

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

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:

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

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

8 Section 1. Findings and policy.

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

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

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

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

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

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

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

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

59 Section 2. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

121 Section 4. Unfair work practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

187 (C). Prevention of unfair work practices.

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

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

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

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

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

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

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

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

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

252 7. Injunctive relief.

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

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

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

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

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

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

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

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

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

300 Section 5. Representatives.

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

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

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

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

315 (D) Representative status.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

544 Section 10. Judicial Review.

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

553 (B) Final orders of the Secretary of Labor pursuant to section 7(F) of this chapter shall be
554 conclusive against all affected TND organizations and all TNCs in the industry unless reversed
555 or modified in proceedings for enforcement or judicial review as herein provided. Such final
556 orders shall be subject to review in accordance with the provisions of section fourteen of chapter
557 30A of the General Laws, provided, however, that the determination of the Secretary of Labor
558 shall only be overturned if it is found to be arbitrary and capricious.

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

561 Section 11. Rules and Regulations.

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

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

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

568 Section 1. Definitions

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

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

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

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

577 “Department”, the department of public utilities.

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

581 “Division”, the division established in section 23 of chapter 25.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

634 (vi) TND well-being; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

769 Section 1. Oppressive and unreasonable wages; validity of contracts

770 [Text of section as amended by 2018, 121, Sec. 21 effective January 1, 2023. See 2018,
771 121, Sec. 36. For text effective until January 1, 2023, see above.]

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

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

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

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

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

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

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

801 “Commissioner”, the director of the department of labor standards.

802 “Department”, the department of labor standards.

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

812 “Agricultural and farm work”, labor on a farm and the growing and harvesting of
813 agricultural, floricultural and horticultural commodities.

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

816 “Transportation network driver” or “TND” shall be defined as described in § 1 of Chapter
817 159A1/2 of the General Laws.

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

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

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

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

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

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

837 4. To carry out the provisions of this chapter.

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

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

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

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

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

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

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

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

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

890 Section 10. Chapter 151 of the General Laws is hereby amended by striking out section
891 15 and inserting in place thereof the following section:-

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

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

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

909 Section 11. Chapter 151 of the General Laws is hereby amended by striking out Section
910 16 and inserting in place thereof the following Section:-

911 Section 16: Posting orders and rules.

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

920 Section 12. Chapter 151 of the General Laws is hereby amended by striking out section
921 17 and inserting in place thereof the following section:-

922 Section 17: Department or attorney general questioning employees.

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

929 Section 13. Chapter 151 of the General Laws is hereby amended by striking out Section
930 19 and inserting in place thereof the following Section:-

931 Section 19: Punishments for stated acts.

932 Section 19. (1) Any employer and his agent or any TNC and his agent, or the officer or
933 agent of any corporation who discharges or in any other manner discriminates against any
934 employee or TND, including any employee in the domestic service of any family or person at his
935 home, because such employee or TND has complained of a violation of the provisions of this
936 chapter, or has testified or is about to testify in any investigation or proceeding under or related
937 to this chapter, or because such employer or TNC believes that said employee, TND, or
938 individual may complain of a violation of the provisions of this chapter, shall have violated this
939 section and shall be punished or shall be subject to a civil citation or order as provided in section
940 27C of chapter 149, and shall be liable for damages which shall not be less than one month's

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

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

954 (2A) Any employer or the officer or agent of any corporation who knowingly pays or
955 agrees to pay to any employee in agriculture and farming less than one dollar and sixty cents per
956 hour shall have violated this section and shall be punished or shall be subject to a civil citation or
957 order as provided in section 27C of chapter 149, and each week in any day in which such
958 employee is paid less shall constitute a separate offense.

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

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

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

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

1000 Section 14. Chapter 151 of the General Laws is hereby amended by striking out section
1001 20 and inserting in place thereof the following section:-

1002 Section 20: Payment of less than minimum fair wage; recovery of deficiency; unclaimed
1003 award; deposit of funds.

1004 Section 20. If a person is paid by an employer less than the minimum fair wage to which
1005 the person is entitled under or by virtue of a minimum fair wage regulation, including the
1006 minimum payment and/or minimum compensation rules applicable to TNDs and established

1007 pursuant to section 7b of Chapter 151 of the General laws, or less than \$1.85 per hour in a
1008 manufacturing occupation or in any other occupation not covered by a minimum fair wage
1009 regulation, the person may institute and prosecute in his own name and on his own behalf, or for
1010 himself and for others similarly situated, a civil action for injunctive relief, for any damages
1011 incurred and for the full amount of the minimum wages less any amount actually paid to him by
1012 the employer or TNC. An agreement between the person and the employer to work for less than
1013 the minimum wage, or between a TND and a TNC to work for less than the minimum payment
1014 and/or minimum compensation rules established pursuant to section 7b of Chapter 151 of the
1015 General laws, shall not be a defense to such action. An employee or TND so aggrieved who
1016 prevails in such an action shall be awarded treble damages, as liquidated damages, for any loss of
1017 minimum wage and shall also be awarded the costs of the litigation and reasonable attorneys'
1018 fees. At the request of any employee paid less than the minimum wage, or TND paid less than
1019 the minimum payment and/or minimum compensation rules established pursuant to section 7b of
1020 Chapter 151 of the General laws, to which he or she is entitled the attorney general may take an
1021 assignment of such wage claim in trust for the assigning employee or TND and may bring any
1022 legal action necessary to collect such claim, and the employer or TNC shall be required to pay
1023 the costs and such reasonable attorney's fees as may be allowed by the court. The attorney
1024 general shall not be required to pay a filing fee in connection with any such action.

1025 In any action or administrative proceeding by an employee or TND or the commissioner
1026 instituted upon such a wage claim in which the employee or TND prevails and the commissioner
1027 thereafter in possession of the resulting award is unable after a reasonable search to locate the
1028 employee or TND or to identify and locate the employee's or TND's successor in interest, the
1029 commissioner shall, upon expiration of one year from the date of said award, deposit the funds

1030 from any such award, less costs and reasonable attorney's fees where applicable, in the General
1031 Fund.

1032 Section 15. Chapter 149 of the General Laws is hereby amended by striking out Section
1033 148C and inserting in place thereof the following section:-

1034 Section 148C: Earned sick time.

1035 Section 148C. (a) As used in this section and section 148D, the following words, unless
1036 the context clearly requires otherwise, shall have the following meanings:—

1037 “Child”, a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a
1038 person who has assumed the responsibilities of parenthood.

1039 “Earned paid sick time”, the time off from work that is provided by an employer to an
1040 employee as computed under subsection (d) that can be used for the purposes described in
1041 subsection (c) and is compensated at the same hourly rate as the employee earns from the
1042 employee's employment at the time the employee uses the paid sick time; provided, however,
1043 that this hourly rate shall not be less than the effective minimum wage under section 1 of chapter
1044 151.

1045 “Earned sick time”, the time off from work that is provided by an employer to an
1046 employee, whether paid or unpaid, as computed under subsection (d) that can be used for the
1047 purposes described in subsection (c).

