SENATE DOCKET, NO. 1162 FILED ON: 1/19/2023

SENATE . . . . . No. 666

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:	
Jason M. Lewis	*Fifth Middlesex*	
Liz Miranda	*Second Suffolk*	
Marc R. Pacheco	*Third Bristol and Plymouth*	*2/8/2023*
James K. Hawkins	*2nd Bristol*	*2/10/2023*
Rodney M. Elliott	*16th Middlesex*	*2/28/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*3/6/2023*
John J. Cronin	*Worcester and Middlesex*	*3/8/2023*
John F. Keenan	*Norfolk and Plymouth*	*3/8/2023*
James B. Eldridge	*Middlesex and Worcester*	*3/13/2023*
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	*3/20/2023*
Sal N. DiDomenico	*Middlesex and Suffolk*	*3/27/2023*
Brendan P. Crighton	*Third Essex*	*4/10/2023*
Joan B. Lovely	*Second Essex*	*8/3/2023*
Adam Gomez	*Hampden*	*10/17/2023*
Patricia D. Jehlen	*Second Middlesex*	*1/11/2024*
Carmine Lawrence Gentile	*13th Middlesex*	*1/12/2024*
Pavel Payano	*First Essex*	*3/7/2024*
Nick Collins	*First Suffolk*	*6/25/2024*

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SENATE . . . . . No. 666

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 666) of Jason M. Lewis, Liz Miranda, Marc R. Pacheco, James K. Hawkins and other members of the General Court for legislation to establish collective bargaining rights for TNC drivers. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1224* OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

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:

SECTION 1. Transportation Network Driver Representation and Negotiations of Recommended Standards.

This section shall establish Chapter 150F of the General Laws to create the opportunity for workers in the digital transportation marketplace to combine into transportation network driver organizations and to negotiate on an industry-wide basis with companies in this industry on recommendations to the commonwealth that raise standards for the terms and conditions of work in this industry:-

Section 1. Findings and policy.

(A) The commonwealth of Massachusetts recognizes that the growing rate of technological advancement has fundamentally altered the way that many people are hired and employed, and work within the commonwealth. This technological advancement has generated new “digital marketplaces” in the transportation sector, in which companies connect, through electronic media, customers seeking passenger transportation services to persons willing to supply that transportation service. These persons often suffer poor pay, inadequate health coverage, and irregular or inadequate working hours. In fact, these deleterious conditions have harmed other companies and workers providing passenger transportation services by more traditional means. It is hereby declared that the best interests of the people of this commonwealth are served by stabilizing the workplace conditions and ameliorating the compensation and benefits of persons who supply their labor in the digital transportation marketplaces. This chapter shall be deemed an exercise of the police power of the commonwealth for the protection of the public welfare, prosperity, health and peace of the people of the commonwealth, and shall be liberally construed for the accomplishment of its purposes. It is further declared that the best interests of the people of this commonwealth are served by the prevention or prompt resolution of disputes between rideshare network companies and the persons who supply the labor to effectuate those services through collective bargaining, subject to approval and ongoing supervision by the commonwealth.

(B) For the reasons set forth in subdivision A, it is the public policy of the commonwealth to displace competition with regulation of the terms and conditions of work for transportation network drivers set forth herein; and, consistent with this policy, to exempt from federal and commonwealth antitrust laws, the formation of industry councils and negotiation between transportation network companies and transportation network drivers to negotiate with

one another on an industry-wide basis, and to supervise, evaluate and if approved, implement the resulting negotiated recommendations concerning the terms and conditions of work for all transportation network drivers in an industry when those recommendations are found by the Secretary of Labor to advance the public purposes stated in this section and are then made binding, regardless of the competitive consequences thereof.

(1) The commonwealth intends that transportation network drivers have the right to form, join, or assist labor organizations, to be represented through representatives of their own choosing, and to engage in other concerted activities for the purpose of working with an industry council to create negotiated recommendations, which shall form the basis for industry regulations;

(2) The commonwealth intends transportation network companies have the right to form multi-company associations to represent them while working with an industry council;

(3) The intent and policy of the commonwealth is for the statutory and non-statutory labor exemptions from the federal antitrust laws and analogous commonwealth laws, to apply to transportation network drivers who choose to form, join or assist labor organizations in qualified labor activity in Massachusetts.

(4) The commonwealth intends in authorizing and regulating transportation network companies and transportation network drivers engaging in qualified labor activity that state action immunity apply to this statute, and that such companies and drivers be immune from the federal and commonwealth antitrust laws to the fullest extent possible in their conduct pursuant to this statute;

(5) The commonwealth will actively supervise the qualified labor activity conducted by transportation network companies and transportation network drivers pursuant to this statute to ensure that the conduct permitted by the statute protects the rights of workers, consumers, and companies, encourages collective negotiation and labor peace, and curtails any practices that may negatively impact the general welfare of workers, consumers, businesses, and the commonwealth economy and otherwise advances the purposes of this Act.

Section 2. Definitions.

(A) "Active transportation network driver" or "active TND" means a transportation network driver so designated pursuant to the following process: Upon request by the board, each transportation network company ("TNC") shall provide the board with information that identifies all transportation network drivers ("TND") who completed five or more rides that originate in the commonwealth of Massachusetts on the TNC's platform in the previous six months. Such information shall include only the name of the TND, the TND driver's license number, and the number of rides the TND completed through the TNC's platform in the previous six months. The board shall combine the data provided by all TNCs to determine the distribution of the number of rides completed by all TNDs for which data has been submitted, and then shall determine the median number of rides across TNDs for whom data has been submitted in the previous six months. Any TND who completed more than at least the median number of rides shall be considered an active transportation network driver in the rideshare industry.

(B) "Board" means the commonwealth employment relations board created by section 9R of Chapter 23 of the General Laws.

(C) “Company union” means any committee, employee representation plan, or association of workers or others which exists for the purpose, in whole or in part, of dealing with TNCs concerning grievances or terms and conditions of work for TNDs, which a TNC has initiated or created or whose initiation or creation it has suggested, participated in or in the formulation of whose governing rules or policies or the conducting of whose management, operations or elections the TNC participates in or supervises or which, on or after the effective date of this act, the TNC maintains, finances, controls, dominates, or assists in maintaining or financing unless required to do so by this chapter or any regulations implementing this chapter, whether by compensating anyone for services performed in its behalf or by donating free services, equipment, materials, office or meeting space or anything else of value, or by any other means. A TND organization shall not be deemed a company union only because it has negotiated or been granted the right to designate workers to be released with pay for the purpose of providing representational services in labor-management affairs on behalf of workers or represented by the TND organization, or where, in the course of providing representational services to workers for whom it is the exclusive bargaining representative, a TNC allows agents of the TND organization to meet with workers at the TNC’s premises.

(D) “Exclusive bargaining representative” means a TND organization certified by the board, in accordance with this chapter, as the representative of TNDs in a bargaining unit.

(E) “Network company” means a TNC, except that a business entity that maintains an online-enabled application or platform that meets all three of the following tests is not a network company: (a) it is used to facilitate primarily non-rideshare services within the commonwealth of Massachusetts, (b) less than seven and one-half percent of service requests fulfilled through the platform on an annual basis are for rideshare services, and (c) fewer than ten thousand service

requests fulfilled through the platform in any year are for rideshare services, is not a network company. For purposes of this paragraph, all applications or platforms that any related corporate entities under common control maintain shall be considered a single application or platform.

(F) “Transportation network driver” or “TND” means a transportation network driver as described by § 1 of Chapter 159A1/2 of the General Laws. TND shall not include any individual who, with respect to the provision of services through a TNC’s online enabled-application or platform, is an employee within the meaning of section 29 U.S.C. § 152(3).

(G) “Transportation network driver organization” or “TND organization” means any organization in which network drivers participate, and which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with network companies concerning grievances, terms or conditions of work, or of other mutual aid or protection and which is not a company union as defined herein.

(H) “Transportation network company” or “TNC” means a transportation network company as described by § 1 of Chapter 159A1/2 of the General Laws.

(I) “Unfair work practices” means only those unfair work practices listed in section 4, below.

section 3. Rights of TNDs. TNDs shall have the right of self-organization, to form, join, or assist TND organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion by TNCs, but nothing contained in this chapter shall be interpreted to prohibit TNDs from exercising the right to confer with TNCs at any time, provided that during such conference there is no attempt by such

company, directly or indirectly, to interfere with, restrain or coerce such workers in the exercise of the rights guaranteed by this section.

Section 4. Unfair work practices.

(A) It shall be an unfair work practice for a TNC to

1. fail or refuse to provide the board with an accurate list of the names, trips or deliveries made, and contact information of TNDs, as required by this chapter;

2. refuse to negotiate in good faith with a certified or recognized TND organization representing TNDs engaged with such TNC concerning wages, hours, or terms and conditions of work. Since the obligation to negotiate in good faith includes an obligation to provide requested information that has a bearing on the bargaining process, it is also an unfair work practice for a TNC to refuse to provide a certified or recognized TND organization with relevant information requested by the TND organization for the performance of its duties as the TND's bargaining representative;

3. refuse to provide a TND organization with a list of the names, addresses and telephone numbers of TNDs where the provision of such list is required by this chapter;

4. refuse to continue all the terms of a determination of terms and conditions of work prescribed by the Secretary of Labor pursuant to this chapter until a new determination is prescribed;

5. lockout TNDs. The term "lockout" shall mean, for the purposes of this section, a refusal by a TNC to permit a TND normal access to the TNC's means of connecting TNDs to individuals seeking transportation service as a result of a dispute with such workers or a TND

organization representing such workers that affects wages, hours and other terms and conditions of work of such workers, provided, however, that a lockout shall not include a termination of engagement of a worker for good cause that does not involve such worker exercising any rights guaranteed by this chapter.

6. To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of TNDs or those workers' representatives or any other person, any activities of such workers or those workers' representatives in the exercise of the rights guaranteed by this chapter.

7. To dominate or interfere with the formation, existence, or administration of any TND organization, or to contribute financial or other support to any such organization, by any means unless required to by this chapter or by any regulations implementing this chapter, including but not limited to the following:

(i) by participating or assisting in, supervising, controlling or dominating (1) the initiation or creation of any such organization or (2) the meetings, management, operation, elections, formulation or amendment of constitution, rules or policies, of any such organization

(ii) by offering incentives to TNDs to join any such organization;

(iii) by donating free services, equipment, materials, office or meeting space or anything else of value for the use of any such organization; provided that a TNC shall not be prohibited from permitting workers to perform representational work protected under this chapter during working hours without loss of time or pay or from allowing agents of a TND organization that is the exclusive representative of its network workers from meeting with workers on its premises.

8. To require a TND to join any company union or TND organization or to refrain from forming, or joining or assisting a TND organization of their own choosing.

9. To encourage membership in any company union or discourage membership in any TND organization, by discrimination in regard to hire or tenure or in any term or condition of employment or engagement.

10. To discharge or otherwise discriminate against a TND because they have signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter.

11. To distribute or circulate any blacklist of individuals exercising any right created or confirmed by this chapter or of members of a TND organization, or to inform any person of the exercise by any individual of such right, or of the membership of any individual in a TND organization for the purpose of preventing individuals so blacklisted or so named from obtaining or retaining opportunities for remuneration.

12. To do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce TNDs in the exercise of the rights guaranteed by this chapter.

(B) It shall be an unfair work practice for a TND organization to

1. Refuse to collectively bargain in good faith with a TNC, provided it is the certified or recognized representative of the company's workers. Since the obligation to negotiate in good faith includes an obligation to provide requested information that has a bearing on the bargaining process, it is also an unfair work practice for a certified or recognized TND to refuse to provide information requested by aTNC organization that is relevant to the bargaining process;

2. restrain or coerce TNDs in the exercise of the rights guaranteed by this chapter, provided that this paragraph shall not impair the right of a TND organization to prescribe its own rules with respect to the acquisition or retention of membership in the organization;

3. fail to fulfill its duty of fair representation toward TNDs where it is the exclusive bargaining representative by acts or omissions that are arbitrary, discriminatory, or in bad faith.

(C). Prevention of unfair work practices.

1. The board is empowered and directed, as hereinafter provided, to prevent any TNC, and any TND organization from engaging in any unfair work practice described in this chapter. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law or by the determination provided for in section 7(F), below. In order to prevent unfair work practices, each TNC shall, at least once each year, send a text message and an e-mail to each of its active TNDs in a form determined by the board notifying the TNDs of their rights under this chapter, and the procedure for filing an unfair work practice charge. The board shall also post a copy of this notice on its website.

2. Whenever it is charged that any TNC or TND organization has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such TNC or TND organization a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent or agency conducting the hearing or the board in its discretion

at any time prior to the issuance of an order based thereon. The TNC or TND organization so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

3. If upon the record before them such member or agent shall determine that an unfair labor practice has been committed by a TNC or TND organization named in the complaint, they shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such further affirmative action as will effectuate the provisions of this chapter including, but not limited to (i) withdrawal of recognition from and refraining from bargaining collectively with any organization or association, agency or plan defined in this chapter as a company union or established, maintained or assisted by any action defined in this chapter as an unfair labor practice; (ii) awarding of back pay or other restoration of compensation without any reduction based on the TND's interim earnings or failure to earn interim earnings, consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded; (iii) requiring reengagement or reestablishment of the TNC's preexisting relationship with an improperly, adversely affected TNDs with or without compensation, or maintenance of a preferential list from which such worker shall be re-engaged or the relationship reestablished, and such order may further require such respondent to make reports from time to time showing the extent to which the order has been complied with; (iv) requiring respondent to provide the complainant with a list of all TNDs, together with those workers' physical and e-mail addresses and known

telephone numbers; and (v) requiring the TNC to recognize and bargain with a TND organization if the board determines that the unfair work practice interfered with the TND's right to form or join a TND organization. If the member or agent determines that an unfair labor practice has not been committed, they shall issue an order dismissing the complaint. An order issued pursuant to this subsection shall become final and binding unless, within ten days after notice thereof, any party requests review by the full board. A review may be made upon a written statement of the case by the member or agent agreed to by the parties, or upon written statements furnished by the parties, or, if any party or the board requests, upon a transcript of the testimony taken at the preliminary hearing, if any, together with such other testimony as the board may require.

