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Sept. 7, 2021

Assembly Committee on State Affairs
Wisconsin State Capitol
2 East Main St.
Madison, WI 53703

Re: Comments in support of AB 487

Chair Swearingen, Vice-Chair Vorpagel and Members of the Committee:

These comments are submitted on behalf of the R Street Institute (R Street), a nonprofit, nonpartisan public policy research organization whose mission is to engage in policy research that supports free markets and limited, effective government. As an organization, we have long supported the need for portable benefits for workers in the gig economy and have written extensively on the topic, including one of the first comprehensive proposals to provide them.¹ As such, we write to you in enthusiastic support of AB 487.

Rep. August, Sen. Roth and their co-sponsors are—in our view—to be commended for the way their bill allows for experimentation and creativity. No state has fully implemented a benefits system explicitly for individuals operating on transportation network company (TNC) platforms and, while we do not object in principle to the idea of some type of mandatory benefits for TNC drivers in the future, allowing experimentation on a voluntary basis rather than through a mandatory system seems more likely to produce at least *some* positive outcomes. While some surveys indicate what types of benefits workers value, only real-world tests will be able to show what actually proves helpful day-to-day.²

Wisconsin, as the state with the first comprehensive workers' compensation system—a topic R Street has written about in the past—has a long history of innovation in worker benefits.³ Implementing the proposed bill would allow Wisconsin to continue this proud role.

As written, the voluntary system provided by AB 487 has much to recommend it and the legislature would do well to pass it without amendment. That said, the committee might be advised to investigate two modest changes that have the potential to improve an already meritorious proposal.

First, the committee may want to consider broadening the group of qualifying events in section 103.08(3). Other events and needs such as caring for a sick family member, purchasing dental/vision insurance and making cost sharing payments for health insurance plans might also be included as qualifying uses for funds in a flexible benefits account.

Second, while the bill's structure surrounding Occupational Accident Insurance (OAI) is sound as proposed, the possibility of allowing TNCs to voluntarily participate in workers' compensation systems under a safe harbor that prevents participation in such systems from being used as a factor to prove worker misclassification may be worth investigating.

Certain aspects of workers' compensation insurance—broad, uncapped benefits, no-fault nature and broad liability shield—could provide significant advantages to both TNCs and workers alike relative to the OAI. That said, many aspects of the structure of workers' compensation insurance may not fit the unique circumstances of TNC workers. As such, the legislature might consider asking one or more of the Department of Financial Institutions, Department of Workforce Development and Legislative Reference Bureau to study the feasibility of allowing TNCs voluntary participation in workers' compensation systems.

To be clear, we do not think that workers' compensation should be made mandatory for TNCs at this time. But investigating even more experimentation as to the forms of insurance provided by TNCs could make a good proposal better.

As AB 487 provides a wholly voluntary system that could be implemented at minimal taxpayer cost and help many individuals who currently may have a difficult time accessing job-related benefits, it deserves both broad, enthusiastic support and speedy passage.

Respectfully submitted,

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¹ See, e.g., Eli Lehrer, “The Future of Work,” *National Affairs*, Summer 2016.

<https://www.nationalaffairs.com/publications/detail/the-future-of-work>.

² See, e.g., “Poll: App-Based Drivers Overwhelmingly Prefer Independent Contractor Status,” Massachusetts Coalition for Independent Work, June 3, 2021. <https://independentmass.org/news/poll-app-based-drivers-overwhelmingly-prefer-independent-contractor-status-value-flexibility>.

³ R.J. Lehmann, “Medical Cost Containment in the Wisconsin Workers’ Compensation Market,” *R Street Policy Study* No. 7, December 2012. <https://www.rstreet.org/wp-content/uploads/2018/04/RSTREET7-1.pdf>.