

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

None

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a rideshare driver bill of rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Henry Matthews De Groot</i>	<i>693 Commonwealth Ave Apt 2, Newton, MA 02459</i>	<i>2/19/2021</i>

HOUSE No.

A petition (accompanied by bill, House, No. [BILL NUMBER]) of Henry Matthews De Groot relative to rideshare drivers.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act establishing a rideshare driver bill of rights.

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. Section 1 of Chapter 159A1/2 of the General Laws, as appearing in the
2 2018

3 Official Edition, is hereby amended by inserting after the last paragraph:-

4 “Available platform time” means the time a TNC driver is logged in to the driver
5 platform

6 and available to receive a TNC dispatched trip prior to receiving a trip request from a

7 TNC. A TNC driver cannot simultaneously be engaged in available platform time,

8 dispatch platform time, and/or passenger platform time for the same TNC. For trips

9 involving multiple passengers picked up from different passenger pick-up locations,

10 available platform time means the period of time when a TNC driver is logged in to the

11 driver platform prior to receiving the first trip request from a TNC;

12 “Dispatch platform time” means the time a TNC driver spends traveling from dispatch
13 location to passenger pick-up location. Dispatch platform time ends when a passenger
14 cancels a trip, a driver cancels a trip, or the driver begins the trip in the driver platform. A
15 TNC driver cannot simultaneously be engaged in available platform time, dispatch
16 platform time, and/or passenger platform time for the same TNC. For trips involving
17 multiple passengers picked up from different passenger pick-up locations, dispatch
18 platform time means the time a TNC driver spends travelling from the first dispatch
19 location to the first passenger pick-up location;

20 “Passenger platform time” means the period of time commencing when the TNC driver
21 starts the trip in the driver platform until the time when the TNC driver ends the trip in
22 the
23 driver platform. For trips involving multiple passengers picked up from different
24 passenger pick-up locations, passenger platform time means the period of time
25 commencing when the TNC driver starts the trip in the driver platform after the first
26 passenger enters the TNC driver’s vehicle until the time when the TNC driver ends the
27 trip in the driver platform after the last passenger exits the TNC driver’s vehicle at the
28 end of the trip. A TNC driver cannot simultaneously be engaged in available platform

29 time, dispatch platform time, and/or passenger platform time for the same TNC;

30 “Passenger mileage utilization rate” means the percentage of miles that TNC drivers

31 drive during passenger platform time relative to the total miles TNC drivers drive during

32 available platform time, dispatch platform time, and passenger platform time.

33 “Passenger platform time utilization rate” means the percentage of time that TNC drivers

34 spend during passenger platform time relative to the total of the time TNC drivers spend

35 during available platform time, dispatch platform time, and passenger platform time.

36 “Per minute rate” means the per minute equivalent of the living wage necessary for two

37 working adults to support a family with two children in the Boston-Cambridge-Newton

38 area as calculated by the Massachusetts Institute of Technology Living Wage Calculator.

39 This wage has been calculated at a rate of twenty dollars and forty one cents an hour,

40 making the per minute rate equal to thirty four cents.

41 “Per mile rate” means the per mile equivalent of the reasonable expenses necessary for

42 a TNC driver to provide TNC services;

43 “Extra large ride” means a ride that requires a vehicle with a passenger or storage

44 capacity greater than four seats in addition to the driver.

45 “Reasonable expenses” means (1) the per mile cost of operating a vehicle for purposes

46 of providing TNC services and (2) the non-mileage expenses incurred by TNC drivers to
47 provide TNC services. Reasonable expenses may include, but are not limited to:

48 1. Vehicle acquisition and financing costs;

49 2. Depreciation;

50 3. Lease payments;

51 4. Maintenance and repairs;

52 5. Vehicle cleaning;

53 6. Tires;

54 7. Gasoline (including all taxes thereon);

55 8. Oil;

56 9. Vehicle insurance;

57 10. License and vehicle registration fees;

58 11. Cell phone and cell phone service plans;

59 12. Cost of medical, dental, and vision insurance;

60 13. The amount of employer-side payroll taxes that TNC drivers must pay;

61 14. The amount of business taxes that TNC drivers must pay;

62 15. Business license fees that TNC drivers must pay;

63 16. Rest breaks; and

64 17. Any other cost or information the Department of Labor Standards determines

65 is necessary to further the purposes of section 13(a);

66 "Rate of inflation" means 100 percent of the annual average growth rate of the

67 bi-monthly Boston-Cambridge-Newton Area Consumer Price Index for Urban Wage

68 Earners and Clerical Workers, termed CPI-W, for the 12-month period ending in August,

69 provided that the percentage increase shall not be less than zero;

70 "Compensation" means payment owed to a TNC driver by reason of providing TNC

71 services.

72 "Days" means calendar days.

73 "Deactivation" means the blocking of a TNC driver's access to the driver platform,

74 changing a TNC driver's status from eligible to provide TNC services to ineligible, or

75 other material restriction in access to the driver platform that is effected by a TNC.

76 "Aggrieved party" means the TNC driver or other person who suffers tangible or

77 intangible harm due to the TNC's violation of section 15.

78 "Driver Resolution Center" means a non-profit organization registered with the

79 Massachusetts Secretary of State that contracts with the Agency to provide culturally

80 competent TNC driver representation services, outreach, and education; that is affiliated
81 with an organization with experience advocating for the civil and economic rights of
82 drivers, contractors, and workers from disadvantaged socioeconomic groups and
83 representing workers in grievance proceedings; and whose administration and/or
84 formation was/is not funded, excessively influenced, or controlled by a TNC. This
85 organization shall have a proven commitment to worker rights and experience in
86 providing resources, programs, and services to TNC drivers, contractors, and workers
87 that allow them to build sustainable economic opportunities while competing in a
88 changing business environment. The Driver Resolution Center should consider
89 contractual partnerships among entities to achieve the direct participation of
90 organizations primarily focused on diversity and advocating for the civil and economic
91 rights of workers from disadvantaged socioeconomic groups.