If upon the record before it the board determines that an unfair practice has been committed it shall state its findings of fact and issue and cause to be served on the TNC or TND organization an order requiring such company or organization to cease and desist from such unfair labor practice, and to take such further affirmative action as will effectuate the provisions of this chapter. If upon the record before it the board determines that an unfair labor practice has not been committed, it shall state its findings of fact and shall issue an order dismissing this complaint.

4. Until the record in a case shall have been filed in a court, as hereinafter provided, the board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

5. The board may institute appropriate proceedings in the appeals court for enforcement of its final orders.

6. Any party aggrieved by a final order of the board may institute proceedings for judicial review in the appeals court within thirty days after receipt of said order. The proceedings in the appeals court shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A.

7. Injunctive relief.

(i) A party filing an unfair work practice charge under this section may petition the board to obtain injunctive relief, pending a decision on the merits of said charge by an administrative law judge, upon a showing that: (i) there is reasonable cause to believe an unfair work practice has occurred, and (ii) it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief. Such immediate and irreparable harm may include the chilling of workers in the exercise of rights provided by this chapter.

(ii) Within ten days of the receipt by the board of such petition, if the board determines that a charging party has made a sufficient showing both that there is reasonable cause to believe an unfair work practice has occurred and it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief, the board shall petition the supreme court, upon notice to all parties for the necessary injunctive relief or, if the board determines not to seek injunctive relief, the charging party may seek injunctive relief by petition to the supreme court, in which case the board must be joined as a necessary party. The board or, where applicable, the charging party, shall not be required to give any undertakings or bond and shall not be liable for any damages or costs which may have been sustained by reason of any

injunctive relief ordered. If the board fails to act within ten days as provided herein, the board, for purposes of review, shall be deemed to have made a final order determining not to seek injunctive relief. In the case of a TNC's failure to provide an accurate list of names and addresses of TNDs, immediate and irreparable injury, loss, or damage shall be presumed.

(iii) Injunctive relief may be granted by the court, after hearing all parties, if it determines that there is reasonable cause to believe an unfair work practice has occurred and that it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief. Such relief shall expire on decision by an administrative law judge finding no unfair work practice to have occurred, successful appeal of the grant of injunction relief, or motion by respondent to vacate or modify pursuant to the provisions of the rules of civil procedure, or subsequent finding by the board that no unfair work practice has occurred. The administrative law judge shall conclude the hearing process and issue a decision on the merits within sixty days after the imposition of such injunctive relief unless mutually agreed by the respondent and charging party.

(iv) A decision on the merits of the unfair work practice charge by an administrative law judge finding an unfair work practice to have occurred shall continue the injunctive relief until either: (i) the respondent fails to file exceptions to the decision and implements the remedy, or (ii) the respondent successfully moves in court, upon notice, to vacate or modify the injunctive relief pursuant to provisions of Chapter 30A of the General Laws.

(v) Any injunctive relief in effect pending a decision by the board on exceptions to administrative law judge's decision: (i) shall expire upon a decision by the board finding no

unfair work practice to have occurred, of which the board shall notify the court immediately, or (ii) shall remain in effect only to the extent it implements any remedial order issued by the board in its decision, of which the board shall notify the court immediately.

(vi) The appeal of any order granting, denying, modifying or vacating injunctive relief ordered by the court pursuant to this subdivision shall be made in accordance with the rules of appellate procedure.

(vii) Except as provided in this section, judicial review of the orders of the board shall be as provided for section 9, below.

Section 5. Representatives.

(A) At the conclusion of each calendar quarter (March 31, June 30, September 30, December 31), each TNC shall have 30 days to submit to the board in an electronic format to be determined by the board, the names, phone numbers, mailing addresses, and email addresses for each active TND. These records shall not be subject to disclosure pursuant to Chapter 66 of the General Laws.

(B) Bargaining units. For purposes of this chapter, each TND shall be included in an industry-wide bargaining unit of all TNDs.

(C) Showing of designation of representative. A TND organization may demonstrate that it has been designated as a bargaining representative by presenting to the board cards, or petitions, or other evidence, which may be in electronic form, sufficient to show the TND has authorized the TND organization to act as the worker's exclusive bargaining representative. In order to be valid, such card, petition, or other evidence must have been executed by the worker

within one year of the date the TND organization submits the evidence to the board. Execution may be electronic.

(D) Representative status.

1. Upon the request of a TND organization, the board shall make a determination that such organization has been designated as bargaining representative by at least five percent of active TNDs in an appropriate bargaining unit.

2. Once the board determines that the TND organization has been designated as the bargaining representative of at least five percent of active TNDs in an appropriate bargaining unit, the board shall (1) require each TNC to send a notice, in a form determined by the board, that the TND organization is seeking to represent TNDs for the purpose of initiating a bargaining process in order to establish terms and conditions for the industry; and (2) provide the TND organization with a complete list of names, phone numbers, mailing address, and electronic mail address for all active TNDs in the bargaining unit. The board will provide the TND organization with an updated list each quarter for the next year. For six months from the date of the board's determination that a TND organization has met the five percent threshold in a bargaining unit, no other TND organization may be certified as the exclusive bargaining representative of those workers without an election.

3. Exclusive representative status. A TND organization that provides evidence to the board that it has been designated as bargaining representative by twenty-five percent of active TNDs in the bargaining unit shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit. In the alternative, a TND organization that has been designated as the bargaining representative of at least five percent of active TNDs in the bargaining unit may

petition the board to conduct an election. The election shall be conducted as expeditiously as possible, and if the TND organization receives a majority of valid votes cast it shall be certified as the exclusive bargaining representative.

4. Determination of Exclusive Representative Status in the Event of a Dispute among TND organizations.

(i) If a TND organization seeking certification as the exclusive bargaining representative provides evidence that shows that less than a majority of active TNDs have designated the TND organization as their bargaining representative, the board shall wait seven days before certifying the TND organization as exclusive bargaining representative, and if, during those seven days, another TND organization provides evidence that at least 25 percent of active TNDs in the bargaining unit have designated it as their bargaining representative, or a TND provides evidence that at least 25 percent of active TNDs in the bargaining unit do not wish to be represented by any TND organization, then the board shall hold an election among all active TNDs in the bargaining unit. Such election shall be conducted as expeditiously as possible. A TND organization receiving a majority of the valid votes cast shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit. When two or more TND organizations are on the ballot and none of the choices (the TND organizations or "no worker organization") receives a majority of the valid votes cast, there shall be a run-off election between the two choices receiving the largest and second largest number of votes. A TND organization receiving a majority of the valid votes cast in the run-off shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit, and it shall owe a duty to fairly represent all such workers. For purposes of this provision, the operative list of active

TNDs shall be based on the most recent quarterly list provided by the TNCs in accordance with section 5(1).

(ii) A TND organization certified as the exclusive bargaining representative shall have the exclusive authority to represent the TNDs in the bargaining unit, without challenge by another TND organization, for the greater of (i) one year following certification; or (ii) the length of time that a final determination rendered by the Secretary of Labor under section 7(F) is in effect, provided that such period shall not be longer than three years following the date of issuance of such final determination. During the times when an exclusive bargaining representative is subject to challenge, TNDs may file for a decertification election upon a showing that at least twenty-five percent of the active TNDs in the bargaining unit have demonstrated support for the decertification. The board will then schedule an election to determine whether the TND organization has retained its status as exclusive bargaining representative. The TND organization shall retain its status as exclusive bargaining representative if it receives a majority of valid votes cast by active TNDs in the bargaining unit.

(iii) In the event that a TND organization has been designated the exclusive bargaining representative with respect to a bargaining unit, only that TND organization shall be entitled to (i) receive from the TNCs with workers covered by the bargaining unit a list of all of their TNDs, together with phone numbers, mailing addresses, and electronic mail addresses; and (ii) shall be entitled to engage in bargaining with such TNCs for recommendations to the Secretary of Labor concerning wages, benefits and terms and conditions of work of such workers.

(iv) Dues Deduction. A TND organization that has been designated as the exclusive bargaining representative with respect to a bargaining unit shall have a right to membership dues

deduction upon presentation of dues deduction authorization cards signed by individual TNDs, which may be in electronic form. A TNC shall commence making such deductions as soon as practicable, but in no case later than thirty days after receiving proof of a signed dues deduction authorization card, and such dues shall be submitted to the TND organization within thirty days of the deduction. A TNC shall accept a signed authorization to deduct dues in any format permitted by Title XV, Chapter 110G. The right to such membership dues deduction shall remain in full force and effect until an individual revokes membership in the TND organization in writing in accordance with the terms of the signed authorization.

Section 6. Employment Relations Board Administrative Fees. Beginning on the date that a TND organization is certified as the exclusive bargaining representative, each TNC shall impose a fee of ten cents per trip, which the board shall collect. The board shall use such fees to issue grants to the exclusive bargaining representative to educate TNDs regarding the TND bill of rights, to provide assistance in enforcing those rights, and to enforce the terms of an agreement or determination approved by the Secretary of Labor under this Chapter.

(A) The fee shall be ten cents per ride on each trip originating in the State performed by a TND. Beginning in 2024, the fee shall be adjusted annually to reflect any increase in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics. The board shall calculate and publish the adjustments required by this subparagraph.

(B) The fee shall be displayed to customers as a “Employment Relations Board Administrative Fee.”

(C) The board shall by regulation adopt an exclusive bargaining representative grant application and criteria for evaluating such grant applications, including criteria to ensure that the exclusive bargaining representative has the capacity and expertise to provide education and enforcement support to TNDs. If the exclusive bargaining representative meets the criteria established by the board, the board shall approve the grant application and remit the fees to the exclusive collective bargaining representative on a monthly basis, with each payment occurring no more than thirty days following the end of the month. The fees shall be used by the TND organization solely to educate TNDs regarding this bill of rights, to provide assistance in enforcing those rights, and to enforce the terms of any agreement or determination approved by the Secretary of Labor under this Chapter. No portion of such fees shall be used for political contributions or lobbying. In the event no such grant is awarded or if the fees collected exceed the grant awarded, the board shall use such fees for educational activities regarding the provisions of this Chapter.

(D) Each exclusive bargaining representative shall submit an annual report to the board in a form to be determined by the board setting forth how the fees have been utilized. The board shall review each annual report and certify whether the exclusive bargaining representative is utilizing the fees for appropriate activities and continues to meet the grant application criteria. The board shall by regulation adopt a process by which it may suspend or revoke grants based on the failure to utilize the fees for educational or enforcement activities or the failure to meet the grant application criteria. If the board finds that the exclusive bargaining representative does not meet the grant application criteria, the board may utilize the fees for its own educational and enforcement activities, and the exclusive bargaining representative may reapply for a grant in the following year.

Section 7. Bargaining, Impasse resolution procedures, and final determination by the Secretary of Labor

(A) Once the board determines that a TND organization is the exclusive bargaining representative for a bargaining unit, the board shall notify all TNCs in that industry, and all such TNCs shall be required to bargain with the exclusive bargaining representative concerning wages, benefits, and terms and conditions of work. The terms and conditions to be bargained include, but are not limited to, the criteria for deactivating a TND and a dispute resolution procedure for resolving claims alleging unjust deactivation. To facilitate negotiations, the TNCs may form an industry association to negotiate on their behalf. If the TNCs choose not to form an association, any recommended agreement must be approved by (i) at least two industry member TNCs and (ii) member TNCs representing at least eighty percent of the market share of that industry in Massachusetts, with votes determined in proportion to the number of rides completed by TNDs contracting directly with the TNC in the two quarters preceding the recognition of the certified representative.

(B) Once the TND organization and the TNCs have reached a set of negotiated recommendations for the industry, the negotiated recommendations shall be submitted by the TND organization to a vote by all TNDs in the industry who have completed at least one hundred trips in the previous quarter. If approved by a majority of TNDs who vote, the negotiated recommendations shall be submitted to the Secretary of Labor for approval. If a majority of valid votes cast by the TNDs are not in favor of the negotiated recommendations, the transportation network worker organization and the TNCs will resume bargaining.

(C) For purposes of this section, an impasse may be deemed to exist if the TNCs and exclusive bargaining representative have failed to achieve agreement by the end of a one hundred eighty-day period from the date a TND organization has been designated as the exclusive bargaining representative or from the expiration date of a prior determination by the Secretary of Labor as provided for in paragraph F, below.

(D) Upon impasse, any of the affected TNCs or the exclusive bargaining representative may request the board to render assistance as provided in this section.

(E) Upon receiving a timely request from an exclusive bargaining representative for commencement of an impasse proceeding, the board shall aid the parties as follows:

1. To assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator from a list of qualified persons maintained by the board; the parties shall be free to select a mediator satisfactory to them or to decline such selection.

2. If the mediator is unable to achieve agreement between the parties concerning an appropriate resolution within thirty days after the board has provided the parties the list of mediators, any party may petition the board to refer the dispute to an arbitrator.

3. Upon timely petition of either party, the board shall refer the dispute to an arbitrator as hereinafter provided.

(i) Prior to submitting the dispute to an arbitrator, the board shall conduct an election among all TNDs in the industry who have completed at least one hundred trips in the previous quarter. The TNDs will choose between submitting the dispute to the arbitrator or decertifying the exclusive bargaining representative. If the majority of eligible votes cast are for

decertification the exclusive bargaining representative shall be decertified and any existing regulations shall remain in place until they expire as provided in paragraph F below.

