

# SENATE . . . . . No. 2778

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## The Commonwealth of Massachusetts

—  
In the One Hundred and Ninety-First General Court  
(2019-2020)  
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SENATE, June 25, 2020.

The committee on Labor and Workforce Development to whom was referred the petition (accompanied by bill, Senate, No. 1090) of Jason M. Lewis, Steven Ultrino, Michelle M. DuBois and David Henry Argosky LeBoeuf for legislation to establish collective bargaining rights for TNC drivers, reports the accompanying bill (Senate, No. 2778).

For the committee,  
Patricia D. Jehlen

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## The Commonwealth of Massachusetts

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An Act establishing collective bargaining rights for TNC drivers.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           SECTION 1. Chapter 159A1/2 of the General Laws is hereby amended by inserting after  
2   section 11 the following section:-

3           Section 12. (a) For the purposes of this section, the following words shall have the  
4   following meanings:-

5           “Commencement date” means a calendar date set by the executive office of labor and  
6   workforce development for the purpose of initiating certain processes pursuant to Section  
7   6.310.735 and establishing timelines and deadlines associated with them.

8           “Executive office”, the executive office of labor and workforce development

9           “Exclusive driver representative”, a driver representative, certified by the executive office  
10   to be the sole and exclusive representative of all licensed for-hire drivers operating within the  
11   commonwealth for a particular transportation network company or livery vehicle service.

“Driver representative”, an entity that can assist drivers in reaching consensus on desired terms of work and negotiate those terms on their behalf with transportation network companies or livery vehicle service.

“Livery vehicle service”, means any company that provides any limousine or other vehicle which is designed to carry fifteen or fewer passengers, including the driver, and carries passengers for hire, business courtesy, employee shuttle, customer shuttle, charter or other pre-arranged transportation, and which vehicle is not required to obtain a taxicab license pursuant to M.G.L. chapter 40 §22.

“Qualifying driver,” means a for-hire driver who drives for a transportation network company or livery vehicle service and who satisfies the conditions established by the executive office with regard to the length, frequency, total number of trips, or average number of trips in a given time period.

“Transportation network company”, a company that provide prearranged transportation services for compensation using an online enabled application or platform to connect driver using their personal vehicles with passengers.

(b) The process of designating a driver representative shall be prescribed by executive office and shall be based on, but not limited to, consideration of the following factors: (i) organization bylaws that give drivers the right to be members of the organization and participate in the democratic control of the organization; and (ii) experience in assisting stakeholders in reaching consensus agreements with, or related to, employers and contractors.

An entity wishing to be considered as a driver representative for drivers in an appropriate unit, as prescribed by executive office, must submit a request to the executive office within 30

days of the commencement date. Within 14 days of the receipt the request, the executive office shall notify the applicant in writing of its determination.

(c) Transportation network companies or livery vehicle services who have hired, contracted with, or partnered with 50 or more drivers at any one time in the 30 days prior to the commencement date in the unit, other than in the context of an employer-employee relationship must, within 60 days of the commencement date, provide all driver representatives seeking to represent their drivers the names, addresses, email addresses, and phone numbers, of all qualifying drivers they hire, contract with, or partner with in the unit.

Driver representatives shall use driver contact information for the sole purpose of contacting drivers to solicit their interest in being represented by the driver representative. The driver representative shall not sell, publish, or otherwise disseminate the driver contact information.

(d) The executive office shall certify a driver representative as the exclusive driver representative for all qualifying drivers contracted with a particular transportation network company or livery vehicle service in the unit, according to the following:

(1) Within 120 days of receiving the driver contact information, a driver representative shall submit statements of interest to the executive office from a majority of qualifying drivers from the list described in subsection (c). Each statement of interest shall be signed, dated, and clearly state that the driver wants to be represented by the driver representative for the purpose of collective bargaining. The executive office shall determine the procedures for submitting and verifying statements of interest by drivers choosing an exclusive driver representative. The methods for submitting and verifying statements of interest by drivers choosing an exclusive

driver representative may include, but not be limited to: signature verification, unique personal identification number verification, statistical methods, or third party verification.

(2) Within 30 days of receiving such statements of interest, the executive office shall determine if they are sufficient to designate the driver representative as the exclusive driver representative for all qualifying drivers for that particular transportation network company or livery vehicle service in the unit. If more than one driver representative establishes that a majority of drivers have expressed interest in being represented by that driver representative, the executive office shall designate the driver representative that received the largest number of verified affirmative statements of interest to be the exclusive driver representative.

(3) Within 30 days of receiving submissions from all driver representatives for a particular transportation network company or livery vehicle service, the executive office shall either certify one to be the exclusive driver representative or announce that no driver representative met the majority threshold for certification.

(e) If no exclusive driver representative is certified for a transportation network company or livery vehicle service in the unit, the executive office shall promulgate a new commencement date that is no earlier than 180 days and no later than 360 days from the determination that no driver representative met the majority threshold, provided that no transportation network company or livery vehicle service shall be subject to the requirements of this section more than once in any calendar year. The affected exclusive driver representative and transportation network company or livery vehicle service may repeat the processes set forth in subsections (c) and (d). If the executive office again fails to certify an exclusive driver representative, all driver

representatives shall lose their certification, and the processes in subsections (c) and (d) shall end until the executive office establishes a new commencement date.