92 "Representative" means a person who gives advice or guidance and includes, but is not
93 limited to, family members, friends, licensed professionals, attorneys, advocates, and
94 Driver Resolution Center advocates.

95 "Respondent" means the TNC who is alleged or found to have committed a violation of
96 section 15.

97 "Food delivery network company" or "FDNC", a corporation, partnership, sole
98 proprietorship or other entity that uses a digital network to connect customers to drivers
99 to pre-arrange and provide delivery of meals or groceries.

100 "Food delivery network driver", a driver certified by a food delivery network company.

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102 -----

103 SECTION 2. Chapter 159A1/2 of the General Laws, as so appearing, is hereby amended
104 by

105 inserting after section 11 the following section:-

106 Section 12: Transportation Network Company Driver Rights

107 Section 12. (a) Transportation Network Company drivers and food delivery network
108 drivers are

109 entitled to the benefits and protections granted to an employee under section 148C of
110 Chapter

111 149. Transportation Network Companies are obligated to the responsibilities of an
112 employer

113 under section 148c of chapter 149. For the purpose of interpreting section 148C(d)(1) of

114 Chapter 149, hours worked shall mean passenger platform time divided by passenger
115 platform

116 time utilization rate.

117 (b) Transportation Network Company and food delivery network drivers drivers

118 providing

119 transportation network services or food delivery network services are entitled to the

120 protections

121 afforded to covered individuals in section 2 of chapter 175M.

122 (c) Transportation Network Company drivers and food delivery network drivers are

123 entitled to

124 compensation for any transportation network services provided in excess of forty hours

125 per

126 week at a rate not less than one- and one-half times the regular per minute rate at which

127 the

128 driver is paid for said services. The per mile rate shall remain the same or greater. Hours

129 worked shall mean passenger platform time divided by passenger platform time

130 utilization rate.

131 (d) Transportation Network Company drivers and food delivery network drivers are

132 entitled to

133 the protections given to employees in chapter 151B.

134 (e). No TNC shall subject a TNC or FDNC driver to unwarranted deactivation, as defined
135 by

136 Department of Labor Standards' rule. The Department of Labor Standards definition of
137 unwarranted deactivation shall be based on, but not limited to, consideration of the
138 following

139 factors:

140 (1) Drivers shall not be deactivated for unsubstantiated customer complaints.

141 (2) Drivers shall not be deactivated for failing to accept dispatches.

142 (3) Drivers shall not be deactivated on the basis of a passenger or customer rating system
143 that allows for passenger or customer discriminatory practices against a protected class.

144 (f) Subject to driver eligibility standards created by the Department of Labor Standards'
145 rule, a

146 TNC or FDNC driver shall have a right to challenge all permanent deactivations and
147 temporary

148 deactivations, as defined by the Department of Labor Standards' rule.

149 (g) The TNC or FDNC driver has the right to elect between representing themselves
150 during any

151 deactivation challenge or being represented by a representative, including an advocate
152 from the

153 Driver Resolution Center. The Driver Resolution Center shall have discretion to
154 determine

155 whether to represent a TNC or FDNC driver, as defined by Department of Labor
156 Standards' rule.

157 (h) For deactivations not described in section 12(r), the TNC or FDNC shall provide the
158 TNC or

159 FDNC driver with 14 days' notice of the impending deactivation. The notice shall include

160 a

161 written statement of the reasons for and effective date of deactivation and provide notice,

162 in a

163 form and manner designated by the Division, of the TNC or FDNC driver's right to

164 challenge

165 such deactivation under this section. The Division shall create and distribute the notice in

166 English and other languages as provided by rules issued by the Division.

167 (i) Upon deactivation, every TNC or FDNC shall furnish to the TNC or FDNC driver a

168 written

169 statement of the reasons for and effective date of deactivation and provide notice, in a

170 form and

171 manner designated by the Division, of the TNC or FDNC driver's right to challenge such

172 deactivation under this section. The Division shall create and distribute the notice in
173 English and
174 other languages as provided by rules issued by the Department.

175 (j). The TNC or FDNC driver and TNC or FDNC may, by mutual agreement, proceed to
176 arbitration through the Deactivation Appeals Panel arbitration ("Panel arbitration")
177 proceeding

178 created by this action instead of proceeding under any applicable arbitration agreement
179 between the TNC or FDNC driver and the TNC or FDNC ("private arbitration
180 agreement"). In

181 the absence of a private arbitration agreement between a TNC or FDNC driver and a
182 TNC or

183 FDNC, the TNC or FDNC driver shall have an absolute right to challenge the
184 deactivation

185 pursuant to this section, regardless of agreement by the TNC or FDNC.

186 (k) If the TNC or FDNC driver and TNC or FDNC agree to proceed to arbitration
187 through the

188 Deactivation Appeals Panel arbitration proceeding created by this section, the TNC or
189 FDNC

190 driver and/or a representative must provide notice to the TNC or FDNC of intent to
191 challenge

192 the deactivation no later than 60 days after the deactivation.

193 (l) The TNC or FDNC and the TNC or FDNC driver and/or a representative shall attempt
194 to

195 resolve the challenge informally no later than 15 days after the notice of intent to
196 challenge has

197 been provided to the TNC or FDNC, or within a time frame mutually agreed by the
198 parties.

199 (m) If the parties resolve the challenge informally pursuant to section 12(l), they must
200 memorialize that resolution in a written agreement.

201 (n) The TNC or FDNC driver and/or representative must provide notice of intent to
202 arbitrate to

203 the TNC or FDNC no later than 15 days after the notice of intent to challenge has been
204 provided

205 to the TNC or FDNC under this section.

206 (o) If a TNC or FDNC driver demonstrates that a TNC or FDNC failed to engage in the
207 informal

208 appeals process under this section, there shall be a presumption, rebuttable by clear and

209 convincing evidence, before the Deactivation Appeals Panel that the deactivation is
210 unwarranted.