(ii). If a majority of TNDs who vote choose to have an arbitrator appointed, the exclusive bargaining representative shall notify the board of the need to appoint an arbitrator, and the board shall notify the TNCs of this request. Each of the two groups of affected parties (affected TNCs being one group, and the exclusive bargaining representative being the other group) shall have an equal say in the selection of the arbitrator and each of the two groups shall share equally the cost of the arbitrator. If the parties are unable to agree upon the arbitrator within seven days after the board notifies the TNCs of the need to appoint an arbitrator, the board shall submit to the parties a list of qualified, disinterested persons for the selection of an arbitrator. A representative of each of the two groups shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as the arbitrator. Each group shall select its representative for this purpose as it sees fit. A group's failure to agree upon the designation of its representative shall result in the failure of the striking procedure, but shall not impede the board's appointment of the arbitrator upon such failure. The striking process shall be completed within five days of receipt of the board's list. The representatives who undertake the striking shall notify the board of the designated arbitrator. In the event the parties are unable to select the arbitrator within five days following receipt of this list, the board shall appoint the arbitrator.

(iii) The arbitrator shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The arbitrator shall determine the order of presentation by the parties, and shall have discretion and authority to decide all procedural issues that may be raised;

(vi) The parties, including all TNCs engaging at least fifty TNDs in the bargaining unit and the exclusive bargaining representative affected, may present, either orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The arbitrator shall have authority to require the production of such additional evidence, either oral or written as she or he may desire from the parties and shall provide at the request of either group of parties that a full and complete record be kept of any such hearings, the cost of such record to be borne by the requesting party. If such record is created, it shall be shared with all parties regardless of which party paid for it.

(v) Any TNC engaging less than fifty TNDs in the bargaining unit shall have the opportunity to make a written submission to the arbitrator.

(vi) The arbitrator shall make a just and reasonable determination of the matters in dispute, and shall issue a determination that shall apply to all TNCs in the bargaining unit and the exclusive bargaining representative. In arriving at such determination, the arbitrator shall specify the basis for their findings, taking into consideration, in addition to any factors recommended by the parties that the arbitrator finds to be consistent with this chapter, the following:

(a) whether the wages, benefits, hours and conditions of work of the TNDs are sufficient to provide those individuals a standard of living that permits them to rent or own housing in the community, and to sustain themselves and their families in good health, and reasonable prosperity, including money set aside for emergencies and retirement. This amount must take into account the real cost of living, it may substantially exceed any statutory minimum wage, and should be a sufficient amount such that the TNDs and their dependents do not need to rely upon any public benefits;

(b) whether the most efficient way to provide benefits is through a portable benefits fund, and if so, how to best assess each TNC a portion of the costs of providing those benefits;

(c) the financial ability of the affected TNCs to pay for the compensation and benefits in question and the impact on the delivery of services provided by the companies;

(d) the establishment of reasonable dispute resolution mechanisms that will allow TNDs a reasonable expectation of uninterrupted work and permit TNCs to alter or terminate their relationships with workers if there is just cause for such; and

(e) comparison of peculiarities in regard to other trades or professions, including specifically, (i) hazards of work; (ii) physical qualifications; (iii) educational qualifications; (iv) mental qualifications; (v) job training and skills.

(F) Any recommendations agreed upon between TNCs and a TND organization acting as exclusive bargaining representative of TNDs in the bargaining unit and/or any determination reached by an arbitrator under this chapter shall be subject to review and approval by the Secretary of Labor. In deciding whether to grant approval to the arbitrator's recommendations, the Secretary of Labor's decision shall be based on the factors specified in paragraph C (3)(d), above, and the policies set forth in section 1. In deciding whether to approve such agreement or determination, the Secretary of Labor shall afford the exclusive representative, all TNCs, and TNDs the opportunity to submit comments and arguments concerning whether approval is warranted. the Secretary of Labor shall be entitled to approve or disapprove the agreement or determination. In the event of disapproval, the Secretary of Labor may make recommendations for amendments to the agreement or determination that would cause the Secretary of Labor to approve and afford the parties an opportunity to respond to those recommendations. The final

determination by the Secretary of Labor shall include a date following which new terms may be set for the bargaining unit which date shall not be more than three years following the date of the issuance of the determination. If during the three year period (or any lesser period that the Secretary of Labor sets as a duration for the final determination), the Secretary of Labor determines that market conditions have changed, the Secretary of Labor shall give the exclusive bargaining representative, all TNCs, and TNDs the opportunity to submit comments and arguments concerning whether the final determination should be modified, and after receiving those comments, the Secretary of Labor may modify the final determination.

Section 8. No agreement or determination made pursuant to this chapter shall diminish or erode a minimum labor standard that would otherwise apply to a TND.

Section 9. This law shall not preempt any commonwealth enactment which provides greater benefits or protection to a TND.

Section 10. Judicial Review.

(A) Final orders of the board made pursuant to this chapter shall be conclusive against all parties to its proceedings and persons who have had an opportunity to be parties to its proceedings unless reversed or modified in proceedings for enforcement or judicial review as herein provided. Final orders of the board shall be subject to review as provided in section 6 of Chapter 150A of the General Laws, provided that a final order of the board under section 5 of this chapter concerning the scope of bargaining units or the designation of a TND organization as an exclusive bargaining representative or as entitled to the production of lists of TNDs shall only be overturned if it is found to be arbitrary and capricious.

(B) Final orders of the Secretary of Labor pursuant to section 7(F) of this chapter shall be conclusive against all affected TND organizations and all TNCs in the industry unless reversed or modified in proceedings for enforcement or judicial review as herein provided. Such final orders shall be subject to review in accordance with the provisions of section fourteen of chapter 30A of the General Laws, provided, however, that the determination of the Secretary of Labor shall only be overturned if it is found to be arbitrary and capricious.

(C) Except in a proceeding brought to challenge a final order of the Secretary of Labor, the determination of an arbitrator shall not be subject to judicial review.

Section 11. Rules and Regulations.

The board shall make such rules and regulations as may be appropriate to effectuate the purposes and provisions of this chapter.

SECTION 2. Regulation of Transportation Network Companies, Minimum Compensation, and Earned Sick Time.

Section 1. Chapter 159A1/2 of the General Laws is hereby amended by striking out Section 1, and inserting in place thereof the following section:-

Section 1. Definitions

As used in this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

“Background check clearance certificate”, verification issued by the division to a transportation network company and driver applicant, electronically or otherwise, that a driver

applicant successfully completed the background check required under section 3 and is suitable to provide transportation network services.

"Cruising", the driving of a vehicle on the streets, alleys or public places of motorized travel in search of or soliciting hails from a person in the street.

"Department", the department of public utilities.

"Digital network", any online-enabled application, software, website or system offered or utilized by a transportation network company that enables pre-arranged rides with transportation network drivers.

"Division", the division established in section 23 of chapter 25.

"Engaged time," the total time a transportation network driver spent on the way to pick up a rider in addition to the total time the transportation network driver spent providing that rider with a pre-arranged ride,"

"Pre-arranged ride", a period of time that begins when a transportation network driver accepts a requested ride through a digital network, continues while the driver transports the transportation network company rider and ends when the rider safely departs from the vehicle.

"Transportation network company" or "TNC", a corporation, partnership, sole proprietorship or other entity that uses a digital network to connect riders to drivers to pre-arrange and provide transportation.

"Transportation network company permit" or "permit", a document that may be issued by the division to a qualifying transportation network company pursuant to this chapter.

“Transportation network driver” or “TND,” a driver certified by a transportation network company who provides services through a TNC’s on-line enabled application or platform and provides service for which the pick up of the passenger occurs within the Commonwealth.

“Transportation network driver certificate” or “driver certificate”, an authorization to provide transportation network services issued by the transportation network company to a transportation network driver.

“Transportation network rider” or “rider”, a passenger in a pre-arranged ride provided by a transportation network driver, provided that the passenger personally arranged the ride or an arrangement was made on the rider's behalf.

“Transportation network services” or “services”, the offering or providing of pre-arranged rides for compensation or on a promotional basis to riders or prospective riders through the transportation network company's digital network, covering the period beginning when a transportation network driver is logged onto the transportation network company's digital network and is available to receive a pre-arranged ride or while in the course of providing a pre-arranged ride.

“Transportation network vehicle” or “vehicle”, a vehicle that is used by a transportation network driver to provide transportation network services.

Section 2. Section 3 of Chapter 159A1/2 of the General Laws is hereby amended by inserting after subsection (e) the following new subsection (f) and (g):-

(f) The director of the division of public utilities in consultation with the commissioner of labor standards shall study:

(i) income TNDs derive from operating vehicles that provide transportation services to passengers;

(ii) the amount of of TND engaged time time as compared to the entire period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when the TND deactivates the mode and is no longer able to receive and respond to trip requests;

(iii) the amount of time TNDs spend in the period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when the TND deactivates the mode and is no longer able to receive and respond to trip requests, by day and by week;

(iv) the number of miles that TNDs drive during the period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when the TND deactivates the mode and is no longer able to receive and respond to trip requests, by day or week;

(v) the amount of time spent by TNDs waiting for an offer and not engaged during the period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when TND deactivates the mode and is no longer able to receive and respond to trip requests

(vi) TND well-being; and

(vii) such other topics as the director of the division of public utilities in consultation with the commissioner of labor standards deems appropriate.

The study shall be conducted no later than three months after the effective date of this chapter.

(g) No later than six months after the effective date, and every annual anniversary thereafter, in order to further the Commonwealth's interest in ensuring fair TND income, ensuring efficient provision of passenger services, and based on the results of the study conducted pursuant to subdivision a of this section, the director of the division of public utilities:

(i) Shall determine the average proportion of TND engaged time as compared to the entire period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when the TND deactivates the mode and is no longer able to receive and respond to trip requests;

(ii) Shall determine the average proportion of miles driven by TNDs during engaged time to average total miles driven during the period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when the TNC deactivates the mode and is no longer able to receive and respond to trip requests;

(iii) Shall establish a rate of accrual of earned sick time under Chapter 148C of the Massachusetts General Laws that ensures that transportation network drivers accrue the equivalent of one hour of earned sick time for every thirty hours worked; and

(iv) Shall determine the average amount of time spent by TNDs waiting for an offer and not engaged during the period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when TND deactivates the mode and is no longer able to receive and respond to trip requests;

v) Shall establish the maximum period of time TND's on average may spend waiting for an offer during the period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when the TND deactivates the mode and is no longer able to receive and respond to trip requests, and shall establish a procedure for temporarily restricting the ability of a TNC to certify TNDs pursuant to section 4 of this Chapter in order to maintain the desired average level of TND utilization.

Section 3. Section 4 of Chapter 159A1/2 of the General Laws is hereby amended by inserting a new subsection (g):-

(g) A Transportation Network Company shall not be permitted to issue a transportation network driver certificate to any driver during any period in which the director of the division of public utilities has restricted the ability of a Transportation Network Company to certify a driver, pursuant to the procedure adopted under subsection 3(h)(iv) of this Chapter,

Section 4. Section 12 of Chapter 159A1/2 of the General Laws, is hereby struck and replaced to read as follows:

Section 12. (a) On the first day of each month, each transportation network company shall submit to the division, in a format approved by the division, data related to each pre-

arranged ride provided in the month prior to the previous month and shall include for each pre-arranged ride: (i) the latitude and longitude for the points of the origination and termination, calculated to 0.001 decimal degrees; (ii) the date and time of the origination and termination, calculated to the nearest minute; (iii) the total cost paid by the rider for the ride; (iv) the universally-unique identifier associated with the transportation network driver; (v) the transportation network driver's city or town of residence as appearing on the driver's license; (vi) whether the rider requested a shared ride but was not successfully matched with another rider; (vii) whether the rider requested accommodation for special needs; (viii) whether the ride was provided by a wheelchair accessible vehicle; (ix) whether there were any driver or rider-initiated cancellations; (x) the total time that the transportation network driver spent on the way to pick up the rider; (xi) the total time that the transportation network driver spent providing the pre-arranged ride; (xii) the geographic position of the vehicle during the entire duration of the pre-arranged ride, provided at intervals of not less than every 60 seconds of the pre-arranged ride; (xiii) the total mileage driven by the transportation network driver while on the way to pick up the rider; (xiv) the total mileage driven by the transportation network driver while providing the pre-arranged ride; (xv) the transportation network vehicle license plate; (xvi) whether the transportation network driver is a professional driver, as advertised by the transportation network company; and (xvii) whether the pre-arranged ride was advertised by the transportation network company as a luxury or premium ride, regardless of whether the transportation network vehicle was registered as a livery vehicle; provided, however, that if the pre-arranged ride was advertised by the transportation network company as a luxury or premium ride, the factors that were considered in that designation, including, but not limited to, vehicle make, model, year and, if available, trim, whether the transportation network driver was a professional driver, as advertised

by the transportation network company and whether the ride was available by an exclusive membership option.; (xviii) the itemized fare for each trip including the amount of the fare, any toll, surcharge, sales or other taxes, commission rate, other deduction, any tip or gratuity, and a breakdown of the amount such passenger paid for the trip, including base, time, mileage, waiting time, surge factor, passenger discounted, pet or other applicable fees; and; (xix) the payment that each TND received and any deductions for fuel, lease, or other charges or fees imposed on the driver for each trip or the hourly rate paid; (xx) A record of each TND session on the licensee's Internet-enabled application or digital platform. For purposes of this section, a driver's session begins when a licensee's TND activates a mode in the licensee's Internet-enabled application or digital platform, signaling the TND's readiness to receive and respond to trip requests. For purposes of this section, a TND's session ends when the TND deactivates the mode and is no longer able to receive and respond to trip requests; and (xxi)The amount of time spent each day and the miles driven by each vehicle transporting passengers for hire, as well as the time spent and miles driven each day by such vehicle on the way to a passenger, and time spent and miles driven by such vehicle while online in a session, between trips but not on the way to a passenger.

