

SENATE 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:

Henry Matthews De Groot

SENATE No.

A petition (accompanied by bill, Senate, No.) of Henry Matthews De Groot for legislation to establish a rideshare driver bill of rights.

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

3 “Available platform time” means the time a TNC driver is logged in to the driver
4 platform and available to receive a TNC dispatched trip prior to receiving a trip request from a
5 TNC. A TNC driver cannot simultaneously be engaged in available platform time, dispatch
6 platform time, and/or passenger platform time for the same TNC. For trips involving multiple
7 passengers picked up from different passenger pick-up locations, available platform time means
8 the period of time when a TNC driver is logged in to the driver platform prior to receiving the
9 first trip request from a TNC;

10 “Dispatch platform time” means the time a TNC driver spends traveling from dispatch
11 location to passenger pick-up location. Dispatch platform time ends when a passenger cancels a
12 trip, a driver cancels a trip, or the driver begins the trip in the driver platform. A TNC driver

13 cannot simultaneously be engaged in available platform time, dispatch platform time, and/or
14 passenger platform time for the same TNC. For trips involving multiple passengers picked up
15 from different passenger pick-up locations, dispatch platform time means the time a TNC driver
16 spends travelling from the first dispatch location to the first passenger pick-up location;

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

26 “Passenger mileage utilization rate” means the percentage of miles that TNC drivers
27 drive during passenger platform time relative to the total miles TNC drivers drive during
28 available platform time, dispatch platform time, and passenger platform time.

29 “Passenger platform time utilization rate” means the percentage of time that TNC drivers
30 spend during passenger platform time relative to the total of the time TNC drivers spend during
31 available platform time, dispatch platform time, and passenger platform time.

32 “Per minute rate” means the per minute equivalent of the living wage necessary for two
33 working adults to support a family with two children in the Boston-Cambridge-Newton area as
34 calculated by the Massachusetts Institute of Technology Living Wage Calculator.

35 This wage has been calculated at a rate of twenty dollars and forty one cents an hour,
36 making the per minute rate equal to thirty four cents.

37 “Per mile rate” means the per mile equivalent of the reasonable expenses necessary for a
38 TNC driver to provide TNC services;

39 “Extra large ride” means a ride that requires a vehicle with a passenger or storage
40 capacity greater than four seats in addition to the driver.

41 “Reasonable expenses” means (1) the per mile cost of operating a vehicle for purposes of
42 providing TNC services and (2) the non-mileage expenses incurred by TNC drivers to provide
43 TNC services. Reasonable expenses may include, but are not limited to:

- 44 1. Vehicle acquisition and financing costs;
- 45 2. Depreciation;
- 46 3. Lease payments;
- 47 4. Maintenance and repairs;
- 48 5. Vehicle cleaning;
- 49 6. Tires;
- 50 7. Gasoline (including all taxes thereon);
- 51 8. Oil;
- 52 9. Vehicle insurance;
- 53 10. License and vehicle registration fees;

- 54 11. Cell phone and cell phone service plans;
- 55 12. Cost of medical, dental, and vision insurance;
- 56 13. The amount of employer-side payroll taxes that TNC drivers must pay;
- 57 14. The amount of business taxes that TNC drivers must pay;
- 58 15. Business license fees that TNC drivers must pay;
- 59 16. Rest breaks; and
- 60 17. Any other cost or information the Department of Labor Standards determines is
61 necessary to further the purposes of section 13(a);

62 "Rate of inflation" means 100 percent of the annual average growth rate of the bi-
63 monthly Boston-Cambridge-Newton Area Consumer Price Index for Urban Wage Earners and
64 Clerical Workers, termed CPI-W, for the 12-month period ending in August, provided that the
65 percentage increase shall not be less than zero;

66 "Compensation" means payment owed to a TNC driver by reason of providing TNC
67 services.

68 "Days" means calendar days.

69 "Deactivation" means the blocking of a TNC driver's access to the driver platform,
70 changing a TNC driver's status from eligible to provide TNC services to ineligible, or other
71 material restriction in access to the driver platform that is effected by a TNC.

72 "Aggrieved party" means the TNC driver or other person who suffers tangible or
73 intangible harm due to the TNC's violation of section 15.