1048 “Employee”, any person who performs services for an employer for wage, remuneration,
1049 or other compensation, except that employees employed by cities and towns shall only be

1050 considered Employees for purposes of this law if this law is accepted by vote or by appropriation
1051 as provided in Article CXV of the Amendments to the Constitution of the Commonwealth.

1052 “Employer”, any individual, corporation, partnership or other private or public entity,
1053 including any agent thereof, who engages the services of an employee for wages, remuneration
1054 or other compensation, except the United States government shall not be considered an Employer
1055 and cities and towns shall only be considered Employers for the purposes of this law if this law is
1056 accepted by vote or by appropriation as provided in Article CXV of the Amendments to the
1057 Constitution of the Commonwealth.

1058 “Health care provider”, the meaning given this term by the Family and Medical Leave
1059 Act of 1993, 29 U.S.C. sections 2601 to 2654, inclusive, as it may be amended and regulations
1060 promulgated thereunder.

1061 “Parent”, a biological, adoptive, foster or step-parent of an employee or of an employee's
1062 spouse; or other person who assumed the responsibilities of parenthood when the employee or
1063 employee's spouse was a child.

1064 “Spouse”, the meaning given this term by the marriage laws of the commonwealth.

1065 “Termination,” the meaning shall include any termination of services of a transportation
1066 network worker by a transportation network company from an application or platform, including
1067 suspension, refusal to contract, termination of contract, and deactivation.

1068 “Transportation network company” or “TNC,” the meaning as described in § 1 of
1069 Chapter 159A1/2 of the General Laws.

1070 “Transportation network driver” or “TND,” the meaning as described in § 1 of Chapter
1071 159A1/2 of the General Laws.

1072 (b) All employees or TNDs who work in the commonwealth who must be absent from
1073 work for the reasons set forth in subsection (c) shall be entitled to earn and use not less than the
1074 hours of earned sick time provided in subsection (d).

1075 (c) Earned sick time shall be provided by an employer or TNC for an employee or TND
1076 to:

1077 (1) care for the employee's or TND’s child, spouse, parent, or parent of a spouse, who is
1078 suffering from a physical or mental illness, injury, or medical condition that requires home care,
1079 professional medical diagnosis or care, or preventative medical care; or

1080 (2) care for the employee's or TND’s own physical or mental illness, injury, or medical
1081 condition that requires home care, professional medical diagnosis or care, or preventative
1082 medical care; or

1083 (3) attend the employee's or TND’s routine medical appointment or a routine medical
1084 appointment for the employee's or TND’s child, spouse, parent, or parent of spouse; or

1085 (4) address the psychological, physical or legal effects of domestic violence as defined in
1086 subsection (g.5) of section 1 of chapter 151A, except that the definition of employee and TND in
1087 subsection (a) will govern for purposes of this section.

1088 (d)(1) An employer or TNC shall provide a minimum of one hour of earned sick time for
1089 every thirty hours worked by an employee, provided, however, that TNDs shall accrue earned
1090 sick time at the rate established by the Director of the Division of Utilities under subsection

1091 (3)(h)(iii) of Chapter 159A ½ of the General Laws. Employees and TNDs shall begin accruing
1092 earned sick time commencing with the date of hire of the employee, the date on which the TNC
1093 certifies the TND pursuant to section 4 of Chapter 159A1/2 of the General Laws, or the date this
1094 law becomes effective, whichever is later, but employees shall not be entitled to use accrued
1095 earned sick time until the 90th calendar day following commencement of their employment and
1096 TNDs shall not be entitled to use accrued earned sick time until the 90th calendar day following
1097 the date such TND was certified by the TNC . On and after this 90 day period, employees and
1098 TNDs may use earned sick time as it accrues.

1099 (2) Nothing in this chapter shall be construed to discourage or prohibit an employer or
1100 TNC from allowing the accrual of earned sick time at a faster rate, or the use of earned sick time
1101 at an earlier date, than this section requires.

1102 (3) Employees and TNDs who are exempt from overtime requirements under 29 U.S.C.
1103 section 213(a)(1) of the Federal Fair Labor Standards Act shall be assumed to work 40 hours in
1104 each work week for purposes of earned sick time accrual unless their normal work week is less
1105 than 40 hours, in which case earned sick time shall accrue based on that normal work week.

1106 (4) All employees employed by an employer or of eleven or more employees and all
1107 TNDs shall be entitled to earn and use up to 40 hours of earned paid sick time from that
1108 employer or a TNC as provided in subsection (d) in a calendar year. In determining the number
1109 of employees who are employed by an employer for compensation, all employees performing
1110 work for compensation on a full-time, part-time or temporary basis shall be counted.

1111 (5) Notwithstanding section 17 of chapter 15D, sections 70–75 of chapter 118E, or any
1112 other special or general law to the contrary, the PCA Quality Home Care Workforce Council

1113 shall be deemed the Employer of all Personal Care Attendants, as defined in section 70 of
1114 chapter 118E, for purposes of subsection (d)(4) of this section, the Department of Medical
1115 Assistance shall be deemed the Employer of said Personal Care Attendants for all other purposes
1116 under this section, and the Department of Early Education and Care shall be deemed the
1117 Employer of all Family Child Care Providers, as defined in section 17(a) of chapter 15D, for
1118 purposes of this section.

1119 (6) All employees not entitled to earned paid sick time from an employer pursuant to
1120 subsection (d)(4)–(5) shall be entitled to earn and use up to 40 hours of earned unpaid sick time
1121 from that employer as provided in subsection (d) in a calendar year.

1122 (7) Earned sick time shall be used in the smaller of hourly increments or the smallest
1123 increment that the employer's or TNC's payroll system or system that is otherwise used to make
1124 payments to TNDs uses to account for absences or use of other time. Employees and TNDs may
1125 carry over up to 40 hours of unused earned sick time to the next calendar year, but are not
1126 entitled to use more than 40 hours in one calendar year. Employers and TNCs shall not be
1127 required to pay out unused earned sick time upon the separation of the employee or TND from
1128 the employer or TND.

1129 (e) If an employee is absent from work for any reason listed in subsection (c) and, by
1130 mutual consent of the employer and the employee, the employee or works an equivalent number
1131 of additional hours or shifts during the same or the next pay period as the hours or shifts not
1132 worked due to reasons listed in subsection (c), an employee shall not be required to use accrued
1133 earned sick time for the employee's absence during that time period and the employer shall not
1134 be required to pay for the time the employee was so absent. An employer shall not require such

1135 employee to work additional hours to make up for the hours during which the employee was so
1136 absent or require that the employee search for or find a replacement employee to cover the hours
1137 during which the employee is utilizing earned sick time. This subsection shall not apply to
1138 TNDs.

1139 (f) Subject to the provisions of subsection (n), an employer or TNC may require
1140 certification when an earned sick time period covers more than 24 consecutively scheduled work
1141 hours. Any reasonable documentation signed by a health care provider indicating the need for
1142 earned sick time taken shall be deemed acceptable certification for absences under subsection
1143 (c)(1), (2) and (3). Documentation deemed acceptable under subsection (g.5) of section 1 of
1144 chapter 151A shall be deemed acceptable documentation for absences under subsection (c)(4).
1145 An employer may not require that the documentation explain the nature of the illness or the
1146 details of the domestic violence. The employer or TNC shall not delay the taking of earned sick
1147 time or delay pay for the period in which earned sick time was taken for employees or TNDs
1148 entitled to pay under subsection (d), on the basis that the employer or TNC has not yet received
1149 the certification. Nothing in this section shall be construed to require an employee or TND to
1150 provide as certification any information from a health care provider that would be in violation of
1151 section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated
1152 under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, 42
1153 U.S.C. 1320d-2 note.