211 (p) The Department shall establish a "Deactivation Appeals Panel" ("Panel") for purposes
212 of
213 hearing TNC or FDNC driver challenges to deactivations. The Agency shall contract with
214 one or
215 more persons or entities ("neutral arbitrator") to conduct arbitration proceedings to hear
216 deactivation challenges. The neutral arbitrator shall be one member of the Panel. The
217 remaining
218 Panel members shall consist of an equal number of partisan panel members, representing
219 the
220 interests of the TNC or FDNC driver and the TNC or FDNC, respectively.

221 (1). The utilization of the Panel arbitration proceeding created by this section is voluntary
222 upon agreement by both parties, except as provided for under section 12(j), and shall be
223 of no cost to the TNC or FDNC driver. If utilized, the Panel shall be the sole arbitration
224 proceeding for challenging the deactivation.

225 (2) The cost of arbitration, including any fee charged by an arbitrator, will be shared
226 equally by the TNC or FDNC and the Driver Resolution Center. If the TNC driver is not

227 represented by a representative of the Driver Resolution Center, the TNC or FDNC shall
228 be solely responsible for the cost of arbitration.

229 (3) The arbitration shall be conducted no later than 30 days after the notice of intent to
230 arbitrate has been provided to the TNC or FDNC under section 12(n), within a time
231 frame mutually agreed by the parties, or as ordered by the Panel.

232 (4) Subject to rules issued by the Department, the Panel may conduct pre-hearing
233 procedures, as well as an evidentiary hearing at which parties shall be entitled to present
234 witnesses and written evidence relevant to the dispute, and to cross-examine witnesses.

235 (5) The Panel's decision in any case shall be by majority vote, with each panel member
236 holding one vote.

237 (6) The Panel shall issue a written decision and, if appropriate, award relief. The Panel
238 shall endeavor to issue the written decision within 48 hours of the evidentiary hearing.

239 (7) Upon a decision concluding an unwarranted deactivation occurred, the Panel may
240 order such relief as may be appropriate to remedy the violation including, without
241 limitation, all remedies provided in section 12(q). Should the Panel order that the TNC or
242 FDNC driver be reinstated, such order shall be limited to reinstatement to provide TNC
243 or FDNC services with the Commonwealth of Massachusetts.

244 (8) The decision of the Panel shall be final and binding upon the parties.

245 (9) Nothing in this section shall be construed as restricting a TNC or FDNC driver's right
246 to pursue any remedy at law or equity for an unwarranted deactivation.

247 (10) The Department shall issue rules to effectuate the terms of this section including,
248 but not limited to, rules regarding the definition of unwarranted deactivation, driver
249 eligibility to challenge deactivations, the selection of and criteria for the neutral
250 arbitrator and partisan panel members, and the number of partisan panel members.

251 The Department shall further issue rules on methods to protect passenger privacy and
252 address potential safety concerns during Panel arbitrations for deactivations that
253 include but are not limited to allegations of egregious misconduct.

254 (11) Subject to the provisions of this section and rules issued by the Department, a
255 TNC or FDNC may immediately deactivate a TNC or FDNC driver if such action is
256 required to comply with any applicable local, state, or federal laws or regulations or
257 where a TNC or FDNC driver has engaged in egregious misconduct. The Department's
258 rules shall define egregious misconduct to include, at minimum, allegations of sexual
259 assault.

260 (12) In computing any period of time prescribed or allowed by this section, the day of

261 the act, event, or default from which the designated period of time begins to run shall
262 not be included. The last day of the period so computed shall be included, unless it is a
263 Saturday, a Sunday, or a federal or state holiday, in which event the period runs until
264 the end of the next day which is neither a Saturday, a Sunday, nor a federal or state
265 holiday.

266 (q) . The payment of unpaid compensation, liquidated damages, and interest provided
267 under
268 this section is cumulative and is not intended to be exclusive of any of the above
269 referenced
270 remedies and procedures.

271 (1) Interest shall accrue from the date the unpaid compensation was first due at 12
272 percent annum, or the maximum rate permitted under Massachusetts law.

273 (2) When determining the amount of liquidated damages payable to aggrieved parties
274 due under this section, the Panel shall consider:

275 (i) The total amount of unpaid compensation, liquidated damages, and interest
276 due;

277 (ii) The nature and persistence of the violations;

278 (iii) The extent of the respondent's culpability;

279 (iv) The substantive or technical nature of the violations;

280 (v) The size, revenue, and human resources capacity of the respondent;

281 (vi) The circumstances of each situation;

282 (vii) Other factors pursuant to rules issued by the Department of Labor

283 Standards.

284 (3) A respondent found to be in violation of this section shall be liable for full payment of

285 unpaid compensation plus interest in favor of the aggrieved party for the period of

286 deactivation under the terms of this section, and other equitable relief. The Department

287 of Labor Standards shall issue rules regarding the method of calculating unpaid

288 compensation. The Department of Labor Standards is authorized to designate a daily

289 amount for unpaid compensation. For any violation of this section, the Panel may

290 assess liquidated damages in an additional amount of up to thrice the unpaid

291 compensation.

292 (r) Subject to the provisions of this section and rules issued by the Department, Division,

293 and

294 Department of Labor Standards, a TNC or FDNC may immediately deactivate a TNC or

295 FDNC

296 driver if such action is required to comply with any applicable local, state, or federal laws

297 or

298 regulations or where a TNC or FDNC driver has engaged in egregious misconduct. The

299 Department of Labor Standard's rules shall define egregious misconduct to include, at

300 minimum, allegations of sexual assault.

301 (s) Any person or class of persons that suffers financial injury as a result of a violation of

302 this

303 section may bring a civil action in a court of competent jurisdiction against the TNC or

304 FDNC

305 violating this section and, upon prevailing, may be awarded reasonable attorney fees and

306 costs

307 and such legal or equitable relief as may be appropriate to remedy the violation including,

308 without limitation, the payment of any unpaid compensation plus interest due to the

309 person and

310 liquidated damages in an additional amount of up to thrice the unpaid compensation.

311 Interest

312 shall accrue from the date the unpaid compensation was first due at 12 percent per

313 annum, or

314 the maximum rate permitted under Massachusetts state law.

315 (t) For purposes of section 12(s) , "person" includes any entity a member of which has
316 suffered
317 financial injury, or any other individual or entity acting on behalf of an aggrieved party
318 that has
319 suffered financial injury.