74 "Driver Resolution Center" means a non-profit organization registered with the
75 Massachusetts Secretary of State that contracts with the Agency to provide culturally competent
76 TNC driver representation services, outreach, and education; that is affiliated with an
77 organization with experience advocating for the civil and economic rights of drivers, contractors,
78 and workers from disadvantaged socioeconomic groups and representing workers in grievance
79 proceedings; and whose administration and/or formation was/is not funded, excessively
80 influenced, or controlled by a TNC. This organization shall have a proven commitment to worker
81 rights and experience in providing resources, programs, and services to TNC drivers, contractors,
82 and workers that allow them to build sustainable economic opportunities while competing in a
83 changing business environment. The Driver Resolution Center should consider contractual
84 partnerships among entities to achieve the direct participation of organizations primarily focused
85 on diversity and advocating for the civil and economic rights of workers from disadvantaged
86 socioeconomic groups.

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

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

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

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

96 SECTION 2. Chapter 159A1/2 of the General Laws, as so appearing, is hereby amended
97 by inserting after section 11 the following section:-

98 Section 12: Transportation Network Company Driver Rights

99 Section 12. (a) Transportation Network Company drivers and food delivery network
100 drivers are entitled to the benefits and protections granted to an employee under section 148C of
101 Chapter 149. Transportation Network Companies are obligated to the responsibilities of an
102 employer under section 148c of chapter 149. For the purpose of interpreting section 148C(d)(1)
103 of Chapter 149, hours worked shall mean passenger platform time divided by passenger platform
104 time utilization rate.

105 (b) Transportation Network Company and food delivery network drivers drivers
106 providing transportation network services or food delivery network services are entitled to the
107 protections afforded to covered individuals in section 2 of chapter 175M.

108 (c) Transportation Network Company drivers and food delivery network drivers are
109 entitled to compensation for any transportation network services provided in excess of forty
110 hours per week at a rate not less than one- and one-half times the regular per minute rate at
111 which the driver is paid for said services. The per mile rate shall remain the same or greater.

112 Hours worked shall mean passenger platform time divided by passenger platform time utilization
113 rate.

114 (d) Transportation Network Company drivers and food delivery network drivers are
115 entitled to the protections given to employees in chapter 151B.

116 (e). No TNC shall subject a TNC or FDNC driver to unwarranted deactivation, as
117 defined by Department of Labor Standards' rule. The Department of Labor Standards definition
118 of unwarranted deactivation shall be based on, but not limited to, consideration of the following
119 factors:

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

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

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

124 (f) Subject to driver eligibility standards created by the Department of Labor
125 Standards' rule, a TNC or FDNC driver shall have a right to challenge all permanent
126 deactivations and temporary deactivations, as defined by the Department of Labor Standards'
127 rule.

128 (g) The TNC or FDNC driver has the right to elect between representing themselves
129 during any deactivation challenge or being represented by a representative, including an
130 advocate from the Driver Resolution Center. The Driver Resolution Center shall have discretion
131 to determine whether to represent a TNC or FDNC driver, as defined by Department of Labor
132 Standards' rule.

133 (h) For deactivations not described in section 12(r), the TNC or FDNC shall provide
134 the TNC or FDNC driver with 14 days' notice of the impending deactivation. The notice shall
135 include a written statement of the reasons for and effective date of deactivation and provide
136 notice, in a form and manner designated by the Division, of the TNC or FDNC driver's right to
137 challenge such deactivation under this section. The Division shall create and distribute the notice
138 in English and other languages as provided by rules issued by the Division.

139 (i) Upon deactivation, every TNC or FDNC shall furnish to the TNC or FDNC driver
140 a written statement of the reasons for and effective date of deactivation and provide notice, in a
141 form and manner designated by the Division, of the TNC or FDNC driver's right to challenge
142 such deactivation under this section. The Division shall create and distribute the notice in
143 English and other languages as provided by rules issued by the Department.