1154 (g) When the use of earned sick time is foreseeable, the employee or TND shall make a
1155 good faith effort to provide notice of this need to the employer or TNC in advance of the use of
1156 the earned sick time.

1157 (h) It shall be unlawful for any employer or TNC to interfere with, restrain, or deny the
1158 exercise of, or the attempt to exercise, any right provided under or in connection with this
1159 section, including, but not limited to, by using the taking of earned sick time under this section as
1160 a negative factor in any employment action such as evaluation, promotion, disciplinary action or
1161 termination, or otherwise subjecting an employee to discipline for the use of earned sick time
1162 under this section.

1163 (i) It shall be unlawful for any employer or TNC to take any adverse action against an
1164 employee or TND because the employee or TND opposes practices which the employee or TND
1165 believes to be in violation of this section, or because the employee or TND supports the exercise
1166 of rights of another employee or TND under this section. Exercising rights under this section
1167 shall include but not be limited to filing an action, or instituting or causing to be instituted any
1168 proceeding, under or related to this section; providing or intending to provide any information in
1169 connection with any inquiry or proceeding relating to any right provided under this section; or
1170 testifying or intending to testify in any inquiry or proceeding relating to any right provided under
1171 this section.

1172 (j) Nothing in this section shall be construed to discourage employers or TNCs from
1173 adopting or retaining earned sick time policies more generous than policies that comply with the
1174 requirements of this section and nothing in this section shall be construed to diminish or impair
1175 the obligation of an employer or TNC to comply with any contract, collective bargaining
1176 agreement, or any employment benefit program or plan in effect on the effective date of this
1177 section that provides to employees or TNDs greater earned sick time rights than the rights
1178 established under this section.

1179 (k) Employers or TNCs required to provide earned paid sick time who provide their
1180 employees or TNDs paid time off under a paid time off, vacation or other paid leave policy who
1181 make available an amount of paid time off sufficient to meet the accrual requirements of this
1182 section that may be used for the same purposes and under the same conditions as earned paid
1183 sick time under this section are not required by this section to provide additional earned paid sick
1184 time.

1185 (l) The attorney general shall enforce this section, and may obtain injunctive or
1186 declaratory relief for this purpose. Violation of this section shall be subject to paragraphs (1), (2),
1187 (4), (6) and (7) of subsection (b) of section 27C and to section 150.

1188 (m) The attorney general shall prescribe by regulation the employer's or TNC's
1189 obligation to make, keep, and preserve records pertaining to this section consistent with the
1190 requirements of section 15 of chapter 151.

1191 (n) The attorney general may adopt rules and regulations necessary to carry out the
1192 purpose and provisions of this section, including the manner in which an employee or TND who
1193 does not have a health care provider shall provide certification, and the manner in which
1194 employer size shall be determined for purposes of subsection (d)(4).

1195 (o) Notice of this section shall be prepared by the attorney general, in English and in
1196 other languages required under clause (iii) of subsection (d) of section 62A of chapter 151A.
1197 Employers or TNCs shall post this notice in a conspicuous location accessible to employees or
1198 TNDs in every establishment where employees with rights under this section work, and shall
1199 provide a copy to their employees or TNDs. This notice shall include the following information:

1200 (1) information describing the rights to earned sick time under this section;

1201 (2) information about the notices, documentation and any other requirements placed on
1202 employees in order to exercise their rights to earned sick time;

1203 (3) information that describes the protections that an employee or TND has in exercising
1204 rights under this section;

1205 (4) the name, address, phone number, and website of the attorney general's office where
1206 questions about the rights and responsibilities under this section can be answered; and

1207 (5) information about filing an action under this section.

1208 Section 16. Chapter 149 of the General Laws is hereby amended by striking out section
1209 150 and inserting in place thereof the following section:-

1210 Section 150: Complaint for violation of certain sections; defenses; payment after
1211 complaint; assignments; loan of wages to employer; civil action.

1212 Section 150. The attorney general may make complaint or seek indictment against any
1213 person for a violation of section 148. On the trial no defence for failure to pay as required, other
1214 than the attachment of such wages by trustee process or a valid assignment thereof or a valid set-
1215 off against the same, or the absence of the employee from his regular place of labor at the time of
1216 payment, or an actual tender to such employee at the time of payment of the wages so earned by
1217 him, shall be valid. The defendant shall not set up as a defence a payment of wages after the
1218 bringing of the complaint. An assignment of future wages payable weekly under section one
1219 hundred and forty-eight shall not be valid if made to the person from whom such wages are to
1220 become due or to any person on his behalf, or if made or procured to be made to another person
1221 for the purpose of relieving the employer from the obligation to pay weekly. A loan made by an

1222 employee to his employer of wages which are payable weekly under section one hundred and
1223 forty-eight, whether made directly to the employer or to another person or persons on his behalf,
1224 shall not be valid as a defense on the trial of a complaint for failure to pay such wages weekly,
1225 unless such loan shall have been made with the approval of the attorney general.

1226 An employee claiming to be aggrieved by a violation of sections 33E, 52E, 148, 148A,
1227 148B, 148C, 150C, 152, 152A, 159C or 190 or section 19, or section 7b of chapter 151 may, 90
1228 days after the filing of a complaint with the attorney general, or sooner if the attorney general
1229 assents in writing, and within 3 years after the violation, institute and prosecute in his own name
1230 and on his own behalf, or for himself and for others similarly situated, a civil action for
1231 injunctive relief, for any damages incurred, and for any lost wages and other benefits; provided,
1232 however, that the 3 year limitation period shall be tolled from the date that the employee or a
1233 similarly situated employee files a complaint with the attorney general alleging a violation of any
1234 of these sections until the date that the attorney general issues a letter authorizing a private right
1235 of action or the date that an enforcement action by the attorney general becomes final. An
1236 employee so aggrieved who prevails in such an action shall be awarded treble damages, as
1237 liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of
1238 the litigation and reasonable attorneys' fees.

1239 SECTION 3. Coverage for Network Driver Injury and Establishment of the
1240 Transportation Network Driver Injury Compensation Fund.

1241 Section 1. Subsection (4) of section 1 of Chapter 152 of the General Laws, as appearing
1242 in the 2020 Official Edition, is hereby amended by inserting after the seventh paragraph the
1243 following paragraph:-

1244 Notwithstanding any other provision of this chapter, and for purposes of this chapter
1245 only, a covered driver, as defined in section 1 of chapter 152A, shall, on and after the fund
1246 liability date, as defined in section 1 of chapter 152A, be an employee of the Transportation
1247 Driver Injury Compensation Fund, Inc. created under Chapter 152A.

