

NINETEENTH CONGRESS OF THE	
REPUBLIC OF THE PHILIPPINES	
First Regular Session	

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SENATE S. No.1275

RECEIVED BY:

Introduced by Senator Francis "Tol" N. Tolentino

AN ACT

PROVIDING FOR WORK BENEFITS AND SOCIAL PROTECTION TO ALL DELIVERY PLATFORM RIDERS WORKING IN THE GIG ECONOMY

EXPLANATORY NOTE

Section 18, Article II of the 1987 Constitution affirms labor as the primary social economic force and mandates the State to protect the rights of workers and promote their welfare. This commitment to safeguard rights of the labor force is reiterated in Article 3 of Presidential Decree No. 442, otherwise known as the "Labor Code of the Philippines," as renumbered.

Further, Section 3, Article XIII of the Constitution enumerates the cardinal labor rights of all workers, namely: 1) right to self-organization; 2) collective bargaining and negotiations; 3) peaceful concerted activities; 4) the right to strike in accordance with law; 5) security of tenure; 6) humane conditions of work; 7) a living wage; and 8) right to participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

During the COVID-19 pandemic, the gig economy has seen exponential growth, particularly those offering goods or services using online or app-based platforms. This pandemic-fueled boom translated to job generation and increased demand

opportunities for delivery platform riders while affording them flexibility of workload and schedule.

Demand for food and courier delivery platform services also increased with key industry players such as FoodPanda and Grab. According to the Grab's 2021 Food Delivery Industry Overview study, conducted in partnership with Euromonitor, growth in online food delivery is expected to be fastest in emerging markets such as Myanmar, Vietnam and the Philippines, with the total regional online food delivery Gross Merchandise Value (GMV) to more than triple from US\$9 billion in 2020 to US\$28 billion in 2025.¹

In response to this increasing demand for delivery platform services, the Department of Labor and Employment issued Labor Advisory No. 14, Series of 2021, entitled "Working Conditions of Delivery Riders in Food Delivery and Courier Activities," dated 23 July 2021.² Said Labor Advisory, however, does not categorically declare delivery platform riders as regular employees. Instead, it provided guidelines to assist riders and digital platform companies in identifying the employment relationship between them, which would thereafter determine the workers' work benefits.

Without legal safeguards for their work conditions and benefits, delivery platform riders remain exposed to potential labor abuses and exploitation. Although considered as front liners during the pandemic, they were neither entitled to payment of hazard pay nor enjoyed social protection in case of accidents or injuries sustained while rendering work.

In order to improve the working conditions of all delivery platform riders, and at the same time protect the sustainable growth of businesses in the gig economy, particularly those engaged in the delivery platform industry, this Bill seeks to establish

¹ <u>https://www.grab.com/sg/press/others/online-food-delivery-spend-to-more-than-triple-in-southeast-asia-by-2025/</u>

² Labor Advisory No. 14-21 accessible at http://ro7.dole.gov.ph/fndr/mis/files/LA%2014-21%20Working%20Conditions%20of%20%20Delivery%20Riders%20in%20Food%20Delivery%20and%20Courier%20Activities(1).pdf.

an employer-employee relationship between riders and digital platform companies. As such, delivery platform riders rendering services through online or app-based platforms would be entitled to minimum wage, social protection, and more comprehensive work benefits at par with those currently enjoyed by regular employees.

This proposed measure affirms the shared responsibility between the State and business owners in promoting the protection of delivery platform riders within their employ as mandated by the Constitution and existing labor laws and regulations.

In view of the foregoing, immediate passage of this bill is earnestly sought.