320 (u) For purposes of determining membership within a class of persons entitled to bring an
321 action

322 under section 12(s) two or more TNC or FDNC drivers are similarly situated if they:

- 323 1. Are or were contracted to perform TNC services by the same TNC, FDNC, TNCs,
324 or FDNCs, whether concurrently or otherwise, at some point during the
325 applicable statute of limitations period,
- 326 2. Allege one or more violations that raise similar questions as to liability, and
- 327 3. Seek similar forms of relief.

328 (v) For purposes of section 12(s) TNC drivers shall not be considered dissimilar solely
329 because

330 their:

- 331 1. Claims seek damages that differ in amount, or
- 332 2. Job titles or other means of classifying TNC drivers differ in ways that are

333 unrelated to their claims.

334 (w) The provisions of this section are declared to be separate and severable. If any clause,
335 sentence, paragraph, subdivision, section, subsection, or portion of this section or the
336 application thereof to any TNC, FDNC, TNC driver, FDNC driver, or circumstance, is
337 held to be
338 invalid, it shall not affect the validity of the remainder of this section, or the validity of its
339 application to other persons or circumstances.

340 (x) Any TNC driver or FDNC driver has the right to maintain the same schedule and
341 scheduling
342 flexibility that the driver possessed at any time while performing labor for a TNC or
343 FDNC. Said
344 drivers shall continue to possess the right to maintain the same schedule and scheduling
345 flexibility for the duration of their engagement with a TNC or FDNC.

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347 -----

348 SECTION 3. Chapter 159A1/2 of the General Laws, as so appearing, is hereby amended
349 by
350 inserting after section 12 the following section:-

351 Section 13: Minimum TNC and FDNC Driver Compensation

352 Section 13. (a) The policy of the Massachusetts General Court is to assure that
353 Transportation
354 Network Company and Food Delivery Network drivers receive a level of compensation
355 that
356 allows them to live with dignity, with consideration to the costs of living in the
357 Commonwealth of
358 Massachusetts.

359 (b) For each TNC dispatched trip, a TNC shall compensate TNC drivers by providing at
360 least the

361 equivalent of: (1) the minimum per minute amount for passenger platform time under
362 section

363 13(b)(1)(i) plus the minimum per-mile amount for passenger platform time under section

364 13(b)(1)(ii); or (2) the minimum per trip amount for each TNC dispatched trip under
365 section

366 13(b)(2)(iii), whichever amount is greater.

367 (1) Minimum payment

368 (i). Per minute amount. For each minute of passenger platform time on each trip,

369 a TNC shall compensate TNC drivers at least the equivalent of the per minute

370 rate divided by the passenger platform time utilization rate. Subject to the

371 provisions in section 13(c), the passenger platform utilization rate is 0.492.

372 (ii). Per mile amount. For each mile driven during passenger platform time on
373 each trip, a TNC shall compensate TNC drivers at least the equivalent of the per
374 mile rate divided by the passenger mileage utilization rate.

375 Subject to the provisions in section 13(c): the per mile amount is \$1.33; the per
376 mile rate is \$0.830; the passenger mileage utilization rate is 0.622.

377 (iii). Per trip amount. For each TNC dispatched trip, a TNC shall compensate
378 TNC drivers a minimum per trip amount of at least \$5, plus any incentive offered
379 to the driver for the trip at the time of dispatch.

380 (iv). For the purposes of section 13(b)(1)(iii), “each TNC dispatched trip” includes
381 but is not limited to a trip in which the TNC driver transports the passenger to the
382 passenger’s desired drop-off location, a trip cancelled by a passenger or the TNC
383 unless the TNC refunds the passenger cancellation fee due to driver conduct,
384 and a trip where the passenger does not appear at the passenger pick-up
385 location. For trips involving multiple passengers picked-up from different
386 locations, the minimum per trip amount applies to the period of time commencing
387 when the TNC driver starts the trip in the driver platform after the first passenger

388 enters the TNC driver's vehicle until the time when the TNC driver ends the trip in
389 the driver platform after the last passenger exits the TNC driver's vehicle at the
390 end of the trip. "Each TNC dispatched trip" does not include a trip cancelled by
391 the TNC driver, unless the driver is forced to cancel the trip in order to comply
392 with any law or regulation.

393 (v). A TNC shall pay to its TNC drivers all tips and gratuities. Tips paid to a TNC
394 driver are in addition to, and may not count towards, the TNC driver's minimum
395 compensation under section 13(b).

396 (vi). Incentives may count towards the TNC's minimum compensation
397 requirements under section 13(b) only for the particular trip in which the
398 incentives are earned. Incentives for completing multiple trips within a given
399 period must be structured so that drivers receive the proportion of the incentive
400 equivalent to the proportion completed of the required trips.

401 (vii) The per mile rate for luxury rides shall be two times the standard per mile
402 rate. The per mile rate for extra large rides shall be one and one half times the
403 standard per mile rate. The per mile rate for a ride which is both a luxury ride and
404 an extra large ride shall be two and one half times the standard mile rate.

405 (2). Effective January 1, 2022, the minimum per trip amount paid to a TNC driver shall
406 be
407 increased on a percentage basis to reflect the rate of inflation and calculated to the
408 nearest cent on January 1 of each year thereafter. The Division shall determine the
409 amount and file a schedule of such amount with the Department.

410 (c). Adjustment of the per mile rate, passenger platform time utilization rate, and the
411 passenger
412 mileage utilization rate

413 (1). Adjustment of the per mile rate. Beginning one year after the effective date of this
414 section, and thereafter on January 1 of each year, the Department of Labor Standards
415 by rule may adjust the per-mile rate. In adjusting the per-mile rate each year, the
416 Department of Labor Standards shall consider the best available sources of data, which
417 may include, but are not limited to: TNC driver surveys, data provided by TNCs, data
418 provided by TNC drivers, data provided by passengers, data from other jurisdictions,
419 data available through academic, policy, or community based organizations, and
420 stakeholder interviews. The Department of Labor Standards shall base the adjustment
421 on an assessment of relevant factors or costs during the 12-month period ending in
422 August. Provided however, that this adjustment shall not result in reduction of the per

423 mile rate below \$0.830.