(b) The division may obtain additional ride data from a transportation network company for the purposes of: (A) congestion management, which may include, but shall not be limited to: (i) the total number of transportation network drivers that utilized the transportation network vehicle's digital network within specified geographic areas and time periods as determined by the division; and (ii) the total time spent and total miles driven by transportation network drivers in such geographic areas or time periods as determined by the division while (A) on the way to pick up a rider or (B) engaged in a pre-arranged ride: Or (B) Any additional information required by the division to conduct the study required by subsection 3(f) of Chapter 159A1/2 of the

General Laws as amended; or (C) to make any of the determinations required under 3(g) of Chapter 159A1/2 of the General Laws as amended or the issuance of permits authorized to be regulated by subsection 3(c) of Chapter 159A1/2 of the General Laws as amended; The division shall promulgate regulations relative to data collection pursuant to this subsection prior to obtaining the data. Each data submission to the division pursuant to this section and any rules promulgated hereunder shall be accompanied by an attestation, made under penalty of perjury, that the data submitted is accurate and complete. The failure to maintain or furnish information to the division within a timeline to be determined by the division may, at the discretion of the division, constitute cause to not issue, suspend or revoke a transportation network company permit pursuant to section 6 of chapter 159A1/2 of the general laws.

(c) Annually, not later than June 30, the division shall post on its website, in aggregate form, the total number of rides provided by all transportation network companies that originated in each city or town, each city or town where the rides originating in each city or town terminated and the average miles and minutes of the rides that originated in each city or town and terminated in each other respective city or town.

(d) For the purposes of congestion management, transportation planning or emissions tracking, the division may enter into confidential data-sharing agreements to share de-identified trip-level data received by the division pursuant to this section with the executive office of technology services and security, the executive office of energy and environmental affairs, the Massachusetts Department of Transportation, the Massachusetts Port Authority, the Massachusetts Bay Transportation Authority, the department of environmental protection, a regional transit authority established under section 3 of chapter 161B, a regional planning agency in the commonwealth and a metropolitan planning organization in the commonwealth. The

division shall prescribe the form and content of a confidential data-sharing agreement under this subsection, the manner of transmitting the information and the information security measures that shall be employed by an entity receiving the data under any such datasharing agreement. A confidential data-sharing agreement shall specify that the information provided by the division shall be aggregated and de-identified and may be used only for the purposes set forth in the agreement. Any data received by an entity from the division through a confidential data-sharing agreement under this subsection shall not be considered a public record under clause Twenty-sixth of section 7 of chapter 4 or chapter 66 and shall not be disclosed to any person or entity other than those listed or described in the confidential data-sharing agreement; provided, however, that a state or municipal government agency or transportation planning entity may disclose conclusions and analyses derived from the information and from the data received pursuant to a confidential data-sharing agreement.

(e) A violation of the terms of a confidential data-sharing agreement by an entity listed in subsection (d) may result in the division declining to enter into future confidential data-sharing agreements with the violating entity and in the termination of any existing data-sharing agreement with the entity. The division shall notify each transportation network company whose data was shared in violation of the terms of a confidential data-sharing agreement of the violation, the violating entity and what data was shared. An entity listed in subsection (d) that violates the terms of a confidential data-sharing agreement shall destroy all data received as a result of the confidential data-sharing agreement.

Section 5. Chapter 151 of the General Laws is hereby amended by striking out section 1 and inserting in place thereof the following section:-

Section 1. Oppressive and unreasonable wages; validity of contracts

[Text of section as amended by 2018, 121, Sec. 21 effective January 1, 2023. See 2018, 121, Sec. 36. For text effective until January 1, 2023, see above.]

Section 1. It is hereby declared to be against public policy for any employer to employ any person or any TNC to rely on a TND for the provision of rides in an occupation in this commonwealth at an oppressive and unreasonable wage as defined in section two, and any contract, agreement or understanding for or in relation to such employment shall be null and void. A wage of less than $15.00 per hour, in any occupation, as defined in this chapter, shall conclusively be presumed to be oppressive and unreasonable, wherever the term “minimum wage” is used in this chapter, unless the commissioner has expressly approved or shall expressly approve the establishment and payment of a lesser wage under the provisions of sections seven and nine. Notwithstanding the provisions of this section, in no case shall the minimum wage rate be less than $.50 higher than the effective federal minimum rate.

Section 6. Chapter 151 of the General Laws is hereby amended by striking out Section 2 and inserting in place thereof the following Section:-

Section 2. The following words and phrases as used in this chapter shall have the following meanings, unless the context clearly requires otherwise:

“A fair wage”, a wage fairly and reasonably commensurate with the value of the service or class of service rendered. In establishing a minimum fair wage for any service or class of service under this chapter the commissioner without being bound by any technical rules of evidence or procedure (1) may take into account the cost of living and all other relevant circumstances affecting the value of the service or class of service rendered, (2) may be guided

by like considerations as would guide a court in a suit for the reasonable value of services rendered where services are rendered at the request of an employer in the absence of an express contract as to the amount of the wage to be paid, and (3) may consider the wages paid in the commonwealth for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards.

"A mandatory order", an order the violation of which is subject to the penalties prescribed in subsection (2) of section nineteen.

"An oppressive and unreasonable wage", a wage which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health.

"Commissioner", the director of the department of labor standards.

"Department", the department of labor standards.

"Occupation", an industry, trade or business or branch thereof or class of work therein, whether operated for profit or otherwise, and any other class of work in which persons are gainfully employed, but shall not include professional service, agricultural and farm work, work by persons being rehabilitated or trained under rehabilitation or training programs in charitable, educational or religious institutions, work by seasonal camp counselors and counselor trainees or work by members of religious orders. Occupation shall also not include outside sales work regularly performed by outside salesmen who regularly sell a product or products away from their employer's place of business and who do not make daily reports or visits to the office or plant of their employer.

"Agricultural and farm work", labor on a farm and the growing and harvesting of agricultural, floricultural and horticultural commodities.

"Trip," a transportation service that involves picking up a passenger at a location, and taking and depositing such passenger at a different location requested by such passenger.

"Transportation network driver" or "TND" shall be defined as described in § 1 of Chapter 159A1/2 of the General Laws.

"Transportation network company" or "TNC" shall be defined as described in § 1 of Chapter 159A1/2 of the General Laws.

Section 7. Chapter 151 of the General Laws is hereby amended by striking out section 3 and inserting in place thereof the following section:-

Section 3. The commissioner or the attorney general, or their authorized representatives, shall have full power and authority:

1. To investigate and ascertain the wages of persons employed in any occupation in the commonwealth, including TNDs;

2. To enter the place of business or employment of any employer of persons in any occupation, and any TNC, other than domestic service in the home of the employer, for the purpose of examining, inspecting and making a transcript of any and all books, registers, pay-rolls, and other records of any employer of persons and any TND that in any way appertain to or have a bearing upon the question of wages of any such persons and for the purpose of ascertaining whether the orders of the commissioner or the attorney general have been and are being complied with; and

3. To require from such employer or TND full and correct statements in writing when the commissioner or the attorney general, or their authorized representatives, deem necessary, of the wages paid to all persons in his employ or all TNDs, such statements to be under oath or accompanied by a written declaration that they are made under the penalties of perjury.

4. To carry out the provisions of this chapter.

Section 8. Chapter 151 of the General Laws is hereby amended by inserting a new Section 7b:-

Section 7b. Minimum payments to transportation network workers and minimum fares.

(a) It is hereby declared to be against public policy for any TND to be paid an oppressive and unreasonable wage. In order to ensure that TNDs are not paid an oppressive or unreasonable wage, by DATE, the commissioner (of the department of labor standards) in consultation with the department of public utilities shall issue : i) a rule establishing the minimum payment that must be made to a TND for a trip pre-arranged through the TNC's digital network, and ii) a rule establishing the minimum rate of compensation for TND expenses. The goal for the minimum payment rule is to establish a rate of payment for each trip, that ensures that the aggregate average hourly compensation to TNDs, for both engaged time and time spent waiting for an offer, during the period of time beginning when the TND has activated a mode in a TNC's internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when the TND deactivates the mode and is no longer able to receive and respond to trip requests, is no less than the equivalent of the minimum wage established under section 1 of this chapter. The rule establishing the minimum compensation to cover TND expenses shall be in addition to the minimum payment, and shall be calculated based

on industry averages relating to TND expenses. The goal for this rule is to establish a per-mile rate of reimbursement per trip that ensures that the aggregate average reimbursement for expenses to TNDs reflects actual average TND expenses for miles driven during engaged time as well miles driven on average during time spent waiting for an offer in the period beginning when a transportation network driver has activated a mode in the licensee's Internet-enabled application or digital platform, signaling the driver's readiness to receive and respond to trip requests and ending when the TND deactivates the mode and is no longer able to receive and respond to trip requests. In establishing the minimum compensation to cover TND expenses, the commissioner shall refer to the average proportion of miles driven by TNDs during engaged time to average total miles driven as determined by the director of the division of public utilities pursuant to subsection 3(h)(ii) of Chapter 159A1/2 of the General Laws.

(b) Any minimum payment determined by the commissioner of the department of labor standards pursuant to this section shall not include gratuities, tolls, or surcharges, nor shall it include fees charged by the transportation network company. A transportation network company shall not retain any portion of any gratuity or use gratuities to offset or cover any portion of minimum payments required by this section.

(c) The Commissioner shall examine relevant data and revise the rules establishing minimum payment and minimum compensation for expenses as necessary to further the goals of this section.

Section 9. Chapter 151 of the General Laws is hereby amended by striking out Section 11 and inserting in place thereof the following Section:-

Section 11. Failure to observe fair wage or regulations; summons; hearing; publication of names, liability.

Section 11. If the commissioner has reason to believe that any employer is not paying a fair wage or not observing other minimum wage regulations, or any TNC is not complying with the requirements of the minimum payment and/or minimum compensation rules established pursuant to Section 7b of Chapter 151 of the General laws, the commissioner may, on fifteen days notice, summon such employer to show cause why the name of such employer or such TNC should not be published as having committed such violation. After a hearing and a finding of nonobservance, the commissioner may cause to be published in such newspaper or newspapers within this commonwealth or in such other manner as he may deem appropriate, the name of such employer or employers, or TNC or TNCs. Neither the commissioner nor any authorized representative of the commissioner nor any newspaper publisher, proprietor, editor or employee thereof shall be liable to an action for damages for publishing the name of any employer or any TNC as provided herein unless guilty of wilful misrepresentation.

Section 10. Chapter 151 of the General Laws is hereby amended by striking out section 15 and inserting in place thereof the following section:-

Section 15: Employer's and TNC’s records; statement furnished to commissioner or attorney general; inspection of records by employee.

Section 15. Every employer and every TNC shall keep a true and accurate record of the name, address and occupation of each employee, of the amount paid each pay period to each employee or TND, of the hours worked each day and each week by each employee or TND, and such other information as the commissioner or the attorney general in their discretion shall deem

material and necessary. Such records shall be kept on file for at least 3 years after the entry date of the record. Such records shall be maintained at the place of employment, at an office of the employer, or with a bank, accountant or other central location and shall be open to the inspection of the commissioner or the attorney general, or their authorized representatives at any reasonable time, and the employer or TNC shall furnish immediately to the attorney general, commissioner or representative, upon request, a copy of any of these records. Every employer and every TNC shall furnish to the commissioner, or the attorney general, or their authorized representative, on demand, a sworn statement of such record, and, if the commissioner or the attorney general shall so require, upon forms prescribed or approved by him. An employer shall allow an employee and a TNC shall show a TND at reasonable times and places to inspect the records kept under this section and pertaining to that employee.

Section 11. Chapter 151 of the General Laws is hereby amended by striking out Section 16 and inserting in place thereof the following Section:-

Section 16: Posting orders and rules.

Section 16. Every employer and every TNC, except employers of persons engaged in domestic service in the employer's home, subject to a minimum fair wage order shall keep a copy of such order posted in a conspicuous place in every room in which persons are employed and through any means the TNC normally uses to communicate with TNDs . Employers and TNCs shall be furnished copies of orders or notices on request without charge. The commissioner may require each employer or TNC in any occupation subject to this chapter to post rules which apply to such employer's employees or TNCs, in such reasonable way or ways and for such length of time as he may direct.

Section 12. Chapter 151 of the General Laws is hereby amended by striking out section 17 and inserting in place thereof the following section:-

Section 17: Department or attorney general questioning employees.

Section 17. Each employer and each TNC shall permit any duly authorized officer or employee or TND of the department or of the attorney general to question any employee of such employer or any TND in the place of employment or where the TND performs work for the TNC, other than places of employment of persons engaged in domestic service in the home of the employer, and during work hours in respect to the wages paid to and the hours worked by employees or TNDs.

Section 13. Chapter 151 of the General Laws is hereby amended by striking out Section 19 and inserting in place thereof the following Section:-

Section 19: Punishments for stated acts.

Section 19. (1) Any employer and his agent or any TNC and his agent, or the officer or agent of any corporation who discharges or in any other manner discriminates against any employee or TND, including any employee in the domestic service of any family or person at his home, because such employee or TND has complained of a violation of the provisions of this chapter, or has testified or is about to testify in any investigation or proceeding under or related to this chapter, or because such employer or TNC believes that said employee,TND, or individual may complain of a violation of the provisions of this chapter, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C of chapter 149, and shall be liable for damages which shall not be less than one month's

wages nor more than two month’s wages of such individual, and the costs of the suit, including a reasonable attorney's fee.

(2) Any employer or TNC or the officer or agent of any corporation who knowingly pays or agrees to pay to any employee less than the rates applicable to such employee under a regulation minimum fair wage established by the commissioner, or who pays or agrees to pay to a TND less than the minimum payment and/or minimum compensation rules established pursuant to section 7b of Chapter 151 of the General laws, or who pays or agrees to pay to any employee less than one dollar and eighty-five cents per hour in any occupation not covered by a minimum wage regulation shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C of chapter 149, and each week in any day of which such employee or TND is paid less than the rate applicable to him under a minimum fair wage regulation and each employee TND so paid less, shall constitute a separate offense.