144 (j). The TNC or FDNC driver and TNC or FDNC may, by mutual agreement, proceed to
145 arbitration through the Deactivation Appeals Panel arbitration ("Panel arbitration") proceeding
146 created by this action instead of proceeding under any applicable arbitration agreement between
147 the TNC or FDNC driver and the TNC or FDNC ("private arbitration agreement"). In the
148 absence of a private arbitration agreement between a TNC or FDNC driver and a TNC or FDNC,
149 the TNC or FDNC driver shall have an absolute right to challenge the deactivation pursuant to
150 this section, regardless of agreement by the TNC or FDNC.

151 (k) If the TNC or FDNC driver and TNC or FDNC agree to proceed to arbitration
152 through the Deactivation Appeals Panel arbitration proceeding created by this section, the TNC
153 or FDNC driver and/or a representative must provide notice to the TNC or FDNC of intent to
154 challenge the deactivation no later than 60 days after the deactivation.

155 (l) The TNC or FDNC and the TNC or FDNC driver and/or a representative shall
156 attempt to resolve the challenge informally no later than 15 days after the notice of intent to
157 challenge has been provided to the TNC or FDNC, or within a time frame mutually agreed by the
158 parties.

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

161 (n) The TNC or FDNC driver and/or representative must provide notice of intent to
162 arbitrate to the TNC or FDNC no later than 15 days after the notice of intent to challenge has
163 been provided to the TNC or FDNC under this section.

164 (o) If a TNC or FDNC driver demonstrates that a TNC or FDNC failed to engage in
165 the informal appeals process under this section, there shall be a presumption, rebuttable by clear
166 and convincing evidence, before the Deactivation Appeals Panel that the deactivation is
167 unwarranted.

168 (p) The Department shall establish a "Deactivation Appeals Panel" ("Panel") for
169 purposes of hearing TNC or FDNC driver challenges to deactivations. The Agency shall contract
170 with one or more persons or entities ("neutral arbitrator") to conduct arbitration proceedings to
171 hear deactivation challenges. The neutral arbitrator shall be one member of the Panel. The
172 remaining Panel members shall consist of an equal number of partisan panel members,
173 representing the interests of the TNC or FDNC driver and the TNC or FDNC, respectively.

174 (1). The utilization of the Panel arbitration proceeding created by this section is voluntary
175 upon agreement by both parties, except as provided for under section 12(j), and shall be of no

176 cost to the TNC or FDNC driver. If utilized, the Panel shall be the sole arbitration proceeding for
177 challenging the deactivation.

178 (2) The cost of arbitration, including any fee charged by an arbitrator, will be shared
179 equally by the TNC or FDNC and the Driver Resolution Center. If the TNC driver is not
180 represented by a representative of the Driver Resolution Center, the TNC or FDNC shall be
181 solely responsible for the cost of arbitration.

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

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

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

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

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

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

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

200 (10) The Department shall issue rules to effectuate the terms of this section including,
201 but not limited to, rules regarding the definition of unwarranted deactivation, driver eligibility to
202 challenge deactivations, the selection of and criteria for the neutral arbitrator and partisan panel
203 members, and the number of partisan panel members. The Department shall further issue rules
204 on methods to protect passenger privacy and address potential safety concerns during Panel
205 arbitrations for deactivations that include but are not limited to allegations of egregious
206 misconduct.

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

212 (12) In computing any period of time prescribed or allowed by this section, the day of
213 the act, event, or default from which the designated period of time begins to run shall not be
214 included. The last day of the period so computed shall be included, unless it is a Saturday, a
215 Sunday, or a federal or state holiday, in which event the period runs until the end of the next day
216 which is neither a Saturday, a Sunday, nor a federal or state holiday.

217 (q) The payment of unpaid compensation, liquidated damages, and interest provided
218 under this section is cumulative and is not intended to be exclusive of any of the above
219 referenced remedies and procedures.

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

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

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

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

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

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

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

229 (vi) The circumstances of each situation;

230 (vii) Other factors pursuant to rules issued by the Department of Labor Standards.

231 (3) A respondent found to be in violation of this section shall be liable for full
232 payment of unpaid compensation plus interest in favor of the aggrieved party for the period of
233 deactivation under the terms of this section, and other equitable relief. The Department of Labor
234 Standards shall issue rules regarding the method of calculating unpaid compensation. The
235 Department of Labor Standards is authorized to designate a daily amount for unpaid
236 compensation. For any violation of this section, the Panel may

237 assess liquidated damages in an additional amount of up to thrice the unpaid
238 compensation.