424 (i). The Department of Labor Standards may consider the following

425 non-exhaustive factors or costs: Vehicle acquisition and financing costs;

426 Depreciation; Lease payments; Maintenance and repairs; Vehicle cleaning; Tires;

427 Gasoline (including all taxes thereon); Oil; Vehicle Insurance; License and

428 vehicle registration fees; Cell phone and cell phone plans; Cost of medical,

429 dental, and vision insurance; The amount of employer-side payroll taxes that

430 TNC drivers must pay; The amount of businesses taxes that TNC drivers must

431 pay; Business license fees that TNC drivers must pay; Rest breaks; and Any

432 other cost or information the Department of Labor Standards determines is

433 necessary to further the purposes of section 13(a).

434 (ii). If the Department of Labor Standards does not adjust the per-mile rate in any

435 given year, the per-mile rate shall be increased on a percentage basis to reflect

436 the rate of inflation and calculated to the nearest cent on January 1 of each year.

437 The Department of Labor Standards shall determine the amount and file a

438 schedule of such amount with the division.

439 (2). Adjustment of the passenger platform time utilization rate and the passenger

440 mileage utilization rate. Subject to the provisions in section 13(c)(2)(i), the Department of
441 Labor Standards by rule may adjust the passenger platform time utilization rate or the
442 passenger mileage utilization rate. The Department of Labor Standards shall provide
443 notice to the public no less than three months before the effective date of any
444 adjustment under this section 13(c)(2). The purpose of any adjustment is to reflect
445 changes in the percentage of time that TNC drivers spend in passenger platform time
446 relative to the total time that TNC drivers spend in available platform time, dispatch
447 platform time and passenger platform time or the percentage of miles TNC drivers drive
448 during passenger platform time relative to the total miles TNC drivers drive during
449 available platform time, dispatch platform time, and passenger platform time. The
450 Department of Labor Standards shall have discretion to determine a passenger platform
451 time utilization rate or a passenger mileage utilization rate on an industry-wide basis or
452 for each TNC covered by section 13.

453 (i). The Department of Labor Standards shall not adjust the passenger platform
454 time utilization rate or the passenger mileage utilization rate until three years after
455 the effective date of section 13.

456 (ii). The Department of Labor Standards may choose not to adjust the passenger

457 platform time utilization rate or the passenger mileage utilization rate for any time
458 period that the Department of Labor Standards determines is necessary to further
459 the purposes of chapter 13(a).

460 (iii). Prior to beginning any assessment period on which the Department of Labor
461 Standards will base a passenger platform time utilization rate or the passenger
462 mileage utilization rate adjustment, the Department of Labor Standards shall
463 provide reasonable notice to the TNCs and other stakeholders of the date on
464 which the assessment period begins.

465 (iii). In adjusting the passenger platform time utilization rate or the passenger
466 mileage utilization rate, the Department of Labor Standards may consider the
467 following sources of information: The best available sources of data, which may
468 include, but are not limited to: TNC driver surveys, data provided by TNCs, data
469 provided by TNC drivers, data provided by passengers, data from other
470 jurisdictions, data available through academic, policy, or community based
471 organizations, and stakeholder interviews; Input from stakeholders on the method
472 and time period for assessment or adjustment of the passenger platform time
473 utilization rate or the passenger mileage utilization rate; and Any other

474 information the Department of Labor Standards determines is necessary to
475 further the purposes of section 13(a).

476 (iv). The Department of Labor Standards shall base any adjustment to the
477 passenger platform time utilization rate or passenger mileage utilization rate on
478 an assessment of relevant factors during an assessment period prior to the date
479 of adjustment. The assessment period for the first adjustment of the passenger
480 platform time utilization rate or passenger mileage utilization rate shall be 12
481 months in duration. The assessment period for any subsequent adjustment to the
482 passenger platform time utilization rate or passenger mileage utilization rate shall
483 be up to 12 months in duration.

484 (v). The Department of Labor Standards may consider the following factors for
485 the assessment: The average and median amount of available platform time,
486 dispatch platform time, and passenger platform time for TNC drivers; The
487 average and median mileage driven by TNC drivers during available platform
488 time, dispatch platform time, and passenger platform time; The average and
489 median speeds driven by TNC drivers during available platform time, dispatch
490 platform time, and passenger platform time; The percentage of total trips that

491 each TNC covered by this section 13 represents; The impact of the adjustment of
492 the passenger platform time utilization rate or the passenger mileage utilization
493 rate on TNCs, TNC passengers, and TNC drivers, including the impact on TNC
494 driver earnings and work hours, the availability of TNC services, and any other
495 factor the Department of Labor Standards deems relevant. And Any other
496 information the Department of Labor Standards determines is necessary to
497 further the purposes of section 13(a).

498 (3) The Department of Labor Standards shall file a schedule of such amounts described
499 in this section with the Department.

500 (d). FDNC driver per minute amount, per mile amount, and per trip minimum amount,
501 and
502 requirements for gratuities and incentives, shall be equivalent to those of TNC drivers.

503 (e) Nothing in this section shall be construed to discourage or prohibit a TNC from the
504 adoption
505 or retention of protections more generous than the ones required by this section.

506 (f) Nothing in this section shall be construed as diminishing the obligation of a TNC to
507 comply

508 with any contract, or other agreement providing more generous protections to TNC
509 drivers than
510 required by this section.

511 (g) The provisions of this section are declared to be separate and severable. If any clause,
512 sentence, paragraph, subdivision, section, subsection, or portion of this section or the
513 application thereof to any TNC, FDNC, TNC driver, FDNC driver, or circumstance, is
514 held to be
515 invalid, it shall not affect the validity of the remainder of this section, or the validity of its
516 application to other persons or circumstances.