1248 Section 2. Subsection (5) of section 1 of Chapter 152 of the General Laws, as appearing
1249 in the 2020 Official Edition, is hereby amended by inserting after the second paragraph the
1250 following paragraph:-

1251 Notwithstanding any other provision of this chapter, and for purposes of this chapter
1252 only, the employer of a covered driver, as defined in section 1 of chapter 152A, shall, on and
1253 after the fund liability date, established in chapter 152A, be the Transportation Driver Injury
1254 Compensation Fund, Inc. created under chapter 152A.

1255 Section 3. Section 24 of Chapter 152 of the General Laws, as appearing in the 2020
1256 Official Edition, is hereby amended by inserting after the first paragraph the following
1257 paragraph:-

1258 The liability under this chapter of the Transportation Driver Injury Compensation Fund,
1259 Inc. shall be limited to: (i) securing the payment of workers' compensation in accordance with
1260 chapter 152A to covered drivers, as defined in section 1 of chapter 152A, whose injury arose out
1261 of and in the course of providing transportation network services as defined in chapter 159A1/2,
1262 for or facilitated by a fund member as defined in section 1 of chapter 152A, and (ii) any statutory
1263 penalty resulting from the failure to secure such payment. The liability under this chapter of a
1264 fund member, as defined in section 1 of chapter 152A, shall be limited to remaining a registered
1265 member in good standing of the fund and any statutory penalty, including loss of immunity

1266 provided by this section, resulting from the failure to become or remain a registered member in
1267 good standing of the fund.

1268 Section 4. Section 25A of Chapter 152 of the General Laws, as appearing in the 2020
1269 Official Edition, is hereby amended by adding the following subsection:-

1270 A transportation network company's requirement under this chapter regarding the
1271 securing and provision of workers' compensation benefits for any covered driver, as those terms
1272 are defined in section 1 of chapter 152A, are satisfied in full by compliance with the
1273 requirements imposed upon the for-hire company or transportation network company under
1274 chapter 152A. Insurance coverage directly procured by any transportation network company for
1275 the purpose of satisfying the requirements of this chapter with respect to employees of the
1276 transportation network company shall not include coverage of any covered driver, to the extent
1277 that the covered driver is provided coverage secured by the Transportation Driver Injury
1278 Compensation Fund, Inc. under chapter 152A. Coverage secured by the fund under chapter 152A
1279 shall be considered primary.

1280 Section 5. Section 43 of Chapter 152 of the General Laws, as appearing in the 2020
1281 Official Edition, is hereby amended by inserting after the first paragraph the following
1282 paragraph:-

1283 Whenever notice is required to be given to an employer under this chapter, such
1284 requirement shall be satisfied, with respect to an accident or injury to a covered driver, as defined
1285 in section 1 of chapter 152A, occurring on or after the fund liability date, as defined in section 1
1286 of chapter 152A, by giving such notice to the Transportation Driver Injury Compensation Fund,
1287 Inc., established under chapter 152A.

1288 Section 6. Chapter 152A of the General Laws is hereby enacted with the following
1289 provisions:-

1290 Section 1. Definitions

1291 1. "Transportation network company" or "TNC" means transportation network driver as
1292 described in § 1 of Chapter 159A1/2 of the General Laws.

1293 2. "Transportation network driver" or "TND" means transportation network company as
1294 described in § 1 of Chapter 159A1/2 of the General Laws.

1295 3. "Covered Driver," all transportation network drivers engaged in and authorized
1296 to provide, transportation network services as defined in 159A1/2, in the commonwealth.

1297 4. "Corporations Division" means the Corporations Division under the Secretary
1298 of the Commonwealth.

1299 7. "Fund" means the Transportation Network Driver Injury Compensation Fund,
1300 Inc.

1301 8. "Fund liability date" means the earlier of: (a) the date as of which the
1302 Department of Industrial Accidents first approves the fund's application to self-insure, or (b) the
1303 date on which coverage commences under the initial insurance policy purchased by the fund
1304 pursuant to subdivision three of section one hundred sixty-ii of this article.

1305 9. "Secretary" means the secretary of state.

1306 Section 2. Creation of the Transportation Network Driver Injury Compensation Fund.

1307 The Transportation Network Driver Injury Compensation Fund, Inc. is hereby created as
1308 a not-for-profit corporation. To the extent that provisions of the not-for-profit corporation law
1309 do not conflict with the Articles of Organization and Bylaws established pursuant to this article,
1310 the not-for-profit corporation law shall apply to the fund. If an applicable provision of MGL
1311 c.151A, or of the fund's Articles of Organization and Bylaws, relates to a matter embraced in a
1312 provision of the not-for-profit corporation law but is not in conflict therewith, both provisions
1313 shall apply. The Fund shall perform its functions in accordance with its Articles and Bylaws
1314 established and approved pursuant to this Chapter and shall exercise its powers through a Board
1315 of Directors established pursuant to this Chapter.

1316 The fund is established for the purpose of providing compensation to covered drivers
1317 under this chapter who are injured while engaged in transportation network services as defined in
1318 this chapter 159A1/2. The Fund, as employer, will comply with all requirements and obligations
1319 imposed on employers by M.G.L. c 152, except as expressly exempted or modified by this
1320 chapter. Covered drivers as defined in this chapter, shall enjoy all the rights and benefits
1321 provided by M.G.L. c. 152, except as expressly proscribed or modified by this chapter. Section
1322 3. Management of the Fund; Board of Directors.

1323 1. Within sixty days of the effective date of this Act, there shall be appointed by the
1324 Governor, a Board of Directors of the fund, consisting of five directors. Two directors will be
1325 nominated by labor organizations operating within the Commonwealth of Massachusetts and two
1326 directors will be nominated by TNCs doing business in the Commonwealth of Massachusetts.
1327 One director will be appointed without nomination of the Governor. The initial terms of
1328 members shall be staggered. Two directors appointed by the Governor will serve for an initial

1329 term of three years and two for an initial term of two years from the effective date of this article.

1330 The subsequent terms of all directors shall be three years.

1331 2. The directors shall elect annually from among their number a chair and a vice chair
1332 who shall act as chair in the chair's absence.

1333 3. For their attendance at meetings, the directors of the fund shall be entitled to
1334 compensation, as authorized by the directors, in an amount not to exceed two hundred dollars per
1335 meeting per director, and to reimbursement of their actual and necessary expenses.

1336 4. Directors of the fund, except as otherwise provided by law, may engage in private or
1337 public employment or in a profession or business.

1338 5. (a) All of the directors shall have equal voting rights and three or more directors shall
1339 constitute a quorum. The affirmative vote of three directors shall be necessary for the transaction
1340 of any business or the exercise of any power or function of the fund.

1341 (b) The fund may delegate to one or more of its directors, officers, agents or employees
1342 such powers and duties as it may deem proper.

1343 (c) A vacancy occurring in a director position shall be filled in the same manner as the
1344 initial appointment to that position, provided however that no individual may serve as director
1345 for more than three successive terms.

1346 6. The Board shall be held to customary fiduciary duties, including the core duties of care
1347 and loyalty, which shall require the Board members to act in good faith and for the Benefit of the
1348 fund and not their own personal or business interests. Violating such duties shall be ground for
1349 immediate removal from the Board by a majority vote of the Board.

