

**SENATE . . . . . No. 1224**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Jason M. Lewis***

*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 collective bargaining rights for TNC drivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/8/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>3/10/2021</i>
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	<i>3/15/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/2/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>4/22/2021</i>
<i>Adam G. Hinds</i>	<i>Berkshire, Hampshire, Franklin and Hampden</i>	<i>4/22/2021</i>

**SENATE . . . . . No. 1224**

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By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1224) of Jason M. Lewis, James B. Eldridge, David Henry Argosky LeBoeuf, Susan L. Moran and others for legislation to establish collective bargaining rights for TNC drivers. Labor and Workforce Development.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1090 OF 2019-2020.]

**The Commonwealth of Massachusetts**

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

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 11(a). - Findings and Policy

4           The legislature finds and declares that:

5           a. Privately operated Transportation Network Companies and the drivers who work with  
6 them are vital parts of the transportation system of the state, and the well-being of the drivers  
7 who operate vehicles that enable the Transportation Network Companies, and the safety,  
8 reliability, and stability of the services offered by privately operated Transportation Network  
9 Companies are matters of statewide importance;

10           b. For these reasons, it is the public policy of the state of Massachusetts to exempt from  
11 federal antitrust laws, and replace from the competition requirements of those laws with  
12 regulations imposed by the executive office and for the executive office to have an ongoing  
13 supervisory role in ensuring that these regulations are implemented by Transportation Network  
14 Companies and their associated drivers in a way that encourages the safety, reliability and  
15 stability of the services offered.

16           c. Furthermore, because collective negotiations between Transportation Network  
17 Companies and their respective drivers, and the resulting collectively negotiated  
18 recommendations concerning the terms and conditions of work for drivers is likely to improve  
19 the regulations promulgated by the executive office, the state of Massachusetts will establish a  
20 process through which Transportation Network Companies and their drivers collectively  
21 negotiate in an industry council to make recommendations that will enable more stable and  
22 sustainable working conditions and better ensure that drivers can perform their services in a safe,  
23 reliable, stable, cost-effective, and economically viable manner, and thereby promote the welfare  
24 of the people who rely on safe and reliable transportation and delivery services to meet their  
25 needs;

26           All the provisions of this article shall be liberally construed for the accomplishment of  
27 these purposes.

28           This article shall be deemed an exercise of the police power of the state for the protection  
29 of the public welfare, prosperity, health and peace of the people of the state.

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

32 “Commencement date” means a calendar date set by the executive office of labor and  
33 workforce development for the purpose of initiating certain processes pursuant to Section  
34 6.310.735 and establishing timelines and deadlines associated with them.

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

36 “Exclusive driver representative”, a driver representative, certified by the executive office  
37 to be the sole and exclusive representative of all licensed for-hire drivers operating within  
38 the commonwealth for a particular transportation network company.

39 “Driver representative”, an entity that can assist drivers in negotiating with

40 Transportation Network Companies on desired

41 terms of work and negotiate those terms on their behalf with transportation network  
42 companies.

43 “Qualifying driver,” means a for-hire driver who drives for a transportation network  
44 company and who has performed one hundred and twenty (120) requests through the  
45 transportation network company’s platform in the last ninety (90) days. .

46 “Industry council” means the body comprised of member transportation network  
47 companies, when their drivers are represented by an exclusive driver representative, and their  
48 respective exclusive driver representative.

49 (b) The process of designating a driver representative shall be prescribed by executive

50 office and shall be based on, but not limited to, consideration of the following factors: (i)

51 organization bylaws that give drivers the right to be members of the organization and  
52 participate in the democratic control of the organization; and (ii) experience in assisting  
53 stakeholders in

54 reaching agreements with Transportation Network Companies related to  
55 recommendations to the executive office concerning the terms and conditions of work .