517 -----
518 -----

519 SECTION 4. Chapter 159A1/2 of the General Laws, as so appearing, is hereby amended
520 by
521 inserting after section 13 the following section:-

522 Section 14: Collective Bargaining Rights For Transportation Network Company Drivers

523 Section 14. (a) For the purposes of this section, the following words shall have the
524 following

525 meanings:-

526 “Commencement date” means a calendar date set by the executive office of labor and

527 workforce development for the purpose of initiating certain processes pursuant to Section
528 6.310.735 and establishing timelines and deadlines associated with them.

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

530 “Exclusive driver representative”, a driver representative, certified by the executive office
531 to be

532 the sole and exclusive representative of all licensed for-hire drivers operating within the
533 commonwealth for a particular transportation network company or livery vehicle service.

534 “Driver representative”, an entity that can assist drivers in reaching consensus on desired
535 terms

536 of work and negotiate those terms on their behalf with transportation network companies,
537 food

538 delivery network companies, or livery vehicle service.

539 “Livery vehicle service”, means any company that provides any limousine or other
540 vehicle which

541 is designed to carry fifteen or fewer passengers, including the driver, and carries
542 passengers for

543 hire, business courtesy, employee shuttle, customer shuttle, charter or other pre-arranged
544 transportation, and which vehicle is not required to obtain a taxicab license pursuant to
545 M.G.L.

546 chapter 40 §22.

547 “Qualifying driver,” means a for-hire driver who drives for a transportation network
548 company,

549 livery vehicle service, or food delivery network company and who satisfies the conditions
550 established by the executive office with regard to the length, frequency, total number of
551 trips, or
552 average number of trips in a given time period.

553 “Transportation network company”, a company that provide prearranged transportation
554 services

555 for compensation using an online enabled application or platform to connect driver using
556 their
557 personal vehicles with passengers.

558 (b) The process of designating a driver representative shall be prescribed by executive
559 office

560 and shall be based on, but not limited to, consideration of the following factors:

561 (1) organization bylaws that give drivers the right to be members of the organization and
562 participate in the democratic control of the organization;

563 (2). Is a 501(c)(3), 501(c)(4), or 501(c)5 non-profit organization, or is otherwise

564 registered with the Commonwealth of Massachusetts as a non-profit organization, that

565 exists for the betterment of Transportation Network Company or Food Delivery Network

566 Company drivers;

567 (3). Has a proven record of engaging in public advocacy to promote the health and
568 wellbeing of Transportation Network Company or Food Delivery Network Company drivers;

569 (4). Has experience in and/or demonstrated commitment to assisting members in
570 reaching

571 consensus agreements with, or related to, employees and contractors;

572 (5). Has a governing structure that promotes workers' decision-making power; and

573 (6). Is not an employer, nor employer-financed, nor an employment agency of
574 Transportation Network Company or Food Delivery Network Company drivers.

575 An entity wishing to be considered as a driver representative for drivers in an appropriate
576 unit,

577 as prescribed by the executive office, must submit a request to the executive office within
578 30

579 days of the commencement date. Within 14 days of the receipt of the request, the
580 executive

581 office shall notify the applicant in writing of its determination.

582 (c) Transportation network companies, food delivery network companies, or livery
583 vehicle

584 services who have hired, contracted with, or partnered with 50 or more drivers at any one
585 time
586 in the 30 days prior to the commencement date in the unit must, within 60 days of the
587 commencement date, provide all driver representatives seeking to represent their drivers
588 the
589 names, addresses, email addresses, and phone numbers, of all qualifying drivers they
590 hire,
591 contract with, or partner with in the unit.

592 Driver representatives shall use driver contact information for the sole purposes of
593 contacting
594 drivers to solicit their interest in being represented by the driver representative and to
595 invite
596 them to participate in the affairs of the driver representative organization. The driver
597 representative shall not sell, publish, or otherwise disseminate the driver contact
598 information.

599 (d) The executive office shall certify a driver representative as the exclusive driver
600 representative for all qualifying drivers contracted with a particular transportation
601 network

602 company, food delivery network company, or livery vehicle service in the unit, according
603 to the

604 following:

605 (1) Within 120 days of receiving the driver contact information, a driver representative
606 shall submit statements of interest to the executive office from a majority of qualifying
607 drivers from the list described in subsection (c). Each statement of interest shall be
608 physically or digitally signed, dated, and clearly state that the driver wants to be
609 represented by the driver representative for the purpose of collective bargaining. The
610 executive office shall determine the procedures for submitting and verifying statements
611 of interest by drivers choosing an exclusive driver representative. The methods for
612 submitting and verifying statements of interest by drivers choosing an exclusive driver
613 representative may include, but not be limited to: signature verification, unique personal
614 identification number verification, statistical methods, or third party verification.

615 (2) Within 30 days of receiving such statements of interest, the executive office shall
616 determine if they are sufficient to designate the driver representative as the exclusive
617 driver representative for all qualifying drivers for that particular transportation network
618 company, food delivery network company, or livery vehicle service in the unit. If more
619 than one driver representative establishes that a majority of drivers have expressed

620 interest in being represented by that driver representative, the executive office shall
621 designate the driver representative that received the largest number of verified
622 affirmative statements of interest to be the exclusive driver representative.

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

627 (4) If the driver representative is unsuccessful in securing a majority of qualified drivers
628 in the 120 day time period, then the executive office must hold an election open to all
629 qualifying drivers to certify the driver representative within 30 days. The driver
630 representative must secure affirmative votes from a majority of the election respondents
631 only in order to be certified as the exclusive driver representative. The voting period must
632 run for 7 days, and drivers must have the ability to access the voting portal from the
633 interface used by the TNC, FDNC or livery service to communicate with and dispatch
634 drivers. An announcement explaining the process for voting must be made at the start of
635 the voting period using the system typically used to relay messages and announcements
636 to drivers by the TNC, FDNC or livery service. The TNC, FDNC or livery service must

637 remain strictly neutral during the voting process. The voting portal shall be secured using
638 blockchain technology.

