



Maplebear Inc. d/b/a Instacart
50 Beale Street, Suite 600
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March 15, 2023

The Honorable Douglas Larsen
Chair
Senate Industry and Business Committee
North Dakota Legislative Assembly
600 E Boulevard Ave
State Capitol
Bismarck, ND 58505-0601

Re: Instacart Written Testimony, Amend, HB 1440 (Ruby)

Dear Chair Larsen, Vice Chair Kessel and Members of the Senate Industry and Business Committee,

I am writing to thank you for the opportunity to provide comment on HB 1440. Respectfully, we recommend the Committee amend this bill before advancing it.

Instacart is the leading grocery technology company in North America and works with grocers and retailers to transform how people shop. Instacart makes it possible for people to get the groceries they need from the retailers they love, and for hundreds of thousands of Instacart shoppers to earn by picking, packing and delivering orders on their own flexible schedule.

Instacart is generally supportive of efforts to modernize legal frameworks that aim to sensibly regulate entities, products and services, as long as they continue to encourage, enable, and advance innovation. We believe additions to regulatory frameworks must avoid duplicating existing requirements or creating overly broad, burdensome, and confusing requirements that are unnecessarily costly and difficult for companies to implement without providing significant value. As a result, we are fully supportive of the suggested amendments offered by Chairman Ruby, and also suggest additional amendments that will help to clarify and streamline the implementation of this bill.

Specifically, we recommend amending the following provisions of the bill, as suggested by Chairman Ruby and for the reasons described further below:

- Removal of the "Delivery available period" definition and subsequent references
- Removal of the Section 4 amendment and 39-34-03. Transportation driver requirements.
- Inserting a new section with language clarifying independent contractor certainty for delivery network drivers.

We also recommend amending the following provisions of the bill:

- Amending the introductory language in the bill referring to "classifying a transportation network company driver as an independent contractor" to read "delivery network company driver" so as to conform with the rest of the bill and its purpose.
- Removing the requirements in Paragraph 1 of Section 26.1-40.2-02, to allow delivery network companies appropriate flexibility in communicating with delivery network company drivers about their respective obligations with respect to automobile insurance coverage, consistent with the obligations set forth in the bill. At a minimum, we recommend removing the reference in Paragraph 1 to "as part of the delivery network company's agreement with the driver" as this would create a highly burdensome and difficult-to-administer obligation for delivery network companies and their drivers to execute new contracts each time a company's insurance program changed.
- Removing the word "primary" from the bill when describing the type of insurance coverage required by delivery network companies, to allow insurance carriers and delivery network companies flexibility in the insurance policies they underwrite and obtain, so long as the requisite coverage described in the bill is obtained.



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- Removal of Paragraph 4 of Section 26.1-40.2-03, consistent with other provisions of the bill that allow for a delivery network company driver or the delivery network company to obtain the requisite insurance, so long as the delivery network company's carrier provides coverage in the event the driver's policy is unavailable or insufficient.
- Amending Paragraph 6 of Section 26.1-40.2-03, to state that a delivery network company or its insurer shall cooperate in good faith, without setting forth the precise requirements for information to be shared, which may vary depending on the specific circumstances of the claim, available coverage, and parties involved.
- Removal of "delivery network company" from Section 39-34-02. Because a delivery network company transaction materially differs from a transportation network company transaction, the provisions of this section do not make sense as applied to delivery network companies. For example, it is unclear what an "applicable rate" is in the context of a consumer purchase of grocery items. Customers placing an order from a retailer through the Instacart platform may select a variety of items before completing a transaction, and are shown the prices of the goods they have selected, as well as applicable fees and estimated taxes, before completing the transaction. Unlike a transportation network company transaction, a delivery network company transaction generally follows a more traditional e-commerce purchasing process. It does not make sense to create a new standard for these transactions, in the context of automobile claims and insurance, and doing so may result in disparate and unfair treatment between delivery network companies and other e-commerce companies operating in the state.

We are concerned that unless amended, the proposed legislation creates a number of burdensome and in some cases, duplicative regulations for the companies who operate in North Dakota. Three changes proposed by Chairman Ruby are particularly necessary:

First, we disagree with the requirement for platforms to maintain auto insurance for drivers while they are online or have the app/platform open but are not providing any delivery services. This period is analogous to non-commercial commute time for independent delivery drivers, as they are under no obligation to accept any particular service requests and are not otherwise engaged in productive work. They could simply have the app open to browse for available work without ever accepting a delivery request.

Second, section 39-34-03 likely overlaps with state and federal laws, including those related to background checks. If the goal is to have safe drivers on the road, the North Dakota DMV licensing process may be a more appropriate venue to address this issue.

Third, workers who engage with app-based platforms choose when and where they want to work, which orders to fulfill, and how long they want to spend on a platform. Flexibility is one of the most important reasons workers perform this type of work. Without any provision guaranteeing their independence, certain requirements in the bill could be read to suggest that drivers are subject to the control of platform operators. And that suggestion could lead operators to change the way their platforms work or make fewer opportunities available in North Dakota. Neither result would help app-based delivery drivers – the intended beneficiaries of the bill.

Therefore, we ask that you adopt the amendments put forth by Chairman Ruby, and consider the additional amendments we have proposed above, prior to consideration of this measure.

Sincerely,

Kelley R. Foxx

Kelley R. Foxx

Head of Government Affairs, Midwest