FRANCIS "TOL" N. TOLENTINO

(TA)	Senate of the Secretary
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AN ACT

PROVIDING FOR WORK BENEFITS AND SOCIAL PROTECTION TO ALL DELIVERY PLATFORM RIDERS WORKING IN THE GIG ECONOMY

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

- SEC. 1. Short Title. This Act shall be known as the "Delivery Platform Riders"

 Protection Act of 2022."
 - **SEC. 2.** *Declaration of Policy.* It is hereby declared the policy of the State to afford protection to labor, promote full employment, ensure equal work opportunities, and regulate relations between workers and employers. Towards this end, the State is mandated to improve working conditions of workers employed in new work arrangements, such as app-based drivers and riders by safeguarding their entitlement to a living wage and access to social protections as envisioned in the Constitution while supporting the sustainable growth of businesses in the gig economy, particularly those offering online or app-based courier and food delivery services.
 - **SEC. 3.** *Definition of Terms.* As used in this Act, the following terms shall mean:
 - a. Delivery platform work refers to goods, courier, or food delivery services organized through a digital platform and performed by an individual on the basis of a contractual relationship, irrespective of

2 recipient of the service; b. Digital platform employer - refers to any person or entity who owns, 3 4 manages, operates, and provides commercial delivery service of goods, 5 courier, or food, which meets all of the following requirements: 6 It is provided through electronic means, such as website or mobile 7 application; ii. 8 It involves allocation of work delivered at least in a distance or a 9 specific geographical area; 10 iii. It is provided on an on-demand basis or upon the request of the customer; 11 iv. it involves, as a necessary and essential component, the 12 organization of work performed by individuals, irrespective of 13 14 whether that work is performed online or in a certain location; c. Delivery platform riders - refer to persons performing online platform 15 deliveries by means of motorcycles or bicycles for a business entity that 16 17 maintains an online-enabled application or platform used to facilitate delivery services on an on-demand basis, and maintains a record of the 18 19 amount engaged time and engaged miles; **SEC. 4.** Existence of an Employer-Employee Relationship. - Every delivery 20 platform rider shall be considered an employee of the digital platform employer he/she 21 22 is engaged with. The employer-employee relationship between the two parties shall be assessed 23 in accordance with existing laws, jurisprudence, and collective agreements, if any. 24 The following principles shall guide the relationship of the delivery platform 25 26 rider and digital platform employer: 1. Four-fold test; 27 28 2. Economic reality test; and 3. Independent contractor test. 29 SEC. 5. Benefits of Delivery Platform Riders. - All delivery platform riders are 30 entitled to the following minimum benefits, as provided for in the Labor Code, as 31 32 amended, and other applicable laws:

whether a contractual relationship exists between the individual and the

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- 1 a. Minimum wage;
- b. Holiday pay;
- c. Premium pay;
- 4 d. Overtime pay;
- e. Night Shift differential;
- f. Service incentive leave;
- g. Thirteenth-month pay;
- h. Separation pay;
- 9 i. Retirement pay;

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- j. Occupational safety and health standards;
- 11 k. Social benefits e.g. SSS, PhilHealth, Pag-IBIG; and
- 12 l. Other benefits under existing laws and collective bargaining agreements, if any.
- SEC. 6. *Delivery Platform Riders Independence.* A delivery platform rider is an independent contractor and not an employee or agent with respect to the digital platform employer after an assessment based on the principles enumerated in
- paragraph 3 of Section 4 of this Act and if the following conditions are met:
- a) The digital platform employer does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the delivery platform rider must be logged into the online-enabled application or platform;
- b) The digital platform employer does not require the delivery platform rider to accept any specific delivery service request as a condition of maintaining access to the online-enabled application or platform;
 - c) The digital platform employer does not restrict the delivery platform rider from performing delivery services through other platform companies except during engaged time;
- d) The digital platform employer does not restrict the delivery platform rider from working in any other lawful occupation or business.
 - **SEC. 7.** *Implementing Rules and Regulations.* Within sixty (60) days from the effectivity of this Act, the Department of Labor and Employment, in coordination with the Department of Trade and Industry and other relevant agencies and sectors, shall promulgate the implementing rules and regulations as may be necessary to carry out the provisions of this Act.

- **SEC. 8.** Separability Clause. If any provision of this Act is declared invalid or unconstitutional, the provisions not affected thereby shall remain in full force and effect.
 - **SEC. 9.** Repealing Clause. All laws, presidential decrees, executive orders, presidential proclamations, rules and regulations or parts thereof contrary to or inconsistent with this Act are hereby repealed or modified accordingly.
 - **SEC. 10.** *Effectivity.* This Act shall take effect fifteen (15) days after its publication in the *Official Gazette* or in a newspaper of general circulation in the Philippines.

Approved,