239 (r) Subject to the provisions of this section and rules issued by the Department,
240 Division, and Department of Labor Standards, a TNC or FDNC may immediately deactivate a
241 TNC or FDNC driver if such action is required to comply with any applicable local, state, or
242 federal laws or regulations or where a TNC or FDNC driver has engaged in egregious
243 misconduct. The Department of Labor Standard's rules shall define egregious misconduct to
244 include, at minimum, allegations of sexual assault.

245 (s) Any person or class of persons that suffers financial injury as a result of a
246 violation of this section may bring a civil action in a court of competent jurisdiction against the
247 TNC or FDNC violating this section and, upon prevailing, may be awarded reasonable attorney
248 fees and costs and such legal or equitable relief as may be appropriate to remedy the violation
249 including, without limitation, the payment of any unpaid compensation plus interest due to the
250 person and liquidated damages in an additional amount of up to thrice the unpaid compensation.
251 Interest shall accrue from the date the unpaid compensation was first due at 12 percent per
252 annum, or the maximum rate permitted under Massachusetts state law.

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

256 (u) For purposes of determining membership within a class of persons entitled to
257 bring an action under section 12(s) two or more TNC or FDNC drivers are similarly situated if
258 they:

259 1. Are or were contracted to perform TNC services by the same TNC, FDNC, TNCs,
260 or FDNCs, whether concurrently or otherwise, at some point during the applicable statute of
261 limitations period,

262 2. Allege one or more violations that raise similar questions as to liability, and

263 3. Seek similar forms of relief.

264 (v) For purposes of section 12(s) TNC drivers shall not be considered dissimilar
265 solely because their:

266 1. Claims seek damages that differ in amount, or

267 2. Job titles or other means of classifying TNC drivers differ in ways that are
268 unrelated to their claims.

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

274 (x) Any TNC driver or FDNC driver has the right to maintain the same schedule and
275 scheduling flexibility that the driver possessed at any time while performing labor for a TNC or
276 FDNC. Said drivers shall continue to possess the right to maintain the same schedule and
277 scheduling flexibility for the duration of their engagement with a TNC or FDNC.

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

280 Section 13: Minimum TNC and FDNC Driver Compensation

281 Section 13. (a) The policy of the Massachusetts General Court is to assure that
282 Transportation Network Company and Food Delivery Network drivers receive a level of
283 compensation that allows them to live with dignity, with consideration to the costs of living in
284 the Commonwealth of Massachusetts.

285 (b) For each TNC dispatched trip, a TNC shall compensate TNC drivers by providing
286 at least the equivalent of: (1) the minimum per minute amount for passenger platform time under
287 section 13(b)(1)(i) plus the minimum per-mile amount for passenger platform time under section
288 13(b)(1)(ii); or (2) the minimum per trip amount for each TNC dispatched trip under section
289 13(b)(2)(iii), whichever amount is greater.

290 (1) Minimum payment

291 (i). Per minute amount. For each minute of passenger platform time on each trip, a
292 TNC shall compensate TNC drivers at least the equivalent of the per minute rate divided by the
293 passenger platform time utilization rate. Subject to the provisions in section 13(c), the passenger
294 platform utilization rate is 0.492.

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

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

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

303 (iv). For the purposes of section 13(b)(1)(iii), “each TNC dispatched trip” includes but
304 is not limited to a trip in which the TNC driver transports the passenger to the passenger’s
305 desired drop-off location, a trip cancelled by a passenger or the TNC unless the TNC refunds the
306 passenger cancellation fee due to driver conduct, and a trip where the passenger does not appear
307 at the passenger pick-up location. For trips involving multiple passengers picked-up from
308 different locations, the minimum per trip amount applies to the period of time commencing when
309 the TNC driver starts the trip in the driver platform after the first passenger enters the TNC
310 driver’s vehicle until the time when the TNC driver ends the trip in the driver platform after the
311 last passenger exits the TNC driver’s vehicle at the end of the trip. “Each TNC dispatched trip”
312 does not include a trip cancelled by the TNC driver, unless the driver is forced to cancel the trip
313 in order to comply with any law or regulation.