639 (e) If no exclusive driver representative is certified for a transportation network company,
640 food

641 delivery network company, or livery vehicle service in the unit, the executive office shall
642 promulgate a new commencement date that is no earlier than 180 days and no later than
643 360

644 days from the determination that no driver representative met the majority threshold,
645 provided

646 that no transportation network company, food delivery network company, or livery
647 vehicle

648 service shall be subject to the requirements of this section more than once in any calendar
649 year.

650 The affected exclusive driver representative and transportation network company or
651 livery

652 vehicle service may repeat the processes set forth in subsections (c) and (d). If the
653 executive

654 office again fails to certify an exclusive driver representative, all driver representatives
655 shall lose

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

659 (f) Upon certification of the exclusive driver representative by the executive office, and at
660 least
661 90 days before expiration of any existing agreement, the transportation network
662 company, food
663 delivery network company, or livery vehicle service and the exclusive driver
664 representative shall
665 meet and negotiate in good faith certain specified subjects, including, but not limited to,
666 best
667 practices regarding vehicle equipment standards, safe driving practices, the nature and
668 amount
669 of payments to be made by, or withheld from, the transportation network company, food
670 delivery
671 network company, or livery vehicle service to or by the drivers, minimum hours of work,
672 conditions of work and applicable rules, and any other subject prescribed by the
673 executive office
674 and shall reduce their discussion to a written agreement.

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

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

686 (g) If a transportation network company, food delivery network company, or livery
687 vehicle
688 service and the exclusive driver representative fail to reach an agreement within 90 days
689 of the
690 certification of the exclusive driver representative by the executive office or within 90
691 days after
692 the expiration of an existing agreement, either party must submit to interest arbitration
693 upon the

694 request of the other party. The arbitrator may be selected by mutual agreement of the
695 parties. If
696 the parties cannot agree on an arbitrator, the superior court on application of a party shall
697 appoint the arbitrator. The court shall submit to the parties a list of 5 persons experienced
698 in
699 labor arbitration from which each party may delete two names and the appointment shall
700 be
701 made from the name or names remaining. An arbitrator so appointed shall have all the
702 powers
703 of an arbitrator specifically named in the agreement.

704 The arbitrator shall transmit any agreement to the executive office for review for
705 compliance with
706 the provisions of this section. The executive office shall have 30 days upon receipt of an
707 agreement to determine its compliance and to notify the interest arbitrator of the
708 determination
709 in writing. If the executive office finds the agreement compliant, the agreement shall be
710 considered final and binding on all parties. If the executive office finds that the
711 agreement fails

712 to comply with this section, the executive office shall remand it to the arbitrator with a
713 written
714 explanation. If either party refuses to enter interest arbitration, upon the request of the
715 other,
716 either party may pursue any available judicial remedies.

717 (h) It shall be a violation for a transportation network company, food delivery network
718 company,
719 or livery vehicle service or its agent, designee, employee, or any person or group of
720 persons

721 acting directly or indirectly in the interest of the transportation network company, food
722 delivery
723 network company, or livery vehicle service in relation to the driver to interfere with,
724 restrain, or

725 deny the exercise of, or the attempt to exercise, any right protected under this section
726 including

727 but not limited to threatening, harassing, penalizing, or otherwise discriminating against a
728 driver
729 because the driver has exercised the rights protected under this section.

730 It shall also be a violation for a transportation network company, food delivery network

731 company, or livery service, or its agent, designee, employee, or any person or group of
732 persons
733 acting directly or indirectly in the interest of any transportation network company, food
734 delivery
735 network company, or livery service to found, organize, fund, support, assist, coordinate
736 with,
737 dominate, interfere, or otherwise become involved with any group or organization which
738 is
739 seeking to be a driver representative, to decertify a driver representative, or which
740 otherwise
741 purports to advocate for, speak on the behalf of, or represent drivers. This shall not be
742 construed to apply to drivers themselves, unless acting at the direction of a TNC, FDNC
743 or livery
744 service.
745 (i) An exclusive driver representative may be decertified if the executive office receives a
746 petition
747 to decertify an exclusive driver representative within 30 days of the expiration of an
748 agreement
749 reached pursuant to this section. A decertification petition must be signed by 200 or more

750 drivers. The executive office shall determine the procedures for submitting the
751 decertification
752 petition.
753 Once a petition has been accepted by the executive office, the executive office shall issue
754 notice to the transportation network company or livery vehicle service and the exclusive
755 driver
756 representative of the decertification petition and promulgate a new commencement date.
757 The
758 transportation network company, food delivery network company, or livery vehicle
759 service shall
760 have 14 days from the commencement date to transmit the list of drivers to any
761 petitioners.
762 Within 90 days of receiving the driver contact information, petitioners for a
763 decertification shall
764 submit statements of interest from a majority of drivers represented to the executive
765 office. The
766 statements of interest shall be signed and dated and shall clearly indicate that the driver
767 no
768 longer wants to be represented by the exclusive driver representative for the purpose of

769 collective bargaining with the transportation network company or livery vehicle service.

770 The

771 executive office shall determine the procedures for submitting and verifying the

772 statements of

773 interest of drivers.

774 Within 30 days of receiving such statements of interest, the executive office shall

775 determine if

776 they are sufficient to decertify the exclusive driver representative for that particular

777 transportation network company or livery vehicle service. The executive office shall

778 decertify the

779 exclusive driver representative or declare that the decertification petition did not meet the

780 majority threshold and reaffirm that the exclusive driver representative shall continue

781 representing all drivers for that particular transportation network company or livery

782 vehicle

783 service.

784 If an exclusive driver representative is decertified for a particular transportation network

785 company, food delivery network company, or livery vehicle service, the process of

786 selecting a

787 new exclusive driver representative may begin.

788 (j) The executive office is authorized to enforce and administer this section. The
789 executive office

790 shall investigate alleged violations. The executive office shall issue a written notice of the
791 violation if a violation has occurred. The notice shall:

792 (1) require the person or entity in violation to comply with the requirement;

793 (2) include notice that the person or entity in violation is entitled to a hearing before the
794 labor relations commission to respond to the notice and introduce any evidence to refute
795 or mitigate the violation;

796 (3) inform the person or entity in violation that a daily penalty of up to \$10,000 for every
797 day the violator fails to cure the violation shall accrue if the violation is uncontested or
798 found committed.