1350 Section 4. Articles of Incorporation.

1351 1. Within ninety days of the appointment of the full Board of Directors, the fund shall file
1352 with the Secretary of State, Corporations Division, its Articles of Incorporation and Bylaws,
1353 which shall be designed to assure the fair, reasonable and equitable administration of the fund.
1354 The Articles and Bylaws and any subsequent amendments thereto shall become effective upon
1355 being filed with the Corporations Division.

1356 2. The Articles and Bylaws shall, in addition to the requirements enumerated elsewhere
1357 in this article:

1358 (a) establish procedures for collecting and managing the assets of the fund;

1359 (b) establish regular places and times for meetings of the fund's board of directors;

1360 (c) establish the procedure by which the fund shall determine whether to provide the
1361 benefits due pursuant to this article by self-insuring or by purchasing insurance;

1362 (d) establish accounting and record-keeping procedures for all financial transactions of
1363 the fund, its agents and the board of directors;

1364 (e) establish a procedure for determining and collecting the appropriate amount of
1365 surcharges and assessments under this article;

1366 (f) set forth the procedures by which the fund may exercise the premium audit rights
1367 granted to it under this article;

1368 (g) establish procedures to ensure prompt and accurate notification to the fund by its
1369 members of all accidents and injuries to TNCs, and provide for full reimbursement of the fund

1370 by any TNC whose failure to provide such notification results in the imposition of a penalty on
1371 the fund by the board; and

1372 (h) contain such additional provisions as the board of the fund may deem necessary or
1373 proper for the execution of the powers and duties of the fund.

1374 Section 5. Membership in the Fund; Registration with the Division.

1375 1. The membership of the fund shall be composed of all transportation network
1376 companies operating in the Commonwealth. Each TNC shall be required, as a condition of
1377 doing business within the Commonwealth, to pay the Department of Public Utilities a two
1378 hundred dollar annual fee for the purpose of registering as a member of the fund and receiving a
1379 certificate of registration. Such sums shall be used by the Department of Public Utilities for the
1380 administration of this Chapter. The initial registration fee shall be due no later than ninety days
1381 after the effective date of this article. The Department of Public Utilities shall provide the fund
1382 with an updated list of registrants on a monthly basis.

1383 2. Within sixty days of the appointment of the full board, the board of the fund shall, on
1384 the basis of information from trade papers and other sources, identify the TNCs subject to this
1385 article and, on a regular and ongoing basis, confirm that all such entities have registered in
1386 accordance with subdivision one of this section.

1387 3. The fund shall, within one hundred fifty days of the appointment of the full board,
1388 provide to its members a copy of the Articles Incorporation and Bylaws and shall inform its
1389 members of their rights and duties pursuant to this article.

1390 Section 6. Securing compensation.

1391 1. Within one hundred fifty days of the effective date of the Articles of Incorporation and
1392 Bylaws, the fund shall secure the payment of workers' compensation to all covered drivers
1393 entitled thereto pursuant to this chapter by either: (a) self-insuring or (b) purchasing workers'
1394 compensation insurance covering, on a blanket basis, for all covered drivers who are the fund's
1395 employees.

1396 2. If the fund initially seeks to self-insure, it shall in accordance with all requirements and
1397 obligations pursuant to M.G.L c. 152.

1398 3. If the fund chooses to secure the payment of workers' compensation pursuant to the
1399 workers' compensation law by purchasing an insurance policy from a licensed insurer, it shall
1400 file in accordance with all requirements and obligations pursuant to M.G.L c. 152.

1401 4. No provision of this article shall be construed to alter or affect the liability under the
1402 workers' compensation law of any TNC with respect to covered drivers prior to the fund liability
1403 date.

1404 Section 7. Assessment of Fund members; customer surcharges; premium audit powers of
1405 the Fund, the board and the Fund's insurer.

1406 1. To pay (a) the costs of the insurance purchased or (b) the benefits due under the
1407 workers' compensation law in the event the fund self-insures, and to pay (c) its expenses in
1408 carrying out its powers and duties under this article and (d) its liabilities, if any, pursuant to
1409 section fourteen-a of the workers' compensation law, the fund shall ascertain by reasonable
1410 estimate the total funding necessary to carry on its operations.

1411 2. Based upon its estimation of operating costs, the fund shall establish a proposed
1412 amount per on-trip mile surcharge. The proposed surcharge shall become effective thirty days
1413 from the effective date of the Articles of Incorporation and Bylaws. Each member of the fund
1414 shall be liable for payment to the fund of an amount equal to the product of (i) the amount per
1415 on-trip mile due pursuant to this article and (ii) the number of on-trip miles by the covered
1416 drivers providing services through its platform, as provided in this subdivision.

1417 3. Each TNC shall submit to the fund with its monthly payment a detailed accounting of
1418 the on-trip miles services during the previous month. The first such payment and accounting
1419 shall be due on the fifteenth day of the month following the imposition of the surcharge.

1420 4. The Department of Public Utilities shall not issue, continue or renew any permit for the
1421 operation of any TNC unless such network company, as a condition of maintaining its permit,
1422 complies with MGL c. 152A section 8, paragraph 3.

1423 5. Should the fund determine that the surcharge amounts that have been paid to it are
1424 inadequate to meet its obligations under this article, it shall determine the surcharge rate required
1425 to eliminate such deficiency and shall notify the fund members of the revised surcharge rate,
1426 along with sufficient documentation detailing its calculations of projected shortfall and estimated
1427 funds under the revised surcharge. Commencing thirty days after such notice, the members of
1428 the fund shall charge the revised surcharge rate and shall pay to the fund the total amount of
1429 surcharges accordingly.

1430 6. The fund shall have the power directly or through its agent to conduct premium audits
1431 of its members solely to verify their compliance with the on-trip mileage reporting requirements.
1432 The fund or its agent shall be afforded convenient access at all reasonable hours to all books,

1433 records and other documents of its members that may be relevant to such premium audits.
1434 Compliance with this section shall not constitute waiver of any legal privilege, confidentiality, or
1435 trade secret protection.

1436 7. For the purposes of conducting premium audits, an insurer providing coverage to the
1437 fund pursuant to this article may treat the members of the fund as policyholders.

1438 Section 8. Financial oversight of the Fund.

1439 No later than the first day of May of each year, the fund shall submit to the Massachusetts
1440 Attorney General Office's Non-Profit Organizations/Public Charities Division, certified financial
1441 statements prepared in accordance with generally accepted accounting principles by a certified
1442 public accountant. The members of the fund shall be required on and after January first of each
1443 year to afford the certified public accountant convenient access at all reasonable hours to all
1444 books, records and other documents, including but not limited to invoices and vouchers,
1445 necessary or useful in the preparation of such statements and in the verification of the monthly
1446 statements submitted to the fund. Compliance with this section shall not constitute waiver of any
1447 legal privilege, confidentiality, or trade secret protection. The requirements in this section shall
1448 commence on the first May after the effective date of the plan of operations.