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

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

321 (vii) The per mile rate for luxury rides shall be two times the standard per mile rate. The
322 per mile rate for extra large rides shall be one and one half times the standard per mile rate. The
323 per mile rate for a ride which is both a luxury ride and an extra large ride shall be two and one
324 half times the standard mile rate.

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

329 (c). Adjustment of the per mile rate, passenger platform time utilization rate, and the
330 passenger mileage utilization rate

331 (1). Adjustment of the per mile rate. Beginning one year after the effective date of this
332 section, and thereafter on January 1 of each year, the Department of Labor Standards by rule may
333 adjust the per-mile rate. In adjusting the per-mile rate each year, the Department of Labor
334 Standards shall consider the best available sources of data, which may include, but are not
335 limited to: TNC driver surveys, data provided by TNCs, data provided by TNC drivers, data
336 provided by passengers, data from other jurisdictions, data available through academic, policy, or
337 community based organizations, and stakeholder interviews. The Department of Labor Standards
338 shall base the adjustment on an assessment of relevant factors or costs during the 12-month
339 period ending in August. Provided however, that this adjustment shall not result in reduction of
340 the per mile rate below \$0.830.

341 (i). The Department of Labor Standards may consider the following non-exhaustive
342 factors or costs: Vehicle acquisition and financing costs; Depreciation; Lease payments;

343 Maintenance and repairs; Vehicle cleaning; Tires; Gasoline (including all taxes thereon); Oil;
344 Vehicle Insurance; License and vehicle registration fees; Cell phone and cell phone plans; Cost
345 of medical, dental, and vision insurance; The amount of employer-side payroll taxes that TNC
346 drivers must pay; The amount of businesses taxes that TNC drivers must pay; Business license
347 fees that TNC drivers must pay; Rest breaks; and Any other cost or information the Department
348 of Labor Standards determines is necessary to further the purposes of section 13(a).

349 (ii). If the Department of Labor Standards does not adjust the per-mile rate in any
350 given year, the per-mile rate shall be increased on a percentage basis to reflect the rate of
351 inflation and calculated to the nearest cent on January 1 of each year. The Department of Labor
352 Standards shall determine the amount and file a schedule of such amount with the division.

353 (2). Adjustment of the passenger platform time utilization rate and the passenger
354 mileage utilization rate. Subject to the provisions in section 13(c)(2)(i), the Department of Labor
355 Standards by rule may adjust the passenger platform time utilization rate or the passenger
356 mileage utilization rate. The Department of Labor Standards shall provide notice to the public no
357 less than three months before the effective date of any adjustment under this section 13(c)(2).
358 The purpose of any adjustment is to reflect changes in the percentage of time that TNC drivers
359 spend in passenger platform time relative to the total time that TNC drivers spend in available
360 platform time, dispatch platform time and passenger platform time or the percentage of miles
361 TNC drivers drive during passenger platform time relative to the total miles TNC drivers drive
362 during available platform time, dispatch platform time, and passenger platform time. The
363 Department of Labor Standards shall have discretion to determine a passenger platform time
364 utilization rate or a passenger mileage utilization rate on an industry-wide basis or for each TNC
365 covered by section 13.

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

369 (ii). The Department of Labor Standards may choose not to adjust the passenger
370 platform time utilization rate or the passenger mileage utilization rate for any time period that the
371 Department of Labor Standards determines is necessary to further the purposes of chapter 13(a).

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

376 (iii). In adjusting the passenger platform time utilization rate or the passenger mileage
377 utilization rate, the Department of Labor Standards may consider the following sources of
378 information: The best available sources of data, which may include, but are not limited to: TNC
379 driver surveys, data provided by TNCs, data provided by TNC drivers, data provided by
380 passengers, data from other jurisdictions, data available through academic, policy, or community
381 based organizations, and stakeholder interviews; Input from stakeholders on the method and time
382 period for assessment or adjustment of the passenger platform time utilization rate or the
383 passenger mileage utilization rate; and Any other information the Department of Labor Standards
384 determines is necessary to further the purposes of section 13(a).