(2A) Any employer or the officer or agent of any corporation who knowingly pays or agrees to pay to any employee in agriculture and farming less than one dollar and sixty cents per hour shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C of chapter 149, and each week in any day in which such employee is paid less shall constitute a separate offense.

(3) An employer or TNC or the officer or agent of a corporation who fails to keep the true and accurate records required under this chapter or to furnish a record to the attorney general, the commissioner, or an authorized representative of the attorney general or commissioner upon request, or who falsifies a record, or who fails to allow an employee or TND to inspect a record

under section 15, or who fails to comply with a requirement of the commissioner under the last sentence of section 16, or who hinders or delays the attorney general, commissioner or representative in the performance of his duties, or who refuses to admit, or locks out, the attorney general, commissioner, or representative from a place of employment or location where a TND performs work, other than a place of employment of a person engaged in domestic service in the home of the employer, which he is authorized to inspect, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C of chapter 149, and each day of the failure to keep a record or to furnish to the attorney general, commissioner or representative a record or other information required for the proper enforcement of this chapter shall constitute a separate offense.

(4) No person shall, for the purpose of evading this chapter, establish any arrangement or organization in his business, by contract, lease or agreement, whether written or oral, whereby a person who would otherwise be his employee does not have the status of such an employee. If the commissioner is of the opinion that any person has established an arrangement or organization in violation of this paragraph, after a public hearing, due notice whereof shall have been given, and at which a reasonable opportunity to be heard has been afforded to such person, he may order such person to cease and desist from such violation; and such an order shall be subject to review under section fourteen in the same manner and to the same extent as any decision of the commissioner under this chapter. Any person so ordered to cease and desist who fails to comply therewith for thirty days after such order has been served upon him shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C of chapter 149.

(5) Whoever directly or indirectly solicits, demands, requests or accepts from any employee or TND any return of a portion of his wages, which would result in such employee or TND retaining less than the rate of wages required by this chapter, or whoever threatens, coerces or intimidates any employee or TND who has wages due under this chapter, for the purpose of causing such person to accept as payment in full a lesser sum than the full amount of the wages so due, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C of chapter 149, and each employee or TND so solicited or threatened shall constitute a separate offense. An employer or TNC who discharges or in any other manner penalizes or discriminates against an employee or TND because the employee or TND has made a complaint to the attorney general or any other person, or assists the attorney general in an investigation under this chapter, or has instituted, or caused to be instituted a proceeding under or related to this chapter, or has testified or is about to testify in the proceeding, or has taken any other action to seek rights under this chapter, shall have violated this section and shall be punished or shall be subject to a civil citation or order as provided in section 27C.

Section 14. Chapter 151 of the General Laws is hereby amended by striking out section 20 and inserting in place thereof the following section:-

Section 20: Payment of less than minimum fair wage; recovery of deficiency; unclaimed award; deposit of funds.

Section 20. If a person is paid by an employer less than the minimum fair wage to which the person is entitled under or by virtue of a minimum fair wage regulation, including the minimum payment and/or minimum compensation rules applicable to TNDs and established

pursuant to section 7b of Chapter 151 of the General laws, or less than $1.85 per hour in a manufacturing occupation or in any other occupation not covered by a minimum fair wage regulation, the person may institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred and for the full amount of the minimum wages less any amount actually paid to him by the employer or TNC. An agreement between the person and the employer to work for less than the minimum wage, or between a TND and a TNC to work for less than the minimum payment and/or minimum compensation rules established pursuant to section 7b of Chapter 151 of the General laws, shall not be a defense to such action. An employee or TND so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any loss of minimum wage and shall also be awarded the costs of the litigation and reasonable attorneys' fees. At the request of any employee paid less than the minimum wage, or TND paid less than the minimum payment and/or minimum compensation rules established pursuant to section 7b of Chapter 151 of the General laws, to which he or she is entitled the attorney general may take an assignment of such wage claim in trust for the assigning employee or TND and may bring any legal action necessary to collect such claim, and the employer or TNC shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The attorney general shall not be required to pay a filing fee in connection with any such action.

In any action or administrative proceeding by an employee or TND or the commissioner instituted upon such a wage claim in which the employee or TND prevails and the commissioner thereafter in possession of the resulting award is unable after a reasonable search to locate the employee or TND or to identify and locate the employee's or TND’s successor in interest, the commissioner shall, upon expiration of one year from the date of said award, deposit the funds

from any such award, less costs and reasonable attorney's fees where applicable, in the General Fund.

Section 15. Chapter 149 of the General Laws is hereby amended by striking out Section 148C and inserting in place thereof the following section:-

Section 148C: Earned sick time.

Section 148C. (a) As used in this section and section 148D, the following words, unless the context clearly requires otherwise, shall have the following meanings:—

“Child”, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person who has assumed the responsibilities of parenthood.

“Earned paid sick time”, the time off from work that is provided by an employer to an employee as computed under subsection (d) that can be used for the purposes described in subsection (c) and is compensated at the same hourly rate as the employee earns from the employee's employment at the time the employee uses the paid sick time; provided, however, that this hourly rate shall not be less than the effective minimum wage under section 1 of chapter 151.

“Earned sick time”, the time off from work that is provided by an employer to an employee, whether paid or unpaid, as computed under subsection (d) that can be used for the purposes described in subsection (c).

“Employee”, any person who performs services for an employer for wage, remuneration, or other compensation, except that employees employed by cities and towns shall only be

considered Employees for purposes of this law if this law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth.

"Employer", any individual, corporation, partnership or other private or public entity, including any agent thereof, who engages the services of an employee for wages, remuneration or other compensation, except the United States government shall not be considered an Employer and cities and towns shall only be considered Employers for the purposes of this law if this law is accepted by vote or by appropriation as provided in Article CXV of the Amendments to the Constitution of the Commonwealth.

"Health care provider", the meaning given this term by the Family and Medical Leave Act of 1993, 29 U.S.C. sections 2601 to 2654, inclusive, as it may be amended and regulations promulgated thereunder.

"Parent", a biological, adoptive, foster or step-parent of an employee or of an employee's spouse; or other person who assumed the responsibilities of parenthood when the employee or employee's spouse was a child.

"Spouse", the meaning given this term by the marriage laws of the commonwealth.

"Termination," the meaning shall include any termination of services of a transportation network worker by a transportation network company from an application or platform, including suspension, refusal to contract, termination of contract, and deactivation.

"Transportation network company" or "TNC," the meaning as described in § 1 of Chapter 159A1/2 of the General Laws.

"Transportation network driver" or "TND," the meaning as described in § 1 of Chapter 159A1/2 of the General Laws.

(b) All employees or TNDs who work in the commonwealth who must be absent from work for the reasons set forth in subsection (c) shall be entitled to earn and use not less than the hours of earned sick time provided in subsection (d).

(c) Earned sick time shall be provided by an employer or TNC for an employee or TND to:

(1) care for the employee's or TND's child, spouse, parent, or parent of a spouse, who is suffering from a physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; or

(2) care for the employee's or TND's own physical or mental illness, injury, or medical condition that requires home care, professional medical diagnosis or care, or preventative medical care; or

(3) attend the employee's or TND's routine medical appointment or a routine medical appointment for the employee's or TND's child, spouse, parent, or parent of spouse; or

(4) address the psychological, physical or legal effects of domestic violence as defined in subsection (g.5) of section 1 of chapter 151A, except that the definition of employee and TND in subsection (a) will govern for purposes of this section.

(d)(1) An employer or TNC shall provide a minimum of one hour of earned sick time for every thirty hours worked by an employee, provided, however, that TNDs shall accrue earned sick time at the rate established by the Director of the Division of Utilities under subection

(3)(h)(iii) of Chapter 159A ½ of the General Laws. Employees and TNDs shall begin accruing earned sick time commencing with the date of hire of the employee, the date on which the TNC certifies the TND pursuant to section 4 of Chapter 159A1/2 of the General Laws, or the date this law becomes effective, whichever is later, but employees shall not be entitled to use accrued earned sick time until the 90th calendar day following commencement of their employment and TNDs shall not be entitled to use accrued earned sick time until the 90th calendar day following the date such TND was certified by the TNC . On and after this 90 day period, employees and TNDs may use earned sick time as it accrues.

(2) Nothing in this chapter shall be construed to discourage or prohibit an employer or TNC from allowing the accrual of earned sick time at a faster rate, or the use of earned sick time at an earlier date, than this section requires.

(3) Employees and TNDs who are exempt from overtime requirements under 29 U.S.C. section 213(a)(1) of the Federal Fair Labor Standards Act shall be assumed to work 40 hours in each work week for purposes of earned sick time accrual unless their normal work week is less than 40 hours, in which case earned sick time shall accrue based on that normal work week.

(4) All employees employed by an employer or of eleven or more employees and all TNDs shall be entitled to earn and use up to 40 hours of earned paid sick time from that employer or a TNC as provided in subsection (d) in a calendar year. In determining the number of employees who are employed by an employer for compensation, all employees performing work for compensation on a full-time, part-time or temporary basis shall be counted.

(5) Notwithstanding section 17 of chapter 15D, sections 70–75 of chapter 118E, or any other special or general law to the contrary, the PCA Quality Home Care Workforce Council

shall be deemed the Employer of all Personal Care Attendants, as defined in section 70 of chapter 118E, for purposes of subsection (d)(4) of this section, the Department of Medical Assistance shall be deemed the Employer of said Personal Care Attendants for all other purposes under this section, and the Department of Early Education and Care shall be deemed the Employer of all Family Child Care Providers, as defined in section 17(a) of chapter 15D, for purposes of this section.

(6) All employees not entitled to earned paid sick time from an employer pursuant to subsection (d)(4)–(5) shall be entitled to earn and use up to 40 hours of earned unpaid sick time from that employer as provided in subsection (d) in a calendar year.

(7) Earned sick time shall be used in the smaller of hourly increments or the smallest increment that the employer's or TNC's payroll system or system that is otherwise used to make payments to TNDs uses to account for absences or use of other time. Employees and TNDs may carry over up to 40 hours of unused earned sick time to the next calendar year, but are not entitled to use more than 40 hours in one calendar year. Employers and TNCs shall not be required to pay out unused earned sick time upon the separation of the employee or TND from the employer or TND.

(e) If an employee is absent from work for any reason listed in subsection (c) and, by mutual consent of the employer and the employee, the employee or works an equivalent number of additional hours or shifts during the same or the next pay period as the hours or shifts not worked due to reasons listed in subsection (c), an employee shall not be required to use accrued earned sick time for the employee's absence during that time period and the employer shall not be required to pay for the time the employee was so absent. An employer shall not require such

employee to work additional hours to make up for the hours during which the employee was so absent or require that the employee search for or find a replacement employee to cover the hours during which the employee is utilizing earned sick time. This subsection shall not apply to TNDs.

(f) Subject to the provisions of subsection (n), an employer or TNC may require certification when an earned sick time period covers more than 24 consecutively scheduled work hours. Any reasonable documentation signed by a health care provider indicating the need for earned sick time taken shall be deemed acceptable certification for absences under subsection (c)(1), (2) and (3). Documentation deemed acceptable under subsection (g.5) of section 1 of chapter 151A shall be deemed acceptable documentation for absences under subsection (c)(4). An employer may not require that the documentation explain the nature of the illness or the details of the domestic violence. The employer or TNC shall not delay the taking of earned sick time or delay pay for the period in which earned sick time was taken for employees or TNDs entitled to pay under subsection (d), on the basis that the employer or TNC has not yet received the certification. Nothing in this section shall be construed to require an employee or TND to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act, 42 U.S.C. 1320d–6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d–2 note.

(g) When the use of earned sick time is foreseeable, the employee or TND shall make a good faith effort to provide notice of this need to the employer or TNC in advance of the use of the earned sick time.

(h) It shall be unlawful for any employer or TNC to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under or in connection with this section, including, but not limited to, by using the taking of earned sick time under this section as a negative factor in any employment action such as evaluation, promotion, disciplinary action or termination, or otherwise subjecting an employee to discipline for the use of earned sick time under this section.

(i) It shall be unlawful for any employer or TNC to take any adverse action against an employee or TND because the employee or TND opposes practices which the employee or TND believes to be in violation of this section, or because the employee or TND supports the exercise of rights of another employee or TND under this section. Exercising rights under this section shall include but not be limited to filing an action, or instituting or causing to be instituted any proceeding, under or related to this section; providing or intending to provide any information in connection with any inquiry or proceeding relating to any right provided under this section; or testifying or intending to testify in any inquiry or proceeding relating to any right provided under this section.

(j) Nothing in this section shall be construed to discourage employers or TNCs from adopting or retaining earned sick time policies more generous than policies that comply with the requirements of this section and nothing in this section shall be construed to diminish or impair the obligation of an employer or TNC to comply with any contract, collective bargaining agreement, or any employment benefit program or plan in effect on the effective date of this section that provides to employees or TNDs greater earned sick time rights than the rights established under this section.

(k) Employers or TNCs required to provide earned paid sick time who provide their employees or TNDs paid time off under a paid time off, vacation or other paid leave policy who make available an amount of paid time off sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick time under this section are not required by this section to provide additional earned paid sick time.

(l) The attorney general shall enforce this section, and may obtain injunctive or declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2), (4), (6) and (7) of subsection (b) of section 27C and to section 150.

(m) The attorney general shall prescribe by regulation the employer's or TNC’s obligation to make, keep, and preserve records pertaining to this section consistent with the requirements of section 15 of chapter 151.

(n) The attorney general may adopt rules and regulations necessary to carry out the purpose and provisions of this section, including the manner in which an employee or TND who does not have a health care provider shall provide certification, and the manner in which employer size shall be determined for purposes of subsection (d)(4).