1449 Section 9. Liability insurance.

1450 The fund shall purchase such insurance as is necessary to protect the fund and any
1451 director, officer, agent or other representative from liability for their administration of the fund,
1452 and shall, to the extent permitted by law, indemnify such directors, officers, agents or other
1453 representatives and hold them harmless from liability for their administration of the fund.

1454 Section 10. Regulations.

1455 The Department of Public Utilities shall adopt regulations implementing the provisions of
1456 this Chapter.

1457 Section 11. Violations; penalties; appeals.

1458 1. (a) If a fund director believes a violation of this article by a fund member may have
1459 occurred, the director, shall upon notice to the fund member, notify the Department of Public
1460 Utilities to hold a hearing to determine whether such violation occurred.

1461 (b) If the fund believes that a TNC has failed to pay the fund the assessments due
1462 pursuant to this Chapter, it shall make a referral to the Department of Public Utilities to hold a
1463 hearing to determine whether such violation occurred.

1464 2. Except as otherwise provided in this section, a fund member that is found, after a
1465 hearing held pursuant to this section, to have violated a provision of this Chapter, or a rule
1466 promulgated in accordance with this Chapter, the fund member shall be liable for a fine in an
1467 amount not to exceed ten thousand dollars per violation. Notwithstanding the foregoing, a fund
1468 member that fails to submit to the fund the required surcharges shall be subject, in addition to
1469 payment to the fund of the amount overdue plus interest on such amount as herein provided, to a
1470 penalty, at the discretion of the Department of Public Utilities, of (a) up to five thousand dollars
1471 for each twenty days the payment is overdue, or (b) revocation of its membership in the fund, or
1472 (c) both a monetary penalty and revocation of its membership in the fund. Any monetary penalty
1473 imposed pursuant to this subdivision shall be retained by the Department of Public Utilities and
1474 be used to defray the costs of administering this article.

1475 SECTION 4. Unemployment Insurance.

1476 Section 1. Section 1 of Chapter 151A of the General Laws, as appearing in the 2022
1477 Official Edition, is hereby amended by inserting the following subsections (ee), (ff), (gg), and
1478 (hh):-

1479 (ee) The term “transportation network company” or “TNC,” transportation network
1480 company as described in § 1 of Chapter 159A1/2 of the General Laws.

1481 (ff) The term “transportation network driver” or “TND,” transportation network driver as
1482 described in § 1 of Chapter 159A1/2 of the General Laws.

1483 (gg) The terms “discharge” and “terminate” shall include any termination of services of a
1484 transportation network worker by a transportation network company from an application or
1485 platform, including suspension, refusal to contract, termination of contract, and deactivation.

1486 (hh) “The terms “hire,” “employ” or “employment” shall include the activation of a
1487 transportation network driver by a transportation network company to an application or platform.

1488 Section 2. Section 2 of Chapter 151A of the General Laws is hereby amended by
1489 inserting at the end of the fourth paragraph, after the word “section.,” the following words:-

1490 Transportation network services as defined in M.G.L.A. 159A 1/2 § 1 shall be deemed
1491 employment subject to this chapter irrespective of any showing of (a), (b) and (c), above.

1492 Section 3. Section 4A of Chapter 151A of the General Laws is hereby amended by
1493 inserting at the end of the section new subsection (g):-

1494 (g) Performing transportation network services as defined in 159A 1/2 § 1.

1495 Section 4. Section 14 of Chapter 151A of the General Laws is hereby amended by
1496 inserting at the end of subsection (i) a new subparagraph (2):-

1497 (2) The contribution rate of each TNC shall be increased by an amount equal to the
1498 difference between the rate of contribution paid by employing units pursuant to the federal
1499 Unemployment Tax Act after applying any credit available to those employing units pursuant to
1500 section 3302 of title 23 of the internal revenue code, and the rate of contribution required to be
1501 made to the Unemployment Compensation Fund which is specified for employers in this
1502 subsection (i).

1503 SECTION 5. Prohibiting discrimination against transportation network drivers.

1504 Section 1. Section 1 of Chapter 151B of the General Laws is hereby amended by
1505 inserting at the end thereof the following subsections:-

1506 24. The term “transportation network company” or “TNC” shall mean transportation
1507 network company as described in § 1 of Chapter 159A1/2 of the General Laws.

1508 25. The term “transportation network driver” or “TND” shall mean transportation
1509 network driver as described in § 1 of Chapter 159A1/2 of the General Laws.

1510 26. The terms “discharge” and “terminate” shall include any termination of services of a
1511 transportation network worker by a transportation network company from an application or
1512 platform, including suspension, refusal to contract, termination of contract, and deactivation.

1513 27. “The terms “hire,” “employ” or “employment” shall include the activation of a
1514 transportation network driver by a transportation network company to an application or platform.

1515 Section 2. Chapter 151B of the General Laws is hereby amended by striking out Section
1516 3A and inserting in place thereof the following Section:-

1517 Section 3A. (a) All employers, TNCs, employment agencies and labor organizations shall
1518 promote a workplace free of sexual harassment.

1519 (b) Every employer and TNCs shall:

1520 (1) adopt a policy against sexual harassment which shall include:

1521 (i) a statement that sexual harassment in the workplace is unlawful;

1522 (ii) a statement that it is unlawful to retaliate against an employee or TND for filing a
1523 complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual
1524 harassment;

1525 (iii) a description and examples of sexual harassment;

1526 (iv) a statement of the range of consequences for employees or TNDs who are found to
1527 have committed sexual harassment;

1528 (v) a description of the process for filing internal complaints about sexual harassment and
1529 the work addresses and telephone numbers of the person or persons to whom complaints should
1530 be made; and

1531 (vi) the identity of the appropriate state and federal employment discrimination
1532 enforcement agencies, and directions as to how to contact such agencies.

1533 (2) provide annually to all employees or TNDs an individual written copy of the
1534 employer's or TNC's policy against sexual harassment; provided, however, that a new employee
1535 or TNC shall be provided such a copy at the time of his employment.

1536 (c) The commission shall prepare and provide to employers or TNCs subject to this
1537 section a model policy and poster consistent with federal and state statutes and regulations,
1538 which may be used by employers or TNCs for the purposes of this section.

1539 (d) An employer's or TNC's failure to provide the information required to be provided by
1540 this section shall not, in and of itself, result in the liability of said employer or TNC to any
1541 current or former employee or TNC or applicant in any action alleging sexual harassment. An
1542 employer's or TNC's compliance with the notice requirements of this section shall not, in and of
1543 itself, protect the employer or TNC from liability for sexual harassment of any current or former
1544 employee or TND or applicant.

1545 (e) Employers, TNCs and labor organizations are encouraged to conduct an education
1546 and training program for new employees, TNDs and members, within one year of
1547 commencement of employment or membership, which includes at a minimum the information
1548 set forth in this section. Employers and TNCs are encouraged to conduct additional training for
1549 new supervisory and managerial employees and members within one year of commencement of
1550 employment or membership, which shall include at a minimum the information set forth in
1551 subsection (b), the specific responsibilities of supervisory and managerial employees and the
1552 methods that such employees should take to ensure immediate and appropriate corrective action
1553 in addressing sexual harassment complaints. Employers, TNCs, labor organizations and
1554 appropriate state agencies are encouraged to cooperate in making such training available.