385 (iv). The Department of Labor Standards shall base any adjustment to the passenger
386 platform time utilization rate or passenger mileage utilization rate on an assessment of relevant
387 factors during an assessment period prior to the date of adjustment. The assessment period for

388 the first adjustment of the passenger platform time utilization rate or passenger mileage
389 utilization rate shall be 12 months in duration. The assessment period for any subsequent
390 adjustment to the passenger platform time utilization rate or passenger mileage utilization rate
391 shall be up to 12 months in duration.

392 (v). The Department of Labor Standards may consider the following factors for the
393 assessment: The average and median amount of available platform time, dispatch platform time,
394 and passenger platform time for TNC drivers; The average and median mileage driven by TNC
395 drivers during available platform time, dispatch platform time, and passenger platform time; The
396 average and median speeds driven by TNC drivers during available platform time, dispatch
397 platform time, and passenger platform time; The percentage of total trips that each TNC covered
398 by this section 13 represents; The impact of the adjustment of the passenger platform time
399 utilization rate or the passenger mileage utilization rate on TNCs, TNC passengers, and TNC
400 drivers, including the impact on TNC driver earnings and work hours, the availability of TNC
401 services, and any other factor the Department of Labor Standards deems relevant. And Any other
402 information the Department of Labor Standards determines is necessary to further the purposes
403 of section 13(a).

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

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

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

410 (f) Nothing in this section shall be construed as diminishing the obligation of a TNC
411 to comply with any contract, or other agreement providing more generous protections to TNC
412 drivers than required by this section.

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

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

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

421 Section 14. (a) For the purposes of this section, the following words shall have the
422 following meanings:-

423 “Commencement date” means a calendar date set by the executive office of labor and
424 workforce development for the purpose of initiating certain processes pursuant to Section
425 6.310.735 and establishing timelines and deadlines associated with them.

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

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

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

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

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

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

445 (b) The process of designating a driver representative shall be prescribed by
446 executive office and shall be based on, but not limited to, consideration of the following factors:

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

449 (2). Is a 501(c)(3), 501(c)(4), or 501(c)5 non-profit organization, or is otherwise
450 registered with the Commonwealth of Massachusetts as a non-profit organization, that exists for

451 the betterment of Transportation Network Company or Food Delivery Network Company
452 drivers;

453 (3). Has a proven record of engaging in public advocacy to promote the health and
454 well-being of Transportation Network Company or Food Delivery Network Company drivers;

455 (4). Has experience in and/or demonstrated commitment to assisting members in reaching
456 consensus agreements with, or related to, employees and contractors;

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

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

460 An entity wishing to be considered as a driver representative for drivers in an appropriate
461 unit, as prescribed by the executive office, must submit a request to the executive office within
462 30 days of the commencement date. Within 14 days of the receipt of the request, the executive
463 office shall notify the applicant in writing of its determination.

464 (c) Transportation network companies, food delivery network companies, or livery
465 vehicle services who have hired, contracted with, or partnered with 50 or more drivers at any one
466 time in the 30 days prior to the commencement date in the unit must, within 60 days of the
467 commencement date, provide all driver representatives seeking to represent their drivers the
468 names, addresses, email addresses, and phone numbers, of all qualifying drivers they hire,
469 contract with, or partner with in the unit.

470 Driver representatives shall use driver contact information for the sole purposes of
471 contacting drivers to solicit their interest in being represented by the driver representative and to

472 invite them to participate in the affairs of the driver representative organization. The driver
473 representative shall not sell, publish, or otherwise disseminate the driver contact information.

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

478 (1) Within 120 days of receiving the driver contact information, a driver
479 representative shall submit statements of interest to the executive office from a majority of
480 qualifying drivers from the list described in subsection (c). Each statement of interest shall be
481 physically or digitally signed, dated, and clearly state that the driver wants to be represented by
482 the driver representative for the purpose of collective bargaining. The executive office shall
483 determine the procedures for submitting and verifying statements of interest by drivers choosing
484 an exclusive driver representative. The methods for submitting and verifying statements of
485 interest by drivers choosing an exclusive driver representative may include, but not be limited to:
486 signature verification, unique personal identification number verification, statistical methods, or
487 third party verification.