(o) Notice of this section shall be prepared by the attorney general, in English and in other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A. Employers or TNCs shall post this notice in a conspicuous location accessible to employees or TNDs in every establishment where employees with rights under this section work, and shall provide a copy to their employees or TNDs. This notice shall include the following information:

(1) information describing the rights to earned sick time under this section;

(2) information about the notices, documentation and any other requirements placed on employees in order to exercise their rights to earned sick time;

(3) information that describes the protections that an employee or TND has in exercising rights under this section;

(4) the name, address, phone number, and website of the attorney general's office where questions about the rights and responsibilities under this section can be answered; and

(5) information about filing an action under this section.

Section 16. Chapter 149 of the General Laws is hereby amended by striking out section 150 and inserting in place thereof the following section:-

Section 150: Complaint for violation of certain sections; defenses; payment after complaint; assignments; loan of wages to employer; civil action.

Section 150. The attorney general may make complaint or seek indictment against any person for a violation of section 148. On the trial no defence for failure to pay as required, other than the attachment of such wages by trustee process or a valid assignment thereof or a valid set-off against the same, or the absence of the employee from his regular place of labor at the time of payment, or an actual tender to such employee at the time of payment of the wages so earned by him, shall be valid. The defendant shall not set up as a defence a payment of wages after the bringing of the complaint. An assignment of future wages payable weekly under section one hundred and forty-eight shall not be valid if made to the person from whom such wages are to become due or to any person on his behalf, or if made or procured to be made to another person for the purpose of relieving the employer from the obligation to pay weekly. A loan made by an

employee to his employer of wages which are payable weekly under section one hundred and forty-eight, whether made directly to the employer or to another person or persons on his behalf, shall not be valid as a defense on the trial of a complaint for failure to pay such wages weekly, unless such loan shall have been made with the approval of the attorney general.

An employee claiming to be aggrieved by a violation of sections 33E, 52E, 148, 148A, 148B, 148C, 150C, 152, 152A, 159C or 190 or section 19, or section 7b of chapter 151 may, 90 days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within 3 years after the violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits; provided, however, that the 3 year limitation period shall be tolled from the date that the employee or a similarly situated employee files a complaint with the attorney general alleging a violation of any of these sections until the date that the attorney general issues a letter authorizing a private right of action or the date that an enforcement action by the attorney general becomes final. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

SECTION 3. Coverage for Network Driver Injury and Establishment of the Transportation Network Driver Injury Compensation Fund.

Section 1. Subsection (4) of section 1 of Chapter 152 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the seventh paragraph the following paragraph:-

Notwithstanding any other provision of this chapter, and for purposes of this chapter only, a covered driver, as defined in section 1 of chapter 152A, shall, on and after the fund liability date, as defined in section 1 of chapter 152A, be an employee of the Transportation Driver Injury Compensation Fund, Inc. created under Chapter 152A.

Section 2. Subsection (5) of section 1 of Chapter 152 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the second paragraph the following paragraph:-

Notwithstanding any other provision of this chapter, and for purposes of this chapter only, the employer of a covered driver, as defined in section 1 of chapter 152A, shall, on and after the fund liability date, established in chapter 152A, be the Transportation Driver Injury Compensation Fund, Inc. created under chapter 152A.

Section 3. Section 24 of Chapter 152 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the first paragraph the following paragraph:-

The liability under this chapter of the Transportation Driver Injury Compensation Fund, Inc. shall be limited to: (i) securing the payment of workers' compensation in accordance with chapter 152A to covered drivers, as defined in section 1 of chapter 152A, whose injury arose out of and in the course of providing transportation network services as defined in chapter 159A1/2, for or facilitated by a fund member as defined in section 1 of chapter 152A, and (ii) any statutory penalty resulting from the failure to secure such payment. The liability under this chapter of a fund member, as defined in section 1 of chapter 152A, shall be limited to remaining a registered member in good standing of the fund and any statutory penalty, including loss of immunity

provided by this section, resulting from the failure to become or remain a registered member in good standing of the fund.

Section 4. Section 25A of Chapter 152 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following subsection:-

A transportation network company's requirement under this chapter regarding the securing and provision of workers' compensation benefits for any covered driver, as those terms are defined in section 1 of chapter 152A, are satisfied in full by compliance with the requirements imposed upon the for-hire company or transportation network company under chapter 152A. Insurance coverage directly procured by any transportation network company for the purpose of satisfying the requirements of this chapter with respect to employees of the transportation network company shall not include coverage of any covered driver, to the extent that the covered driver is provided coverage secured by the Transportation Driver Injury Compensation Fund, Inc. under chapter 152A. Coverage secured by the fund under chapter 152A shall be considered primary.

Section 5. Section 43 of Chapter 152 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the first paragraph the following paragraph:-

Whenever notice is required to be given to an employer under this chapter, such requirement shall be satisfied, with respect to an accident or injury to a covered driver, as defined in section 1 of chapter 152A, occurring on or after the fund liability date, as defined in section 1 of chapter 152A, by giving such notice to the Transportation Driver Injury Compensation Fund, Inc., established under chapter 152A.

Section 6. Chapter 152A of the General Laws is hereby enacted with the following provisions:-

Section 1. Definitions

1. "Transportation network company" or "TNC" means transportation network driver as described in § 1 of Chapter 159A1/2 of the General Laws.

2. "Transportation network driver" or "TND" means transportation network company as described in § 1 of Chapter 159A1/2 of the General Laws.

3. "Covered Driver," all transportation network drivers engaged in and authorized to provide, transportation network services as defined in 159A1/2, in the commonwealth.

4. "Corporations Division" means the Corporations Division under the Secretary of the Commonwealth.

7. "Fund" means the Transportation Network Driver Injury Compensation Fund, Inc.

8. "Fund liability date" means the earlier of: (a) the date as of which the Department of Industrial Accidents first approves the fund's application to self-insure, or (b) the date on which coverage commences under the initial insurance policy purchased by the fund pursuant to subdivision three of section one hundred sixty-ii of this article.

9. "Secretary" means the secretary of state.

Section 2. Creation of the Transportation Network Driver Injury Compensation Fund.

The Transportation Network Driver Injury Compensation Fund, Inc. is hereby created as a not-for-profit corporation. To the extent that provisions of the not-for-profit corporation law do not conflict with the Articles of Organization and Bylaws established pursuant to this article, the not-for-profit corporation law shall apply to the fund. If an applicable provision of MGL c.151A, or of the fund's Articles of Organization and Bylaws, relates to a matter embraced in a provision of the not-for-profit corporation law but is not in conflict therewith, both provisions shall apply. The Fund shall perform its functions in accordance with its Articles and Bylaws established and approved pursuant to this Chapter and shall exercise its powers through a Board of Directors established pursuant to this Chapter.

The fund is established for the purpose of providing compensation to covered drivers under this chapter who are injured while engaged in transportation network services as defined in this chapter 159A1/2. The Fund, as employer, will comply with all requirements and obligations imposed on employers by M.G.L. c 152, except as expressly exempted or modified by this chapter. Covered drivers as defined in this chapter, shall enjoy all the rights and benefits provided by M.G.L. c. 152, except as expressly proscribed or modified by this chapter. Section 3. Management of the Fund; Board of Directors.

1. Within sixty days of the effective date of this Act, there shall be appointed by the Governor, a Board of Directors of the fund, consisting of five directors. Two directors will be nominated by labor organizations operating within the Commonwealth of Massachusetts and two directors will be nominated by TNCs doing business in the Commonwealth of Massachusetts. One director will be appointed without nomination of the Governor. The initial terms of members shall be staggered. Two directors appointed by the Governor will serve for an initial

term of three years and two for an initial term of two years from the effective date of this article. The subsequent terms of all directors shall be three years.

2. The directors shall elect annually from among their number a chair and a vice chair who shall act as chair in the chair's absence.

3. For their attendance at meetings, the directors of the fund shall be entitled to compensation, as authorized by the directors, in an amount not to exceed two hundred dollars per meeting per director, and to reimbursement of their actual and necessary expenses.

4. Directors of the fund, except as otherwise provided by law, may engage in private or public employment or in a profession or business.

5. (a) All of the directors shall have equal voting rights and three or more directors shall constitute a quorum. The affirmative vote of three directors shall be necessary for the transaction of any business or the exercise of any power or function of the fund.

(b) The fund may delegate to one or more of its directors, officers, agents or employees such powers and duties as it may deem proper.

(c) A vacancy occurring in a director position shall be filled in the same manner as the initial appointment to that position, provided however that no individual may serve as director for more than three successive terms.

6. The Board shall be held to customary fiduciary duties, including the core duties of are and loyalty, which shall require the Board members to act in good faith and for the Benefit of the fund and not their own personal or business interests. Violating such duties shall be ground for immediate removal from the Board by a majority vote of the Board.

Section 4. Articles of Incorporation.

1. Within ninety days of the appointment of the full Board of Directors, the fund shall file with the Secretary of State, Corporations Division, its Articles of Incorporation and Bylaws, which shall be designed to assure the fair, reasonable and equitable administration of the fund. The Articles and Bylaws and any subsequent amendments thereto shall become effective upon being filed with the Corporations Division.

2. The Articles and Bylaws shall, in addition to the requirements enumerated elsewhere in this article:

(a) establish procedures for collecting and managing the assets of the fund;

(b) establish regular places and times for meetings of the fund's board of directors;

(c) establish the procedure by which the fund shall determine whether to provide the benefits due pursuant to this article by self-insuring or by purchasing insurance;

(d) establish accounting and record-keeping procedures for all financial transactions of the fund, its agents and the board of directors;

(e) establish a procedure for determining and collecting the appropriate amount of surcharges and assessments under this article;

(f) set forth the procedures by which the fund may exercise the premium audit rights granted to it under this article;

(g) establish procedures to ensure prompt and accurate notification to the fund by its members of all accidents and injuries to TNCs, and provide for full reimbursement of the fund

by any TNC whose failure to provide such notification results in the imposition of a penalty on the fund by the board; and

(h) contain such additional provisions as the board of the fund may deem necessary or proper for the execution of the powers and duties of the fund.

Section 5. Membership in the Fund; Registration with the Division.

1. The membership of the fund shall be composed of all transportation network companies operating in the Commonwealth. Each TNC shall be required, as a condition of doing business within the Commonwealth, to pay the Department of Public Utilities a two hundred dollar annual fee for the purpose of registering as a member of the fund and receiving a certificate of registration. Such sums shall be used by the Department of Public Utilities for the administration of this Chapter. The initial registration fee shall be due no later than ninety days after the effective date of this article. The Department of Public Utilities shall provide the fund with an updated list of registrants on a monthly basis.

2. Within sixty days of the appointment of the full board, the board of the fund shall, on the basis of information from trade papers and other sources, identify the TNCs subject to this article and, on a regular and ongoing basis, confirm that all such entities have registered in accordance with subdivision one of this section.

3. The fund shall, within one hundred fifty days of the appointment of the full board, provide to its members a copy of the Articles Incorporation and Bylaws and shall inform its members of their rights and duties pursuant to this article.

Section 6. Securing compensation.

1. Within one hundred fifty days of the effective date of the Articles of Incorporation and Bylaws, the fund shall secure the payment of workers' compensation to all covered drivers entitled thereto pursuant to this chapter by either: (a) self-insuring or (b) purchasing workers' compensation insurance covering, on a blanket basis, for all covered drivers who are the fund's employees.

2. If the fund initially seeks to self-insure, it shall in accordance with all requirements and obligations pursuant to M.G.L c. 152.

3. If the fund chooses to secure the payment of workers' compensation pursuant to the workers' compensation law by purchasing an insurance policy from a licensed insurer, it shall file in accordance with all requirements and obligations pursuant to M.G.L c. 152.

4. No provision of this article shall be construed to alter or affect the liability under the workers' compensation law of any TNC with respect to covered drivers prior to the fund liability date.

Section 7. Assessment of Fund members; customer surcharges; premium audit powers of the Fund, the board and the Fund's insurer.

1. To pay (a) the costs of the insurance purchased or (b) the benefits due under the workers' compensation law in the event the fund self-insures, and to pay (c) its expenses in carrying out its powers and duties under this article and (d) its liabilities, if any, pursuant to section fourteen-a of the workers' compensation law, the fund shall ascertain by reasonable estimate the total funding necessary to carry on its operations.

2. Based upon its estimation of operating costs, the fund shall establish a proposed amount per on-trip mile surcharge. The proposed surcharge shall become effective thirty days from the effective date of the Articles of Incorporation and Bylaws. Each member of the fund shall be liable for payment to the fund of an amount equal to the product of (i) the amount per on-trip mile due pursuant to this article and (ii) the number of on-trip miles by the covered drivers providing services through its platform, as provided in this subdivision.

3. Each TNC shall submit to the fund with its monthly payment a detailed accounting of the on-trip miles services during the previous month. The first such payment and accounting shall be due on the fifteenth day of the month following the imposition of the surcharge.

4. The Department of Public Utilities shall not issue, continue or renew any permit for the operation of any TNC unless such network company, as a condition of maintaining its permit, complies with MGL c. 152A section 8, paragraph 3.

5. Should the fund determine that the surcharge amounts that have been paid to it are inadequate to meet its obligations under this article, it shall determine the surcharge rate required to eliminate such deficiency and shall notify the fund members of the revised surcharge rate, along with sufficient documentation detailing its calculations of projected shortfall and estimated funds under the revised surcharge. Commencing thirty days after such notice, the members of the fund shall charge the revised surcharge rate and shall pay to the fund the total amount of surcharges accordingly.

6. The fund shall have the power directly or through its agent to conduct premium audits of its members solely to verify their compliance with the on-trip mileage reporting requirements. The fund or its agent shall be afforded convenient access at all reasonable hours to all books,

records and other documents of its members that may be relevant to such premium audits. Compliance with this section shall not constitute waiver of any legal privilege, confidentiality, or trade secret protection.

7. For the purposes of conducting premium audits, an insurer providing coverage to the fund pursuant to this article may treat the members of the fund as policyholders.

Section 8. Financial oversight of the Fund.