1555 Section 3. Section 4, subsection 1 of Chapter 151B of the General Laws is hereby
1556 amended by inserting after “For an employer” in the first sentence the following words:- “or
1557 TNC”

1558 Section 4. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1559 striking out subsection 1A and inserting in place thereof the following subsection:-

1560 1A. It shall be unlawful discriminatory practice for an employer or TNC to impose upon
1561 an individual as a condition of obtaining or retaining employment any terms or conditions,
1562 compliance with which would require such individual to violate, or forego the practice of, his
1563 creed or religion as required by that creed or religion including but not limited to the observance
1564 of any particular day or days or any portion thereof as a sabbath or holy day and the employer or
1565 TNC shall make reasonable accommodation to the religious needs of such individual. No
1566 individual who has given notice as hereinafter provided shall be required to remain at his place
1567 of employment during any day or days or portion thereof that, as a requirement of his religion, he
1568 observes as his sabbath or other holy day, including a reasonable time prior and subsequent
1569 thereto for travel between his place of employment and his home, provided, however, that any
1570 employee or TND intending to be absent from work when so required by his or her creed or
1571 religion shall notify his or her employer or TNC not less than ten days in advance of each
1572 absence, and that any such absence from work shall, wherever practicable in the judgment of the
1573 employer, be made up by an equivalent amount of time at some other mutually convenient time.
1574 Nothing under this subsection shall be deemed to require an employer or TNC to compensate an
1575 employee for such absence. “Reasonable Accommodation”, as used in this subsection shall mean
1576 such accommodation to an employee's or TND's or prospective employee's or TND's religious
1577 observance or practice as shall not cause undue hardship in the conduct of the employer's or

1578 TNC’s business. The employee or TND shall have the burden of proof as to the required practice
1579 of his creed or religion. As used in this subsection, the words “creed or religion” mean any
1580 sincerely held religious beliefs, without regard to whether such beliefs are approved, espoused,
1581 prescribed or required by an established church or other religious institution or organization.

1582 Undue hardship, as used herein, shall include the inability of an employer or TNC to
1583 provide services which are required by and in compliance with all federal and state laws,
1584 including regulations or tariffs promulgated or required by any regulatory agency having
1585 jurisdiction over such services or where the health or safety of the public would be unduly
1586 compromised by the absence of such employee or TND or employees or TNDs, or where the
1587 employee's or TND’s presence is indispensable to the orderly transaction of business and his or
1588 her work cannot be performed by another employee or TND of substantially similar
1589 qualifications during the period of absence, or where the employee's or TND’s presence is
1590 needed to alleviate an emergency situation. The employer or TNC shall have the burden of proof
1591 to show undue hardship.

1592 Section 5. Section 4, subsection 1B of Chapter 151B of the General Laws is hereby
1593 amended by inserting after “For an employer” in the first sentence the following words:- “or
1594 TNC”

1595 Section 6. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1596 striking out subsection 1C and inserting in place thereof the following subsection:-

1597 1C. For the commonwealth or any of its political subdivisions, by itself or its agent,
1598 because of the age of any individual, to refuse to hire or employ or to bar or discharge from

1599 employment such individual in compensation or in terms, conditions or privileges of
1600 employment unless pursuant to any other general or special law.

1601 Section 7. Section 4, subsection 1D of Chapter 151B of the General Laws is hereby
1602 amended by inserting after “For an employer” in the first sentence the following words:- “or
1603 TNC”

1604 Section 8. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1605 striking out subsection 1E and inserting in place thereof the following subsection:-

1606 1E. (a) For an employer or TNC to deny a reasonable accommodation for an employee’s
1607 or TND’s pregnancy or any condition related to the employee’s or TND’s pregnancy including,
1608 but not limited to, lactation or the need to express breast milk for a nursing child if the employee
1609 or TND requests such an accommodation; provided, however, that an employer or TNC may
1610 deny such an accommodation if the employer or TNC can demonstrate that the accommodation
1611 would impose an undue hardship on the employer’s or TNC’s program, enterprise or business. It
1612 shall also be an unlawful practice under this subsection to:

1613 (i) take adverse action against an employee or TND who requests or uses a reasonable
1614 accommodation in terms, conditions or privileges of employment including, but not limited to,
1615 failing to reinstate the employee or TND to the original employment status or to an equivalent
1616 position with equivalent pay and accumulated seniority, retirement, fringe benefits and other
1617 applicable service credits when the need for a reasonable accommodation ceases;

1618 (ii) deny an employment opportunity to an employee if the denial is based on the need of
1619 the employer or TNC to make a reasonable accommodation to the known conditions related to

1620 the employee's or TND's pregnancy including, but not limited to, lactation or the need to express
1621 breast milk for a nursing child;

1622 (iii) require an employee or TND affected by pregnancy, or require said employee or
1623 TND affected by a condition related to the pregnancy, including, but not limited to, lactation or
1624 the need to express breast milk for a nursing child, to accept an accommodation that the
1625 employee or TND chooses not to accept, if that accommodation is unnecessary to enable the
1626 employee or TND to perform the essential functions of the job;

1627 (iv) require an employee or TND to take a leave if another reasonable accommodation
1628 may be provided for the known conditions related to the employee's or TND's pregnancy,
1629 including, but not limited to, lactation or the need to express breast milk for a nursing child,
1630 without undue hardship on the employer's program, enterprise or business;

1631 (v) refuse to hire a person who is pregnant because of the pregnancy or because of a
1632 condition related to the person's pregnancy, including, but not limited to, lactation or the need to
1633 express breast milk for a nursing child; provided, however, that the person is capable of
1634 performing the essential functions of the position with a reasonable accommodation and that
1635 reasonable accommodation would not impose an undue hardship, demonstrated by the employer
1636 or TNC, on the employer's or TNC's program, enterprise or business.

1637 (b) As used in this subsection, the following words shall have the following meanings
1638 unless the context clearly requires otherwise:

1639 "Reasonable accommodation", may include, but shall not be limited to: (i) more frequent
1640 or longer paid or unpaid breaks; (ii) time off to attend to a pregnancy complication or recover
1641 from childbirth with or without pay; (iii) acquisition or modification of equipment or seating; (iv)

1642 temporary transfer to a less strenuous or hazardous position; (v) job restructuring; (vi) light duty;
1643 (vii) private non-bathroom space for expressing breast milk; (viii) assistance with manual labor;
1644 or (ix) a modified work schedule; provided, however, that an employer or TNC shall not be
1645 required to discharge or transfer an employee or TND with more seniority or promote an
1646 employee or TND who is not able to perform the essential functions of the job with or without a
1647 reasonable accommodation.

1648 “Undue hardship”, an action requiring significant difficulty or expense; provided,
1649 however, that the employer shall have the burden of proving undue hardship; provided further,
1650 that in making a determination of undue hardship, the following factors shall be considered: (i)
1651 the nature and cost of the needed accommodation; (ii) the overall financial resources of the
1652 employer or TNC; (iii) the overall size of the business of the employer with respect to the
1653 number of employees or TNDs and the number, type and location of its facilities; and (iv) the
1654 effect on expenses and resources or any other impact of the accommodation on the employer’s
1655 program, enterprise or business.

