company's digital network, except where agreed to by written contract.

(b) A delivery network company shall not permit a delivery network driver to engage in delivery services on the company's digital network until the company discloses in writing to the driver:

(i) the insurance coverage, including the types of coverage and the limits for each coverage, that the company provides while the driver uses a personal vehicle in connection with the company's digital network; and

(ii) that the driver's own motor vehicle liability insurance policy might not provide any coverage during a delivery available period, if applicable, or a delivery service period.

5. (a) Nothing in subdivision three or four of this section shall be construed to:

(i) invalidate or limit an exclusion contained in a motor vehicle liability insurance policy, including any policy in use or approved for use that excludes coverage for motor vehicles used for delivery, or for any business use; or

(ii) invalidate, limit, or restrict an insurer's ability under existing law to underwrite any insurance policy, or cancel and/or non-renew policies.

(b) Nothing in subdivision three or four of this section limits the scope of federal or state law regarding the delivery or transport of goods. Deliveries made pursuant to this section that are subject to federal or state law regarding the delivery or transport of goods shall also comply with the requirements of those laws. In the event of a conflict between subdivision three or four of this section and another law dealing with the delivery or transport of goods, the other law prevails.

6. 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. The insurance law is amended by adding a new section 3459-a to read as follows:

§ 3459-a. Delivery service exclusions for motor vehicle insurance policies. (a) The definitions set forth in section three hundred ninety-one-v of the general business law shall apply to this section.

(b) Notwithstanding any other provision of law to the contrary, an authorized insurer that writes motor vehicle liability insurance in the state may exclude any and all coverage and the duty to defend or indemnify for any injury or loss that occurs during the delivery available period and the delivery service period, including but not limited to:

(1) liability coverage for bodily injury and property damage;

(2) coverage provided pursuant to article fifty-one of this chapter;

(3) uninsured motorist coverage;

(4) supplementary uninsured/underinsured motorist coverage; and

(5) motor vehicle physical damage coverage as described in paragraph nineteen of subsection (a) of section one thousand one hundred thirteen of this chapter.

(c) Nothing in this article shall invalidate or limit an exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use that shall exclude coverage for motor vehicles made available for rent, sharing, hire or any business use.

(d) Nothing in this section invalidates or limits an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles used for delivery or for any business use.

(e) Nothing in this section invalidates, limits or restricts an insurer's ability under existing law to underwrite any insurance policy. Nothing in this section invalidates, limits or restricts an insurer's ability under existing law to cancel and non-renew policies.

(f) A motor vehicle liability insurer that defends or indemnifies a claim against a delivery network driver that is excluded under the terms of its policy shall have the right to seek recovery against the insurer providing coverage under paragraphs(a) and (b) of subdivision three of section three hundred ninety-one-v of the general business law if the claim:

(i) occurs during the delivery available period or the delivery service period; and

(ii) is excluded under the terms of its policy.

§ 3. This act shall take effect one year after it shall have become a law.