No later than the first day of May of each year, the fund shall submit to the Massachusetts Attorney General Office's Non-Profit Organizations/Public Charities Division, certified financial statements prepared in accordance with generally accepted accounting principles by a certified public accountant. The members of the fund shall be required on and after January first of each year to afford the certified public accountant convenient access at all reasonable hours to all books, records and other documents, including but not limited to invoices and vouchers, necessary or useful in the preparation of such statements and in the verification of the monthly statements submitted to the fund. Compliance with this section shall not constitute waiver of any legal privilege, confidentiality, or trade secret protection. The requirements in this section shall commence on the first May after the effective date of the plan of operations.

Section 9. Liability insurance.

The fund shall purchase such insurance as is necessary to protect the fund and any director, officer, agent or other representative from liability for their administration of the fund, and shall, to the extent permitted by law, indemnify such directors, officers, agents or other representatives and hold them harmless from liability for their administration of the fund.

Section 10. Regulations.

The Department of Public Utilities shall adopt regulations implementing the provisions of this Chapter.

Section 11. Violations; penalties; appeals.

1. (a) If a fund director believes a violation of this article by a fund member may have occurred, the director, shall upon notice to the fund member, notify the Department of Public Utilities to hold a hearing to determine whether such violation occurred.

(b) If the fund believes that a TNC has failed to pay the fund the assessments due pursuant to this Chapter, it shall make a referral to the Department of Public Utilities to hold a hearing to determine whether such violation occurred.

2. Except as otherwise provided in this section, a fund member that is found, after a hearing held pursuant to this section, to have violated a provision of this Chapter, or a rule promulgated in accordance with this Chapter, the fund member shall be liable for a fine in an amount not to exceed ten thousand dollars per violation. Notwithstanding the foregoing, a fund member that fails to submit to the fund the required surcharges shall be subject, in addition to payment to the fund of the amount overdue plus interest on such amount as herein provided, to a penalty, at the discretion of the Department of Public Utilities, of (a) up to five thousand dollars for each twenty days the payment is overdue, or (b) revocation of its membership in the fund, or (c) both a monetary penalty and revocation of its membership in the fund. Any monetary penalty imposed pursuant to this subdivision shall be retained by the Department of Public Utilities and be used to defray the costs of administering this article.

SECTION 4. Unemployment Insurance.

Section 1. Section 1 of Chapter 151A of the General Laws, as appearing in the 2022 Official Edition, is hereby amended by inserting the following subsections (ee), (ff), (gg), and (hh):-

(ee) The term “transportation network company” or “TNC,” transportation network company as described in § 1 of Chapter 159A1/2 of the General Laws.

(ff) The term “transportation network driver” or “TND,” transportation network driver as described in § 1 of Chapter 159A1/2 of the General Laws.

(gg) The terms “discharge” and “terminate” shall include any termination of services of a transportation network worker by a transportation network company from an application or platform, including suspension, refusal to contract, termination of contract, and deactivation.

(hh) “The terms “hire,” “employ” or “employment” shall include the activation of a transportation network driver by a transportation network company to an application or platform.

Section 2. Section 2 of Chapter 151A of the General Laws is hereby amended by inserting at the end of the fourth paragraph, after the word “section.”, the following words:-

Transportation network services as defined in M.G.L.A. 159A 1/2 § 1 shall be deemed employment subject to this chapter irrespective of any showing of (a), (b) and (c), above.

Section 3. Section 4A of Chapter 151A of the General Laws is hereby amended by inserting at the end of the section new subsection (g):-

(g) Performing transportation network services as defined in 159A 1/2 § 1.

Section 4. Section 14 of Chapter 151A of the General Laws is hereby amended by inserting at the end of subsection (i) a new subparagraph (2):-

(2) The contribution rate of each TNC shall be increased by an amount equal to the difference between the rate of contribution paid by employing units pursuant to the federal Unemployment Tax Act after applying any credit available to those employing units pursuant to section 3302 of title 23 of the internal revenue code, and the rate of contribution required to be made to the Unemployment Compensation Fund which is specified for employers in this subsection (i).

SECTION 5. Prohibiting discrimination against transportation network drivers.

Section 1. Section 1 of Chapter 151B of the General Laws is hereby amended by inserting at the end thereof the following subsections:-

24. The term "transportation network company" or "TNC" shall mean transportation network company as described in § 1 of Chapter 159A1/2 of the General Laws.

25. The term "transportation network driver" or "TND" shall mean transportation network driver as described in § 1 of Chapter 159A1/2 of the General Laws.

26. The terms "discharge" and "terminate" shall include any termination of services of a transportation network worker by a transportation network company from an application or platform, including suspension, refusal to contract, termination of contract, and deactivation.

27. "The terms "hire," "employ" or "employment" shall include the activation of a transportation network driver by a transportation network company to an application or platform.

Section 2. Chapter 151B of the General Laws is hereby amended by striking out Section 3A and inserting in place thereof the following Section:-

Section 3A. (a) All employers, TNCs, employment agencies and labor organizations shall promote a workplace free of sexual harassment.

(b) Every employer and TNCs shall:

(1) adopt a policy against sexual harassment which shall include:

(i) a statement that sexual harassment in the workplace is unlawful;

(ii) a statement that it is unlawful to retaliate against an employee or TND for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment;

(iii) a description and examples of sexual harassment;

(iv) a statement of the range of consequences for employees or TNDs who are found to have committed sexual harassment;

(v) a description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and

(vi) the identity of the appropriate state and federal employment discrimination enforcement agencies, and directions as to how to contact such agencies.

(2) provide annually to all employees or TNDs an individual written copy of the employer's or TNC’s policy against sexual harassment; provided, however, that a new employee or TNC shall be provided such a copy at the time of his employment.

(c) The commission shall prepare and provide to employers or TNCs subject to this section a model policy and poster consistent with federal and state statutes and regulations, which may be used by employers or TNCs for the purposes of this section.

(d) An employer's or TNC’s failure to provide the information required to be provided by this section shall not, in and of itself, result in the liability of said employer or TNC to any current or former employee or TNC or applicant in any action alleging sexual harassment. An employer's or TNC’s compliance with the notice requirements of this section shall not, in and of itself, protect the employer or TNC from liability for sexual harassment of any current or former employee or TND or applicant.

(e) Employers, TNCs and labor organizations are encouraged to conduct an education and training program for new employees, TNDs and members, within one year of commencement of employment or membership, which includes at a minimum the information set forth in this section. Employers and TNCs are encouraged to conduct additional training for new supervisory and managerial employees and members within one year of commencement of employment or membership, which shall include at a minimum the information set forth in subsection (b), the specific responsibilities of supervisory and managerial employees and the methods that such employees should take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints. Employers, TNCs, labor organizations and appropriate state agencies are encouraged to cooperate in making such training available.

Section 3. Section 4, subsection 1 of Chapter 151B of the General Laws is hereby amended by inserting after “For an employer” in the first sentence the following words:- “or TNC”

Section 4. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 1A and inserting in place thereof the following subsection:-

1A. It shall be unlawful discriminatory practice for an employer or TNC to impose upon an individual as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such individual to violate, or forego the practice of, his creed or religion as required by that creed or religion including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or holy day and the employer or TNC shall make reasonable accommodation to the religious needs of such individual. No individual who has given notice as hereinafter provided shall be required to remain at his place of employment during any day or days or portion thereof that, as a requirement of his religion, he observes as his sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between his place of employment and his home, provided, however, that any employee or TND intending to be absent from work when so required by his or her creed or religion shall notify his or her employer or TNC not less than ten days in advance of each absence, and that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time at some other mutually convenient time. Nothing under this subsection shall be deemed to require an employer or TNC to compensate an employee for such absence. “Reasonable Accommodation”, as used in this subsection shall mean such accommodation to an employee's or TND’s or prospective employee's or TND’s religious observance or practice as shall not cause undue hardship in the conduct of the employer's or

TNC's business. The employee or TND shall have the burden of proof as to the required practice of his creed or religion. As used in this subsection, the words "creed or religion" mean any sincerely held religious beliefs, without regard to whether such beliefs are approved, espoused, prescribed or required by an established church or other religious institution or organization.

Undue hardship, as used herein, shall include the inability of an employer or TNC to provide services which are required by and in compliance with all federal and state laws, including regulations or tariffs promulgated or required by any regulatory agency having jurisdiction over such services or where the health or safety of the public would be unduly compromised by the absence of such employee or TND or employees or TNDs, or where the employee's or TND's presence is indispensable to the orderly transaction of business and his or her work cannot be performed by another employee or TND of substantially similar qualifications during the period of absence, or where the employee's or TND's presence is needed to alleviate an emergency situation. The employer or TNC shall have the burden of proof to show undue hardship.

Section 5. Section 4, subsection 1B of Chapter 151B of the General Laws is hereby amended by inserting after "For an employer" in the first sentence the following words:- "or TNC"

Section 6. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 1C and inserting in place thereof the following subsection:-

1C. For the commonwealth or any of its political subdivisions, by itself or its agent, because of the age of any individual, to refuse to hire or employ or to bar or discharge from

employment such individual in compensation or in terms, conditions or privileges of employment unless pursuant to any other general or special law.

Section 7. Section 4, subsection 1D of Chapter 151B of the General Laws is hereby amended by inserting after “For an employer” in the first sentence the following words:- “or TNC”

Section 8. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 1E and inserting in place thereof the following subsection:-

1E. (a) For an employer or TNC to deny a reasonable accommodation for an employee’s or TND’s pregnancy or any condition related to the employee’s or TND’s pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child if the employee or TND requests such an accommodation; provided, however, that an employer or TNC may deny such an accommodation if the employer or TNC can demonstrate that the accommodation would impose an undue hardship on the employer’s or TNC’s program, enterprise or business. It shall also be an unlawful practice under this subsection to:

(i) take adverse action against an employee or TND who requests or uses a reasonable accommodation in terms, conditions or privileges of employment including, but not limited to, failing to reinstate the employee or TND to the original employment status or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other applicable service credits when the need for a reasonable accommodation ceases;

(ii) deny an employment opportunity to an employee if the denial is based on the need of the employer or TNC to make a reasonable accommodation to the known conditions related to

the employee's or TND's pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child;

(iii) require an employee or TND affected by pregnancy, or require said employee or TND affected by a condition related to the pregnancy, including, but not limited to, lactation or the need to express breast milk for a nursing child, to accept an accommodation that the employee or TND chooses not to accept, if that accommodation is unnecessary to enable the employee or TND to perform the essential functions of the job;

(iv) require an employee or TND to take a leave if another reasonable accommodation may be provided for the known conditions related to the employee's or TND's pregnancy, including, but not limited to, lactation or the need to express breast milk for a nursing child, without undue hardship on the employer's program, enterprise or business;

(v) refuse to hire a person who is pregnant because of the pregnancy or because of a condition related to the person's pregnancy, including, but not limited to, lactation or the need to express breast milk for a nursing child; provided, however, that the person is capable of performing the essential functions of the position with a reasonable accommodation and that reasonable accommodation would not impose an undue hardship, demonstrated by the employer or TNC, on the employer's or TNC's program, enterprise or business.

(b) As used in this subsection, the following words shall have the following meanings unless the context clearly requires otherwise:

"Reasonable accommodation", may include, but shall not be limited to: (i) more frequent or longer paid or unpaid breaks; (ii) time off to attend to a pregnancy complication or recover from childbirth with or without pay; (iii) acquisition or modification of equipment or seating; (iv)

temporary transfer to a less strenuous or hazardous position; (v) job restructuring; (vi) light duty; (vii) private non-bathroom space for expressing breast milk; (viii) assistance with manual labor; or (ix) a modified work schedule; provided, however, that an employer or TNC shall not be required to discharge or transfer an employee or TND with more seniority or promote an employee or TND who is not able to perform the essential functions of the job with or without a reasonable accommodation.

"Undue hardship", an action requiring significant difficulty or expense; provided, however, that the employer shall have the burden of proving undue hardship; provided further, that in making a determination of undue hardship, the following factors shall be considered: (i) the nature and cost of the needed accommodation; (ii) the overall financial resources of the employer or TNC; (iii) the overall size of the business of the employer with respect to the number of employees or TNDs and the number, type and location of its facilities; and (iv) the effect on expenses and resources or any other impact of the accommodation on the employer's program, enterprise or business.

(c) Upon request for an accommodation from the employee or TND or prospective employee or TND capable of performing the essential functions of the position involved, the employee or TND or prospective employee or TND and the employer or TNC shall engage in a timely, good faith and interactive process to determine an effective, reasonable accommodation to enable the employee or TND or prospective employee or TND to perform the essential functions of the employee's or TND's job or the position to which the prospective employee or TND has applied. An employer or TNC may require that documentation about the need for a reasonable accommodation come from an appropriate health care or rehabilitation professional; provided, however, that an employer or TNC shall not require documentation from an

appropriate health care or rehabilitation professional for the following accommodations: (i) more frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting more than 20 pounds; and (iv) private non-bathroom space for expressing breast milk. An "appropriate health care or rehabilitation professional" shall include, but shall not be limited to, a medical doctor, including a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health professional authorized to perform specified mental health services. An employer or TNC may require documentation for an extension of the accommodation beyond the originally agreed to accommodation.

(d) Written notice of the right to be free from discrimination in relation to pregnancy or a condition related to the employee's or TND's pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, including the right to reasonable accommodations for conditions related to pregnancy pursuant to this subsection, shall be distributed by an employer or TNC to its employees. The notice shall be provided in a handbook, pamphlet or other means of notice to all employees or TNDs including, but not limited to: (i) new employees or TNDs at or prior to the commencement of employment; and (ii) an employee or TND who notifies the employer of a pregnancy or an employee or TND who notifies the employer or TNC of a condition related to the employee's or TND's pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child not more than 10 days after such notification.

(e) Subject to appropriation, the commission shall develop courses of instruction and conduct public education efforts as necessary to inform employers, TNCs, employees, TNDs,

and employment agencies about the rights and responsibilities established under this subsection not more than 180 days after the appropriation.