488 (2) Within 30 days of receiving such statements of interest, the executive office shall
489 determine if they are sufficient to designate the driver representative as the exclusive driver
490 representative for all qualifying drivers for that particular transportation network company, food
491 delivery network company, or livery vehicle service in the unit. If more than one driver
492 representative establishes that a majority of drivers have expressed interest in being represented
493 by that driver representative, the executive office shall designate the driver representative that

494 received the largest number of verified affirmative statements of interest to be the exclusive
495 driver representative.

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

500 (4) If the driver representative is unsuccessful in securing a majority of qualified
501 drivers in the 120 day time period, then the executive office must hold an election open to all
502 qualifying drivers to certify the driver representative within 30 days. The driver representative
503 must secure affirmative votes from a majority of the election respondents only in order to be
504 certified as the exclusive driver representative. The voting period must run for 7 days, and
505 drivers must have the ability to access the voting portal from the interface used by the TNC,
506 FDNC or livery service to communicate with and dispatch drivers. An announcement explaining
507 the process for voting must be made at the start of the voting period using the system typically
508 used to relay messages and announcements to drivers by the TNC, FDNC or livery service. The
509 TNC, FDNC or livery service must remain strictly neutral during the voting process. The voting
510 portal shall be secured using blockchain technology.

511 (e) If no exclusive driver representative is certified for a transportation network
512 company, food delivery network company, or livery vehicle service in the unit, the executive
513 office shall promulgate a new commencement date that is no earlier than 180 days and no later
514 than 360 days from the determination that no driver representative met the majority threshold,
515 provided that no transportation network company, food delivery network company, or livery

516 vehicle service shall be subject to the requirements of this section more than once in any calendar
517 year. The affected exclusive driver representative and transportation network company or livery
518 vehicle service may repeat the processes set forth in subsections (c) and (d). If the executive
519 office again fails to certify an exclusive driver representative, all driver representatives shall lose
520 their certification, and the processes in subsections (c) and (d) shall end until the executive office
521 establishes a new commencement date.

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

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

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

538 (g) If a transportation network company, food delivery network company, or livery
539 vehicle service and the exclusive driver representative fail to reach an agreement within 90 days
540 of the certification of the exclusive driver representative by the executive office or within 90
541 days after the expiration of an existing agreement, either party must submit to interest arbitration
542 upon the request of the other party. The arbitrator may be selected by mutual agreement of the
543 parties. If the parties cannot agree on an arbitrator, the superior court on application of a party
544 shall appoint the arbitrator. The court shall submit to the parties a list of 5 persons experienced in
545 labor arbitration from which each party may delete two names and the appointment shall be
546 made from the name or names remaining. An arbitrator so appointed shall have all the powers of
547 an arbitrator specifically named in the agreement.

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

556 (h) It shall be a violation for a transportation network company, food delivery
557 network company, or livery vehicle service or its agent, designee, employee, or any person or
558 group of persons acting directly or indirectly in the interest of the transportation network
559 company, food delivery network company, or livery vehicle service in relation to the driver to
560 interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected

561 under this section including but not limited to threatening, harassing, penalizing, or otherwise
562 discriminating against a driver because the driver has exercised the rights protected under this
563 section.

564 It shall also be a violation for a transportation network company, food delivery network
565 company, or livery service, or its agent, designee, employee, or any person or group of persons
566 acting directly or indirectly in the interest of any transportation network company, food delivery
567 network company, or livery service to found, organize, fund, support, assist, coordinate with,
568 dominate, interfere, or otherwise become involved with any group or organization which is
569 seeking to be a driver representative, to decertify a driver representative, or which otherwise
570 purports to advocate for, speak on the behalf of, or represent drivers. This shall not be construed
571 to apply to drivers themselves, unless acting at the direction of a TNC, FDNC or livery service.

572 (i) An exclusive driver representative may be decertified if the executive office
573 receives a petition to decertify an exclusive driver representative within 30 days of the expiration
574 of an agreement reached pursuant to this section. A decertification petition must be signed by
575 200 or more drivers. The executive office shall determine the procedures for submitting the
576 decertification petition.

577 Once a petition has been accepted by the executive office, the executive office shall issue
578 notice to the transportation network company or livery vehicle service and the exclusive driver
579 representative of the decertification petition and promulgate a new commencement date. The
580 transportation network company, food delivery network company, or livery vehicle service shall
581 have 14 days from the commencement date to transmit the list of drivers to any petitioners.

