

**Testimony on H. No. 961
An Act Establishing Portable Benefit Accounts For App-Based-Delivery Drivers**

**Submitted to the Joint Committee on Financial Services
Massachusetts Legislature
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OPPOSED

Submitted By:
Lorena Roque, Senior Policy Analyst
Center for Law and Social Policy
Washington, D.C.

Dear Members of the Joint Committee on Financial Services,

Thank you for holding this hearing and for the opportunity to submit this testimony on behalf of the Center for Law and Social Policy (CLASP). CLASP stands in strong opposition of H. 961, an Act establishing portable benefit accounts for app-based-delivery drivers, which would deny delivery workers the benefits guaranteed to them by law and create a second-class employment status that gives Delivery Network workers substandard benefits on only a fraction of the time they spend working.

CLASP is a national, nonpartisan, nonprofit, advancing anti-poverty policy solutions that disrupt structural, systemic racism, and remove barriers blocking people from economic justice and opportunity. With deep expertise in a wide range of programs and policy ideas, longstanding relationships with anti-poverty, child and family, higher education, workforce development, and economic justice stakeholders, and over 50 years of history, CLASP works to amplify the voices of directly-impacted workers and families and help public officials design and implement effective programs. CLASP also seeks to improve job quality for workers earning low incomes. That includes increasing wages and providing access to paid sick days, paid family and medical leave, and stable work schedules. Quality jobs enable individuals to balance their work, school, and family responsibilities – promoting economic stability as well as career advancement.

All working people have a right to a good, stable job that pays them a living wage and treats them with respect. Throughout the Commonwealth of Massachusetts, hundreds of thousands of hourly workers – disproportionately women and people of color – struggle to earn a stable income because of low wages and the inability to access employee benefits. H.961 strips workers of being considered employees in the Commonwealth of Massachusetts, allows corporations to skirt accountability and avoid paying into Massachusetts' social safety net, and forces the taxpayers of the Commonwealth to subsidize wages of workers to whom these corporations refuse to pay a living wage.

Wrongly Classifies Delivery Network Company workers as Independent Contractors

H. 916 claims to establish benefit accounts for Transportation Network Company (TNC) workers but in fact creates a legal carve out to permanently classify these drivers as independent contractors, using the justification that these workers will “retain full control of where, when, and how they perform app-based services/work” (Section 1, p. 1-2). However, this definition is inconsistent and violates the Fair Labor Standards Act 148B ABC Test, which states:

Section 148B: (a) For the purpose of this chapter and chapter 151, an individual performing any service, except as authorized under this chapter, shall be considered to be an employee under those chapters unless:—

- (1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and*
- (2) the service is performed outside the usual course of the business of the employer; and,*
- (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.*

In fact, (1) Delivery Network Companies (DNC) control working conditions of delivery workers, and (2) these workers perform work that is part of the company’s standard business offerings. And (3), delivery workers necessarily hold themselves out as an agent of the business. Thus, this fails all 3 prongs of 148B’s ABC Test.

Additionally, H 916 states that any worker who exercises independent judgement in their position as a worker and has *any* flexibility in work location or flex hours fits this legislation’s definition and justification for misclassification. As written this legislation is a harmful departure from Massachusetts’s current labor law and could warp interpretations of Massachusetts’s 148B’s control prong of the ABC test.

Portable Benefit Accounts Do Not Replace MA Paid Family and Medical Leave, Paid Sick Leave

H 916 provides “portable benefits accounts” after a DNC worker had been paid at least \$1000 by a DNC app in a quarter for that year and the next three quarters. DNCs would contribute an amount equal to 4 percent of an eligible driver’s quarterly earnings. These “portable benefits accounts” can be used for sick leave, disability, and reduced earnings (50% greater reduction). However, this portable benefits account creates one fund that a worker must use only for:

- a. Illness/accident
- b. Birth or Adoption of a child (not foster care)
- c. Federal/State Declared Emergency
- d. An “Earnings Loss” event resulting in a 50 percent more of loss in monthly earnings for previous month through “no fault” of worker.
- e. May be transferred to an IRA
- f. To cover health insurance.

This one benefit account is meant to cover all of the benefits above, yet does not reflect the benefits that workers are entitled to under Massachusetts labor law. In the case of paid sick leave, workers in

Massachusetts are entitled to earn and use up to 40 hours of job-protected sick time per year to take care of their health and family members. Workers must earn at least one hour of earned sick leave for every 30 hours worked. Separately, Massachusetts employees are eligible for up to 26 [weeks](#) combined family and medical leave per year. In the case of health insurance, Massachusetts requires most employers to contribute significantly to the health insurance and paid family medical leave of their full-time employees.⁸

This bill offers the illusion of providing benefits yet, most DNC workers would only receive a partial benefit as a result of this legislation's creation of a two-tiered employment system. If digital platform companies want to support their DNC workers then they should abide by Massachusetts labor laws by classifying them as employees and appropriately paying into the social safety net that Massachusetts has fought to build.

Addressing Discrimination

H 916 prohibits discrimination against DNC workers, however this legislation does not provide rights to sue or pursue claims at Massachusetts Claims Against Discrimination (MCAD), nor damages or attorneys' fees. Although this legislation prohibits discrimination, it fails to provide an accountability mechanism and thus fails to protect workers against discrimination from DNC companies.

The Commonwealth of Massachusetts has been a national leader in building economic opportunity and security for working families. Massachusetts was the first state to pass a minimum wage law in 1912, the first state to pass a near-universal health care coverage, and one of just a handful of states to pass paid family and medical leave. H.916 would be a significant retreat from Massachusetts remarkable history of advancing workers' rights and economic security for its residents.

CLASP opposes H. 916 and urges the committee to oppose and reject this legislation. Thank you for your time and attention on this important issue.

Sincerely,
Lorena Roque
Washington, D.C.
lroque@clasp.org