56 22

57 (c) Transportation network companies who have hired, contracted with, or partnered with  
58 50 or more drivers at any one time in the 30 days prior to the commencement date in the  
59 unit, other than in the context of an employer-employee relationship must, within 60 days of the  
60 commencement date, provide all driver representatives seeking to represent their drivers the  
61 names, addresses, email addresses, and phone numbers, of all qualifying drivers they hire,  
62 contract with, or partner with in the unit.

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

67 (d) The executive office shall certify a driver representative as the exclusive driver  
68 representative for all qualifying drivers contracted with a particular transportation  
69 network  
70 company in the unit, according to the following:

71 (1) Within 120 days of receiving the driver contact information, a driver representative  
72 shall submit statements of interest to the executive office from 10% of qualifying  
73 drivers  
74 from the list described in subsection (c). Each statement of interest shall be signed, dated,  
75 and  
76 clearly state that the driver wants to be represented by the driver representative for the  
77 purpose of  
78 collective bargaining. The executive office shall determine the procedures for submitting  
79 and  
80 verifying statements of interest by drivers choosing an exclusive driver representative.  
81 The  
82 methods for submitting and verifying statements of interest by drivers choosing an  
83 exclusive driver representative may include, but not be limited to: signature verification,  
84 electronic authorization, unique personal identification number verification, statistical methods,  
85 or third party verification.

86 (2) Within 30 days of receiving such statements of interest, the executive office shall  
87 determine if they are sufficient to designate the driver representative as the exclusive  
88 driver  
89 representative for all qualifying drivers for that particular transportation network  
90 company in the

91 unit. If the executive office determines that they are sufficient, the associated  
92 transportation network company may voluntarily recognize the drivers representative as the  
93 exclusive drivers representative for the purpose of joining the industry council and commencing  
94 negotiations under this article. If the company fails to voluntarily recognize the driver  
95 representative, or if an organization wishes to take the place of an exclusive drivers  
96 representative for the workers of a transportation network company, the organization may do so  
97 by presenting proof of interest from thirty percent (30%) of qualifying drivers with that company  
98 under the same terms and conditions described above, at which point the executive office shall  
99 hold an election to determine if the qualifying drivers wish to be represented by the drivers  
100 representative. An exclusive drivers representative that has been voluntarily recognized by their  
101 associated transportation network company may choose to gather statements of interest from  
102 30% of their qualifying drivers and trigger the vote described in this section as well. Any  
103 exclusive drivers representative that has won an election under this subsection may only be  
104 removed or displaced through the decertification process described in section j below.

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

110 (e) If no exclusive driver representative is certified for a transportation network company

111 in the unit, the executive office shall promulgate a new commencement date that is no  
112 earlier

113 than 180 days and no later than 360 days from the determination that no driver  
114 representative

115 met the required threshold, provided that no transportation network company shall be  
116 subject to

117 the requirements of this section more than once in any calendar year. The affected  
118 exclusive

119 driver representative and transportation network company may repeat the processes set  
120 forth in

121 subsections (c) and (d). If the executive office again fails to certify an exclusive driver

122 representative, all driver representatives shall lose their certification, and the processes in

123 subsections (c) and (d) shall end until the executive office establishes a new

124 commencement

125 date.

126 (f) Upon certification of the exclusive driver representative by the executive office, the

127 transportation network company and their associated exclusive driver representative will join the

128 industry council. The transportation network companies and the exclusive driver representatives

129 shall each have votes on the industry council equal to their share of the overall market the

130 transportation network company they are connected with had in the previous calendar year.

131 (g) Upon formation with the first transportation network company and their associated  
132 exclusive driver representative, and at

133 68 least 90 days before expiration of any existing agreement, the industry council  
134 shall meet and negotiate in good faith certain specified

135 subjects. Any agreed upon recommendations must include

136 (i) The provision of occupational accident coverage or other insurance coverage for  
137 drivers. This coverage shall include, at no cost to the drivers, benefits for drivers reasonably  
138 equal to benefits of this type provided required under the laws related to workers compensation  
139 coverage in Massachusetts.