582 Within 90 days of receiving the driver contact information, petitioners for a
583 decertification shall submit statements of interest from a majority of drivers represented to the
584 executive office. The statements of interest shall be signed and dated and shall clearly indicate
585 that the driver no longer wants to be represented by the exclusive driver representative for the
586 purpose of collective bargaining with the transportation network company or livery vehicle
587 service. The executive office shall determine the procedures for submitting and verifying the
588 statements of interest of drivers.

589 Within 30 days of receiving such statements of interest, the executive office shall
590 determine if they are sufficient to decertify the exclusive driver representative for that particular
591 transportation network company or livery vehicle service. The executive office shall decertify
592 the exclusive driver representative or declare that the decertification petition did not meet the
593 majority threshold and reaffirm that the exclusive driver representative shall continue
594 representing all drivers for that particular transportation network company or livery vehicle
595 service.

596 If an exclusive driver representative is decertified for a particular transportation network
597 company, food delivery network company, or livery vehicle service, the process of selecting a
598 new exclusive driver representative may begin.

599 (j) The executive office is authorized to enforce and administer this section. The
600 executive office shall investigate alleged violations. The executive office shall issue a written
601 notice of the violation if a violation has occurred. The notice shall:

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

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

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

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

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

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

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

623 (i) The process of defining a qualifying driver shall be prescribed by the executive
624 office and shall be based on, but not limited to, consideration of the following factors:

625 (1) Completion of at least 200 trips for the relevant Transportation Network
626 Company or Food Delivery Network Company.

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

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

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

636 Section 15: Driver Resolution Center Established

637 (a) The Department shall contract with a Driver Resolution Center to provide driver
638 resolution services. Those services shall include, but not be limited to:

639 (1). Consultation and/or direct representation for TNC and FDNC drivers facing
640 deactivation;

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

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

645 (b) There shall be a Driver Resolution Center Trust Fund. The director of the division
646 shall be the trustee of the Fund and shall expend money to fund the Driver Resolution Center.
647 There shall be credited to the Fund: (i) ten cents of any per-ride assessment collected,
648 notwithstanding section 12; and (ii) any interest earned on money in the Fund. Money remaining
649 in the fund at the end of a fiscal year shall not revert to the General Fund.

650 (c) Food Delivery Network Companies shall be assessed a ten cent tax per delivery to
651 fund the Driver Resolution Center.

652 (d) The provisions of this section are declared to be separate and severable. If any
653 clause, sentence, paragraph, subdivision, section, subsection, or portion of this section or the
654 application thereof to any TNC, FDNC, TNC driver, FDNC driver, or circumstance, is held to be
655 invalid, it shall not affect the validity of the remainder of this section, or the validity of its
656 application to other persons or circumstances.

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

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

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

663 SECTION 8. Chapter 159A1/2 of the General Laws, as so appearing, is hereby amended
664 by inserting after section 15 the following section:-

665 Section 15: Policy and Intent

666 (a) The legislature finds and declares that:

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

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

678 (3). Furthermore, because collective negotiations between Transportation Network
679 Companies and their respective drivers, and the resulting collectively negotiated
680 recommendations concerning the terms and conditions of work for drivers is likely to improve
681 the regulations promulgated by the executive office, the state of Massachusetts will establish a
682 process through which Transportation Network Companies and their drivers collectively
683 negotiate in order to enable more stable and sustainable working conditions and better ensure
684 that drivers can perform their services in a safe, reliable, stable, cost-effective, and economically

685 viable manner, and thereby promote the welfare of the people who rely on safe and reliable
686 transportation and delivery services to meet their needs;

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

691 (b) No provision in this chapter shall be interpreted as to determine that transportation
692 network company drivers or food delivery network company drivers are not employees under
693 state law.

694 (c) No provisions of this chapter shall be interpreted as to determine that
695 transportation network company drivers or food delivery network company drivers are due less
696 than what is otherwise required under Massachusetts law. In the case of a conflict between any
697 section in this chapter and any section in this or other chapters, the intent of the legislature is that
698 the section which grants the highest degree of compensation and rights to the drivers shall
699 prevail.