799 (4) Driver representatives shall not be subject to penalties, except if found in violation of
800 subsection (h).

801 (5) A violation of subsection (h) shall be a criminal offense subject to imprisonment of no
802 less than six months. The executive officers and board of directors of any Transportation
803 Network Company which violates subsection (h) shall be liable for such an offense.

804 The person or entity named on the notice of violation must file with the labor relations

805 commission the request for a hearing within 10 business days after the date of the notice
806 of
807 violation. The labor relations commission may affirm, modify, or reverse the executive
808 office's
809 notice of violation. If the person or entity named on the notice of violation fails to timely
810 request
811 a hearing, the notice of violation shall be final and the daily penalty of up to \$10,000
812 shall accrue
813 until the violation is cured.

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

819 (i) The process of defining a qualifying driver shall be prescribed by the executive office
820 and
821 shall be based on, but not limited to, consideration of the following factors:
822 (1) Completion of at least 200 trips for the relevant Transportation Network Company or
823 Food Delivery Network Company.

824 (m) The provisions of this section are declared to be separate and severable. If any clause,
825 sentence, paragraph, subdivision, section, subsection, or portion of this section or the
826 application thereof to any TNC, FDNC, TNC driver, FDNC driver, or circumstance, is
827 held to be
828 invalid, it shall not affect the validity of the remainder of this section, or the validity of its
829 application to other persons or circumstances.

830 (n) This section shall remain valid so long as the National Labor Relations Board declines
831 to
832 extend coverage of the National Labor Relations Act to TNC and FDNC drivers.

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834 -----

835 SECTION 5. Chapter 159A1/2 of the General Laws, as so appearing, is hereby amended
836 by
837 inserting after section 14 the following section:-

838 Section 15: Driver Resolution Center Established

839 (a) The Department shall contract with a Driver Resolution Center to provide driver
840 resolution

841 services. Those services shall include, but not be limited to:

842 (1). Consultation and/or direct representation for TNC and FDNC drivers facing

843 deactivation;

844 (2). Other support for TNC and FDNC drivers to ensure compliance with applicable
845 labor standards and/or to support their ability to perform TNC or FDNC services; and

846 (3). Outreach and education to TNC and FDNC drivers regarding their rights under this
847 chapter and other applicable federal, state, and local laws and regulations.

848 (b) There shall be a Driver Resolution Center Trust Fund. The director of the division
849 shall be

850 the trustee of the Fund and shall expend money to fund the Driver Resolution Center.

851 There

852 shall be credited to the Fund: (i) ten cents of any per-ride assessment collected,
853 notwithstanding

854 section 12; and (ii) any interest earned on money in the Fund. Money remaining in the
855 fund at

856 the end of a fiscal year shall not revert to the General Fund.

857 (c) Food Delivery Network Companies shall be assessed a ten cent tax per delivery to
858 fund the

859 Driver Resolution Center.

860 (d) The provisions of this section are declared to be separate and severable. If any clause,
861 sentence, paragraph, subdivision, section, subsection, or portion of this section or the

862 application thereof to any TNC, FDNC, TNC driver, FDNC driver, or circumstance, is
863 held to be

864 invalid, it shall not affect the validity of the remainder of this section, or the validity of its
865 application to other persons or circumstances.

866 -----
867 -----

868 SECTION 6. Section 2 of Chapter 159A1/2, as so appearing, is hereby amended by
869 striking
870 out subsection (e).

871 -----
872 -----

873 SECTION 7. Section 4 of Chapter 159A1/2, as so appearing, is hereby amended by
874 inserting
875 after the last paragraph:-

876 (g) No Transportation Network Company shall issue transportation network driver
877 certificates
878 to new drivers until June 1st of 2023.

879 -----
880 -----

881 SECTION 8. Chapter 159A1/2 of the General Laws, as so appearing, is hereby amended
882 by

883 inserting after section 15 the following section:-

884 Section 15: Policy and Intent

885 (a) The legislature finds and declares that:

886 (1). Privately operated Transportation Network Companies and the drivers who work
887 with them are vital parts of the transportation system of the state, and the well-being of
888 the drivers who operate vehicles that enable the Transportation Network Companies, and
889 the safety, reliability, and stability of the services offered by privately operated
890 Transportation Network Companies are matters of statewide importance;

891 (2). For these reasons, it is the public policy of the state of Massachusetts to exempt from
892 federal antitrust laws, and replace from the competition requirements of those laws with
893 regulations imposed by the executive office and for the executive office to have an
894 ongoing supervisory role in ensuring that these regulations are implemented by
895 Transportation Network Companies and their associated drivers in a way that encourages
896 the safety, reliability and stability of the services offered.

897 (3). Furthermore, because collective negotiations between Transportation Network
898 Companies and their respective drivers, and the resulting collectively negotiated

899 recommendations concerning the terms and conditions of work for drivers is likely to
900 improve the regulations promulgated by the executive office, the state of Massachusetts
901 will establish a process through which Transportation Network Companies and their
902 drivers collectively negotiate in order to enable more stable and sustainable working
903 conditions and better ensure that drivers can perform their services in a safe, reliable,
904 stable, cost-effective, and economically viable manner, and thereby promote the welfare
905 of the people who rely on safe and reliable transportation and delivery services to meet
906 their needs;

907 (4). All the provisions of this article shall be liberally construed for the accomplishment
908 of these purposes. This article shall be deemed an exercise of the police power of the
909 state for the protection of the public welfare, prosperity, health and peace of the people of
910 the state.

911 (b) No provision in this chapter shall be interpreted as to determine that transportation

912 network

913 company drivers or food delivery network company drivers are not employees under state
914 law.

915 (c) No provisions of this chapter shall be interpreted as to determine that transportation

916 network

917 company drivers or food delivery network company drivers are due less than what is

918 otherwise

919 required under Massachusetts law. In the case of a conflict between any section in this

920 chapter

921 and any section in this or other chapters, the intent of the legislature is that the section

922 which

923 grants the highest degree of compensation and rights to the drivers shall prevail.