(f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect any other law relating to sex discrimination or pregnancy or in any way diminish the coverage for pregnancy or a condition related to pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child under section 105D of chapter 149.

Section 9. Section 4, subsection 3 of Chapter 151B of the General Laws is hereby amended by inserting after “For an employer” in the first sentence the following words:- “or TNC”

Section 10. Section 4, subsection 4 of Chapter 151B of the General Laws is hereby amended by inserting after “employer” in the first sentence the following word:- “TNC”

Section 11. Section 4, subsection 5 of Chapter 151B of the General Laws is hereby amended by inserting after “employer” in the first sentence the following words:- “TNC, TND”

Section 12. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 9 and inserting in place thereof the following subsection:-

9. For an employer or TNC, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which requests such information, or to exclude, limit or otherwise discriminate against any person by reason of his or

her failure to furnish such information through a written application or oral inquiry or otherwise regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 3 or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within 3 years immediately preceding the date of such application for employment or such request for information, or (iv) a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276.

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such information as he has a right to withhold by this subsection.

Nothing contained herein shall be construed to affect the application of section thirty-four of chapter ninety-four C, or of chapter two hundred and seventy-six relative to the sealing of records.

Nothing contained herein shall be construed to prohibit a transportation network company from complying with its obligations set forth in section 4 of chapter 159A1/2 of the General Laws.

Section 13. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 91/2 and inserting in place thereof the following subsection:-

9 ½. For an employer or TNC to request on its initial written application form criminal offender record information; provided, however, that except as otherwise prohibited by subsection 9, an employer may inquire about any criminal convictions on an applicant's application form if: (i) the applicant is applying for a position for which any federal or state law or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or more types of criminal offenses; or (ii) the employer or TNC or an affiliate of such employer or TNC is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal offenses.

Section 14. Section 4, subsection 9A of Chapter 151B of the General Laws is hereby amended by inserting after “For an employer” in the first sentence the following words:- “or TNC”

Section 15. Section 4 of Chapter 151B of the General Laws is hereby amended by striking out subsection 11A and inserting in place thereof the following subsection:-

11A. For an employer or TNC, or an employer’s or TNC’s agent, to refuse to restore certain employees or TNDs to employment following an absence by reason of a parental leave taken pursuant to section 105D of chapter 149 or to otherwise fail to comply with that section, or for the commonwealth and any of its boards, departments and commissions to deny vacation credit to an employee for the fiscal year during which the employee or TND is absent due to a parental leave taken pursuant to said section 105D of said chapter 149, or to impose any other penalty as a result of a parental leave of absence.

Section 16. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 16 and inserting in place thereof the following subsection:-

16. For any employer or TNC, personally or through an agent, to dismiss from employment or refuse to hire, rehire or advance in employment or otherwise discriminate against, because of his handicap, any person alleging to be a qualified handicapped person, capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer or TNC can demonstrate that the accommodation required to be made to the physical or mental limitations of the person would impose an undue hardship to the employer's or TNC's business. For purposes of this subsection, the word employer or TNC shall include an agency which employs individuals directly for the purpose of furnishing part-time or temporary help to others.

In determining whether an accommodation would impose an undue hardship on the conduct of the employer's business, factors to be considered include:--

(1) the overall size of the employer's or TNC's business with respect to the number of employees, number and type of facilities, and size of budget or available assets;

(2) the type of the employer's or TNC's operation, including the composition and structure of the employer's or TNC's workforce; and

(3) the nature and cost of the accommodation needed.

Physical or mental job qualification requirement with respect to hiring, promotion, demotion or dismissal from employment or any other change in employment status or

responsibilities shall be functionally related to the specific job or jobs for which the individual is being considered and shall be consistent with the safe and lawful performance of the job.

An employer or TNC may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped individual or as to the nature or severity of the handicap, except that an employer or TNC may condition an offer of employment on the results of a medical examination conducted solely for the purpose of determining whether the employee or TNC, with reasonable accommodation, is capable of performing the essential functions of the job, and an employer may invite applicants to voluntarily disclose their handicap for purposes of assisting the employer in its affirmative action efforts.

Section 17. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 16A and inserting in place thereof the following subsection:-

16A. For an employer or TNC, personally or through its agents, to sexually harass any employee or TND.

Section 18. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 17 and inserting in place thereof the following subsection:-

17. Notwithstanding any provision of this chapter, it shall not be an unlawful employment practice for any person, employer, TNC, labor organization or employment agency to:

(a) observe the terms of a bona fide seniority system or any bona fide employee or TND benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this section, except that no such employee or TND benefit plan shall excuse the

failure to hire any person, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any person because of age except as permitted by paragraph (b).

(b) require the compulsory retirement of any person who has attained the age of sixty-five and who, for the two year period immediately before retirement, is employed in a bona fide executive or high policymaking position, if such person entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan, or any combination of such plans, of the employer, which equals, in the aggregate, at least forty-four thousand dollars.

(c) require the retirement of any employee or TND who has attained seventy years of age and who is serving under a contract of unlimited tenure or similar arrangement providing for unlimited tenure at an independent institution of higher education, or to limit the employment in a faculty capacity of such an employee or TND, or another person who has attained seventy years of age who was formerly employed under a contract of unlimited tenure or similar arrangement, to such terms and to such a period as would serve the present and future needs of the institution, as determined by it; provided, however, that in making such a determination, no institution shall use as a qualification for employment or reemployment, the fact that the individual is under any

Section 19. Section 4 of Chapter 151B of the General Laws is hereby further amended by striking out subsection 18 and inserting in place thereof the following subsection:-

18. For the owner, lessee, sublessee, licensed real estate broker, assignee, or managing agent of publicly assisted or multiple dwelling or contiguously located housing accommodations

or other covered housing accommodations, or other person having the right of ownership or possession, or right to rent or lease, or sell or negotiate for the sale of such accommodations, or any agent or employee of such person or any organization of unit owners in a condominium or housing cooperative to sexually harass any tenant, prospective tenant, purchaser or prospective purchaser of property.

Notwithstanding the foregoing provisions of this section, it shall not be an unlawful employment practice for any person, employer, TNC, labor organization or employment agency to inquire of an applicant for employment or membership as to whether or not he or she is a veteran or a citizen.

Notwithstanding the provisions of any general or special law nothing herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting admission to or giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment, discipline, faith, internal organization, or ecclesiastical rule, custom, or law which are calculated by such organization to promote the religious principles for which it is established or maintained.

Notwithstanding the foregoing provisions of this section, (a) every employer, every TNC, every employment agency, including the division of employment and training, and every labor organization shall make and keep such records relating to race, color or national origin as the commission may prescribe from time to time by rule or regulation, after public hearing, as reasonably necessary for the purpose of showing compliance with the requirements of this

chapter, and (b) every employer, TNC and labor organization may keep and maintain such records and make such reports as may from time to time be necessary to comply, or show compliance with, any executive order issued by the President of the United States or any rules or regulations issued thereunder prescribing fair employment practices for contractors and subcontractors under contract with the United States, or, if not subject to such order, in the manner prescribed therein and subject to the jurisdiction of the commission. Such requirements as the commission may, by rule or regulation, prescribe for the making and keeping of records under clause (a) shall impose no greater burden or requirement on the employer, TNC, employment agency or labor organization subject thereto, than the comparable requirements which could be prescribed by Federal rule or regulation so long as no such requirements have in fact been prescribed, or which have in fact been prescribed for an employer, TNC, employment agency or labor organization under the authority of the Civil Rights Act of 1964, from time to time amended.1 This paragraph shall apply only to employers or TNCs who on each working day in each of twenty or more calendar weeks in the annual period ending with each date set forth below, employed more employees or TNDs than the number set forth beside such date, and to labor organizations which have more members on each such working day during such period.

Minimum Employees or TNDs

Period Ending.

or Members.

June 30, 1965

100

June 30, 1966

75

June 30, 1967

50

June 30, 1968 and thereafter

25

Nothing contained in this chapter or in any rule or regulation issued by the commission shall be interpreted as requiring any employer, TNC, employment agency or labor organization to grant preferential treatment to any individual or to any group because of the race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information or ancestry of such individual or group because of imbalance which may exist between the total number or percentage of persons employed by any employer or TNC, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization or admitted to or employed in, any apprenticeship or other training program, and the total number or percentage of persons of such race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object, age, genetic information or ancestry in the commonwealth or in any community, section or other area therein, or in the available work force in the commonwealth or in any of its political subdivisions.

Section 20. Section 4, subsection 19 of Chapter 151B of the General Laws is hereby amended by inserting after “employer” in the first sentence of subsection (a) the following word:- “TNC”

SECTION 6. Paid Family Medical Leave

Section 1. Section 1 of Chapter 175M of the General Laws is hereby amended by inserting after the sentence defining “Department” the following words:-

“Digital network”, the same as defined in section 1 of chapter 159A ½.

Section 2. Section 1 of Chapter 175M of the General Laws is hereby further amended by inserting after the sentence defining “State average weekly wage” the following words:-

“Discharging,” “firing” and “terminating”, any termination of services of a transportation network worker by a transportation network company from an application or platform, including suspension, refusal to contract, termination of contract, and deactivation.

“Transportation network company” or “TNC”, the same as defined in section 1 of chapter 159A ½.

“Transportation network driver” or “TND”, the same as defined in section 1 of chapter 159A ½.

Section 3. Chapter 175M of the General Laws is hereby amended by striking out section 4 and inserting in place thereof the following section:-

Section 4: Notice

Section 4. (a) Each employer and covered business entity shall post in a conspicuous place on each of its premises a workplace notice prepared or approved by the department providing notice of benefits available under this chapter. Where the employer or covered business entity does not control the daily workplace, employer or covered business entity shall post electronically or other means which are the usual means of communication with employee or covered business entity. The workplace notice shall be issued in English, Spanish, Chinese, Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other language that is the primary language of at least 10,000 or .5 of one per cent of all residents of the commonwealth. The required workplace notice shall be in English and each language other than English which is the primary language of 5 or more employees or self-employed individuals of that workplace, if such notice is available from the department.

Each employer shall issue to each employee not more than 30 days from the beginning date of the employee's employment, provided however that TNC shall issue to each TND not more than 30 days from certification of the TND by the TNC the following written information provided or approved by the department in the employee's primary language: (i) an explanation of the availability of family and medical leave benefits provided under this chapter, including rights to reinstatement and continuation of health insurance; (ii) the employee's contribution amount and obligations under this chapter; (iii) the employer's contribution amount and obligations under this chapter; (iv) the name and mailing address of the employer; (v) the identification number assigned to the employer by the department; (vi) instructions on how to file a claim for family and medical leave benefits; (vii) the mailing address, email address and telephone number of the department; and (viii) any other information deemed necessary by the department. Delivery is made when an employee provides written acknowledgement of receipt

of the information, or signs a statement indicating the employee's refusal to sign such acknowledgement.

Section 4. Chapter 175M of the General Laws is hereby amended by striking out section 9 and inserting in place thereof the following section:-

Section 9: Prohibited acts

Section 9. (a) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening intimidating, terminating, or harassing a worker, filing a false report with a government agency, reducing compensation, garnishing tips or gratuities, denying or limiting access to incentives or bonuses, informing another TNC that a TND has engaged in activities protected by this section, or in any other manner discriminating against an employee including actions related to perceived immigration status or work authorization, for exercising any right to which such employee is entitled under this chapter or with the purpose of interfering with the exercise of any right to which such employee is entitled under this chapter.

(b) It shall be unlawful for any employer to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening intimidating, terminating, or harassing a worker, filing a false report with a government agency, reducing compensation, garnishing tips or gratuities, denying or limiting access to incentives or bonuses, informing another TNC that a TND has engaged in activities protected by this section, or in any other manner discriminating including actions related to perceived immigration status or work authorization, against an employee who has filed a complaint or instituted or caused to be instituted a proceeding under or related to this section, has testified or is about to testify in an

inquiry or proceeding or has given or is about to give information connected to any inquiry or proceeding relating to this section.

(c) Any negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment of an employee or TND which occurs any time during a leave taken by an employee or TND under this chapter, or during the 6 month period following an employee's or TND's leave or restoration to a position pursuant to this section, or of an employee or TND who has participated in proceedings or inquiries pursuant to this section within 6 months of the termination of proceedings shall be presumed to be retaliation under this section. Such presumption shall be rebutted only by clear and convincing evidence that such employer's or TNC's action was not retaliation against the employee or TND and that the employer or TNC had sufficient independent justification for taking such action and would have in fact taken such action in the same manner and at the same time the action was taken, regardless of the employee's or TND's use of leave, restoration to a position or participation in proceedings or inquiries as described in this subsection. An employer or TNC found to have threatened, coerced or taken reprisal against any employee or TND pursuant to this subsection shall rescind any adverse alteration in the terms of employment for such employee or TND and shall offer reinstatement to any terminated employee or TND and shall also be liable in an action brought under subsection (d).

(d) An employee or TND or former employee or TND aggrieved by a violation of this section or subsections (e) and (f) of section 2 of this chapter may, not more than 3 years after the violation occurs, institute a civil action in the superior court. A party to the action shall be entitled to a jury trial. All remedies available in common law tort actions shall be available to prevailing plaintiffs and shall be in addition to any legal or equitable relief provided in this

section. The court may: (i) issue temporary restraining orders or preliminary or permanent injunctions to restrain continued violations of this section; (ii) reinstate the employee or TND to the same position held before the violation or to an equivalent position; (iii) reinstate full fringe benefits and seniority rights to the employee or TND; (iv) compensate the employee or TND for 3 times the lost wages, benefits and other remuneration and the interest thereon; and (v) order payment by the employer or TNC of reasonable costs and attorneys' fees.

SECTION 7. Severability

The provisions of this act shall be severable and if any phrase, clause, sentence or provision of this article or the applicability thereof to any person, entity, or circumstance shall be held invalid, the remainder of this act and the application thereof shall not be affected.