140 (ii) Written affirmation of anti-discrimination rights provided to drivers. Such rights shall  
141 be no less restrictive upon the network transportation company than the anti-discrimination laws  
142 of {the MA human rights law cited here}.

143 (iii) Benefits for drivers which may include health, retirement, and other benefits. Such  
144 benefits will be administered by a non-profit entity controlled by the driver representatives on the  
145 Industry Council.

146 (iv) Wage regulations that have the effect of providing a minimum wage not lower than  
147 the existing state regulation when wait time and expenses are considered.

148 (v) The imposition of a 0.5% surcharge on every ride to be provided to the exclusive  
149 drivers representatives to provide representation, training benefits, and services for their  
150 members.

151 (vi) Other issues including, but not limited to, best practices regarding vehicle  
152 equipment standards, safe  
153 driving practices, the nature and amount of payments to be made by, or withheld from,  
154 the  
155 transportation network company to or by the drivers, minimum hours of work,  
156 conditions of  
157 work and applicable rules, and any other subject prescribed by the executive office and  
158 shall  
159 reduce their discussion to a written set of recommendations .

160 If an agreement concerning such recommendations is reached, the exclusive driver  
161 representative(s) shall put the recommendations to a vote of their members. If a majority of the  
162 voting members approves the recommendations, the industry council shall transmit the  
163 recommendations to the executive

164 office. The executive office shall have 30 days upon receipt of such recommendations  
165 to determine if the

166 agreement complies with this section and the public policy intent of section 11(a) and to  
167 notify the industry council of the determination in writing. If

168 the executive office finds the recommendations compliant, the recommendations  
169 shall be considered final and binding on all network transportation companies operating in the  
170 state of Massachusetts .If the executive office finds that the recommendations fail to

171 comply with this section, the executive office shall remand it to the industry council with a  
172 written explanation.

173 84 (g) If the industry council fails to reach a set of recommendations that are then  
174 approved by the members of the drivers representative(s) within 90 days of the creation of the  
175 industry council or within 90 days after the expiration of an existing agreement, either the  
176 transportation network company(ies) or the exclusive driver representative(s)

177 must submit to interest arbitration upon the request of the other party. The arbitrator may  
178 be

179 selected by mutual agreement of the parties. If the parties cannot agree on an arbitrator,  
180 the

181 superior court on application of a party shall appoint the arbitrator. The court shall submit  
182 to the

183 parties a list of 5 persons experienced in labor arbitration from which the transportation  
184 network companies and the exclusive driver representatives may each delete two

185 names and the appointment shall be made from the name or names remaining. An  
186 arbitrator so

187 appointed shall have all the powers of an arbitrator specifically named in the agreement.

188 The arbitrator shall transmit any recommendations to the executive office for review  
189 for

190 compliance with the provisions of this section and section 11(a). The executive office  
191 shall have 30 days upon receipt of an agreement to determine its compliance and to notify the  
192 interest arbitrator of the

193 determination in writing. If the executive office finds the recommendations compliant,  
194 the recommendations shall be considered final and binding on all transportation network  
195 companies in the state of Massachusetts . No recommendations approved by a vote of the  
196 qualifying drivers shall be approved for a period longer than four (4) years. No  
197 recommendations made by an arbitrator shall be approved for a period of longer than two (2)  
198 years. If the executive office finds that the agreement fails to comply with this section and/or  
199 section 11(a), the executive office shall remand it to the arbitrator with a written explanation. If  
200 either party refuses to enter interest arbitration, upon the request of the other, either party may  
201 pursue any available judicial remedies.