(f) Upon certification of the exclusive driver representative by the executive office, and at least 90 days before expiration of any existing agreement, the transportation network company or livery vehicle service and the exclusive driver representative shall meet and negotiate in good faith certain specified subjects, including, but not limited to, best practices regarding vehicle equipment standards, safe driving practices, the nature and amount of payments to be made by, or withheld from, the transportation network company or livery vehicle service to or by the drivers, minimum hours of work, conditions of work and applicable rules, and any other subject prescribed by the executive office and shall reduce their discussion to a written agreement.

If an agreement is reached, the parties shall transmit the agreement to the executive office. The executive office shall have 30 days upon receipt of an agreement to determine if the agreement complies with this section and to notify the parties of the determination in writing. If the executive office finds the agreement compliant, the agreement shall be considered final and binding on all parties.

If the executive office finds that the agreement fails to comply with this section, the executive office shall remand it to the parties with a written explanation.

(g) If a transportation network company or livery vehicle service and the exclusive driver representative fail to reach an agreement within 90 days of the certification of the exclusive driver representative by the executive office or within 90 days after the expiration of an existing agreement, either party must submit to interest arbitration upon the request of the other party. The arbitrator may be selected by mutual agreement of the parties. If the parties cannot agree on

an arbitrator, the superior court on application of a party shall appoint the arbitrator. The court shall submit to the parties a list of 5 persons experienced in labor arbitration from which each party may delete two names and the appointment shall be made from the name or names remaining. An arbitrator so appointed shall have all the powers of an arbitrator specifically named in the agreement.

The arbitrator shall transmit any agreement to the executive office for review for compliance with the provisions of this section. The executive office shall have 30 days upon receipt of an agreement to determine its compliance and to notify the interest arbitrator of the determination in writing. If the executive office finds the agreement compliant, the agreement shall be considered final and binding on all parties. If the executive office finds that the agreement fails to comply with this section, the executive office shall remand it to the arbitrator with a written explanation. If either party refuses to enter interest arbitration, upon the request of the other, either party may pursue any available judicial remedies.

(h) It shall be a violation for a transportation network company or livery vehicle service or its agent, designee, employee, or any person or group of persons acting directly or indirectly in the interest of the transportation network company or livery vehicle service in relation to the driver to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this section including but not limited to threatening, harassing, penalizing, or otherwise discriminating against a driver because the driver has exercised the rights protected under this section.

(i) An exclusive driver representative may be decertified if the executive office receives a petition to decertify an exclusive driver representative within 30 days of the expiration of an

121 agreement reached pursuant to this section. A decertification petition must be signed by 10 or  
122 more drivers. The executive office shall determine the procedures for submitting the  
123 decertification petition.

124         Once a petition has been accepted by the executive office, the executive office shall issue  
125 notice to the transportation network company or livery vehicle service and the exclusive driver  
126 representative of the decertification petition and promulgate a new commencement date. The  
127 transportation network company or livery vehicle service shall have 14 days from the  
128 commencement date to transmit the list of drivers to any petitioners. Within 90 days of receiving  
129 the driver contact information, petitioners for a decertification shall submit statements of interest  
130 from a majority of drivers represented to the executive office. The statements of interest shall be  
131 signed and dated and shall clearly indicate that the driver no longer wants to be represented by  
132 the exclusive driver representative for the purpose of collective bargaining with the  
133 transportation network company or livery vehicle service. The executive office shall determine  
134 the procedures for submitting and verifying the statements of interest of drivers.

135         Within 30 days of receiving such statements of interest, the executive office shall  
136 determine if they are sufficient to decertify the exclusive driver representative for that particular  
137 transportation network company or livery vehicle service. The executive office shall decertify  
138 the exclusive driver representative or declare that the decertification petition did not meet the  
139 majority threshold and reaffirm that the exclusive driver representative shall continue  
140 representing all drivers for that particular transportation network company or livery vehicle  
141 service.



142 If an exclusive driver representative is decertified for a particular transportation network  
143 company or livery vehicle service, the process of selecting a new exclusive driver representative  
144 may begin.

145 (j) The executive office is authorized to enforce and administer this section. The  
146 executive office shall investigate alleged violations. The executive office shall issue a written  
147 notice of the violation if a violation has occurred. The notice shall: (i) require the person or entity  
148 in violation to comply with the requirement; (ii) include notice that the person or entity in  
149 violation is entitled to a hearing before the labor relations commission to respond to the notice  
150 and introduce any evidence to refute or mitigate the violation; and (iii) inform the person or  
151 entity in violation that a daily penalty of up to \$10,000 for every day the violator fails to cure the  
152 violation shall accrue if the violation is uncontested or found committed.

153 The person or entity named on the notice of violation must file with the labor relations  
154 commission the request for a hearing within 10 business days after the date of the notice of  
155 violation. The labor relations commission may affirm, modify, or reverse the executive office's  
156 notice of violation. If the person or entity named on the notice of violation fails to timely request  
157 a hearing, the notice of violation shall be final and the daily penalty of up to \$10,000 shall accrue  
158 until the violation is cured.

159 (k) After receipt of the decision of the labor relations commission, the aggrieved party  
160 may pursue any available judicial remedies. A plaintiff who prevails in any action to enforce this  
161 section may be awarded reasonable attorney's fees and costs.