202 (h) During the term of any binding terms and conditions of work, the executive office  
203 shall have an ongoing supervisory role to ensure that their implementation satisfies the minimum  
204 requirements and purposes set out in section 11(a) and advances the public policy goals set forth  
205 in this article. The executive office shall have the authority to withdraw approval of the  
206 recommendations if the executive office determines that the recommended terms and conditions  
207 no longer adhere to the provisions of this section or that they no longer promote the public policy  
208 goals set forth in this article. The executive office may withdraw approval only after providing  
209 the industry council with written notice of the proposed withdrawal of approval, the grounds  
210 therefore, and an opportunity to be heard regarding the proposed withdrawal. The executive  
211 office's withdrawal of approval shall be effective only upon the issuance of a written explanation  
212 of the reasons why the approved terms and conditions no longer adhere to the provisions of this

213 article. If the executive office withdraws approval of an existing set of binding terms and  
214 conditions of work, the industry council may submit a new set of agreed-upon recommendations  
215 for consideration within three (3) months' time.

216 (i) It shall be a violation for a transportation network company or its agent, designee,  
217 employee, or any person or group of persons acting directly or indirectly in the interest of  
218 the  
219 transportation network company in relation to the driver to interfere with, restrain, or  
220 deny the  
221 exercise of, or the attempt to exercise, any right protected under this section including but  
222 not  
223 limited to threatening, harassing, penalizing, or otherwise discriminating against a driver  
224 because  
225 the driver has exercised the rights protected under this section.

226 (j) An exclusive driver representative may be decertified if the executive office receives a  
227 petition to decertify an exclusive driver representative within 30 days of the expiration of an  
228 agreement reached pursuant to this section. A decertification petition must be signed by 10 or  
229 more drivers. The executive office shall determine the procedures for submitting the  
230 decertification petition.

231 Once a petition has been accepted by the executive office, the executive office shall issue

232 notice to the transportation network company and the exclusive driver representative of  
233 the  
234 decertification petition and promulgate a new commencement date. The transportation  
235 network  
236 company shall have 14 days from the commencement date to transmit the list of drivers  
237 to any  
238 petitioners. Within 90 days of receiving the driver contact information, petitioners for a  
239 decertification shall submit statements of interest from a majority of drivers represented  
240 to the  
241 executive office. The statements of interest shall be signed and dated and shall clearly  
242 indicate  
243 that the driver no longer wants to be represented by the exclusive driver representative for  
244 the  
245 purpose of collective bargaining with the transportation network company. The executive  
246 office shall determine the procedures for submitting and verifying the statements of interest of  
247 drivers.  
248 Within 30 days of receiving such statements of interest, the executive office shall  
249 determine if they are sufficient to decertify the exclusive driver representative for that  
250 particular  
251 transportation network company. The executive office shall decertify the exclusive driver

252 representative or declare that the decertification petition did not meet the majority  
253 threshold and

254 reaffirm that the exclusive driver representative shall continue representing all drivers for  
255 that particular transportation network company.

256 If an exclusive driver representative is decertified for a particular transportation network  
257 company, the process of selecting a new exclusive driver representative may begin. The  
258 transportation network company whose exclusive driver representative has been decertified may  
259 not vote on the industry council until a new exclusive driver representative is chosen.

260 (k) The executive office is authorized to enforce and administer this section. The

261 executive office shall investigate alleged violations. The executive office shall issue a  
262 written

263 notice of the violation if a violation has occurred. The notice shall: (i) require the person  
264 or entity

265 in violation to comply with the requirement; (ii) include notice that the person or entity in

266 violation is entitled to a hearing before the labor relations commission to respond to the  
267 notice

268 and introduce any evidence to refute or mitigate the violation; and (iii) inform the person

269 or

270 entity in violation that a daily penalty of up to \$100,000 for every day the violator fails to

271 cure the

272 violation shall accrue if the violation is uncontested or found committed.

273 The person or entity named on the notice of violation must file with the labor relations  
274 commission the request for a hearing within 10 business days after the date of the notice  
275 of  
276 violation. The labor relations commission may affirm, modify, or reverse the executive  
277 office's  
278 notice of violation. If the person or entity named on the notice of violation fails to timely  
279 request  
280 a hearing, the notice of violation shall be final and the daily penalty of up to \$100,000  
281 shall accrue  
282 until the violation is cured.

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