1656 (c) Upon request for an accommodation from the employee or TND or prospective
1657 employee or TND capable of performing the essential functions of the position involved, the
1658 employee or TND or prospective employee or TND and the employer or TNC shall engage in a
1659 timely, good faith and interactive process to determine an effective, reasonable accommodation
1660 to enable the employee or TND or prospective employee or TND to perform the essential
1661 functions of the employee’s or TND’s job or the position to which the prospective employee or
1662 TND has applied. An employer or TNC may require that documentation about the need for a
1663 reasonable accommodation come from an appropriate health care or rehabilitation professional;
1664 provided, however, that an employer or TNC shall not require documentation from an

1665 appropriate health care or rehabilitation professional for the following accommodations: (i) more
1666 frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting more than 20 pounds;
1667 and (iv) private non-bathroom space for expressing breast milk. An “appropriate health care or
1668 rehabilitation professional” shall include, but shall not be limited to, a medical doctor, including
1669 a psychiatrist, a psychologist, a nurse practitioner, a physician assistant, a psychiatric clinical
1670 nurse specialist, a physical therapist, an occupational therapist, a speech therapist, a vocational
1671 rehabilitation specialist, a midwife, a lactation consultant or another licensed mental health
1672 professional authorized to perform specified mental health services. An employer or TNC may
1673 require documentation for an extension of the accommodation beyond the originally agreed to
1674 accommodation.

1675 (d) Written notice of the right to be free from discrimination in relation to pregnancy or a
1676 condition related to the employee’s or TND’s pregnancy including, but not limited to, lactation
1677 or the need to express breast milk for a nursing child, including the right to reasonable
1678 accommodations for conditions related to pregnancy pursuant to this subsection, shall be
1679 distributed by an employer or TNC to its employees. The notice shall be provided in a handbook,
1680 pamphlet or other means of notice to all employees or TNDs including, but not limited to: (i)
1681 new employees or TNDs at or prior to the commencement of employment; and (ii) an employee
1682 or TND who notifies the employer of a pregnancy or an employee or TND who notifies the
1683 employer or TNC of a condition related to the employee’s or TND’s pregnancy including, but
1684 not limited to, lactation or the need to express breast milk for a nursing child not more than 10
1685 days after such notification.

1686 (e) Subject to appropriation, the commission shall develop courses of instruction and
1687 conduct public education efforts as necessary to inform employers, TNCs, employees, TNDs,

1688 and employment agencies about the rights and responsibilities established under this subsection
1689 not more than 180 days after the appropriation.

1690 (f) This subsection shall not be construed to preempt, limit, diminish or otherwise affect
1691 any other law relating to sex discrimination or pregnancy or in any way diminish the coverage
1692 for pregnancy or a condition related to pregnancy including, but not limited to, lactation or the
1693 need to express breast milk for a nursing child under section 105D of chapter 149.

1694 Section 9. Section 4, subsection 3 of Chapter 151B of the General Laws is hereby
1695 amended by inserting after “For an employer” in the first sentence the following words:- “or
1696 TNC”

1697 Section 10. Section 4, subsection 4 of Chapter 151B of the General Laws is hereby
1698 amended by inserting after “employer” in the first sentence the following word:- “TNC”

1699 Section 11. Section 4, subsection 5 of Chapter 151B of the General Laws is hereby
1700 amended by inserting after “employer” in the first sentence the following words:- “TNC, TND”

1701 Section 12. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1702 striking out subsection 9 and inserting in place thereof the following subsection:-

1703 9. For an employer or TNC, himself or through his agent, in connection with an
1704 application for employment, or the terms, conditions, or privileges of employment, or the
1705 transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the
1706 employment of any person, to request any information, to make or keep a record of such
1707 information, to use any form of application or application blank which requests such
1708 information, or to exclude, limit or otherwise discriminate against any person by reason of his or

1709 her failure to furnish such information through a written application or oral inquiry or otherwise
1710 regarding: (i) an arrest, detention, or disposition regarding any violation of law in which no
1711 conviction resulted, or (ii) a first conviction for any of the following misdemeanors:
1712 drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the
1713 peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the
1714 completion of any period of incarceration resulting therefrom, whichever date is later, occurred 3
1715 or more years prior to the date of such application for employment or such request for
1716 information, unless such person has been convicted of any offense within 3 years immediately
1717 preceding the date of such application for employment or such request for information, or (iv) a
1718 criminal record, or anything related to a criminal record, that has been sealed or expunged
1719 pursuant to chapter 276.

1720 No person shall be held under any provision of any law to be guilty of perjury or of
1721 otherwise giving a false statement by reason of his failure to recite or acknowledge such
1722 information as he has a right to withhold by this subsection.

1723 Nothing contained herein shall be construed to affect the application of section thirty-four
1724 of chapter ninety-four C, or of chapter two hundred and seventy-six relative to the sealing of
1725 records.

1726 Nothing contained herein shall be construed to prohibit a transportation network
1727 company from complying with its obligations set forth in section 4 of chapter 159A1/2 of the
1728 General Laws.

1729 Section 13. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1730 striking out subsection 91/2 and inserting in place thereof the following subsection:-

1731 9 ½. For an employer or TNC to request on its initial written application form criminal
1732 offender record information; provided, however, that except as otherwise prohibited by
1733 subsection 9, an employer may inquire about any criminal convictions on an applicant's
1734 application form if: (i) the applicant is applying for a position for which any federal or state law
1735 or regulation creates mandatory or presumptive disqualification based on a conviction for 1 or
1736 more types of criminal offenses; or (ii) the employer or TNC or an affiliate of such employer or
1737 TNC is subject to an obligation imposed by any federal or state law or regulation not to employ
1738 persons, in either 1 or more positions, who have been convicted of 1 or more types of criminal
1739 offenses.

1740 Section 14. Section 4, subsection 9A of Chapter 151B of the General Laws is hereby
1741 amended by inserting after “For an employer” in the first sentence the following words:- “or
1742 TNC”

1743 Section 15. Section 4 of Chapter 151B of the General Laws is hereby amended by
1744 striking out subsection 11A and inserting in place thereof the following subsection:-

1745 11A. For an employer or TNC, or an employer’s or TNC’s agent, to refuse to restore
1746 certain employees or TNDs to employment following an absence by reason of a parental leave
1747 taken pursuant to section 105D of chapter 149 or to otherwise fail to comply with that section, or
1748 for the commonwealth and any of its boards, departments and commissions to deny vacation
1749 credit to an employee for the fiscal year during which the employee or TND is absent due to a
1750 parental leave taken pursuant to said section 105D of said chapter 149, or to impose any other
1751 penalty as a result of a parental leave of absence.

1752 Section 16. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1753 striking out subsection 16 and inserting in place thereof the following subsection:-

1754 16. For any employer or TNC, personally or through an agent, to dismiss from
1755 employment or refuse to hire, rehire or advance in employment or otherwise discriminate
1756 against, because of his handicap, any person alleging to be a qualified handicapped person,
1757 capable of performing the essential functions of the position involved with reasonable
1758 accommodation, unless the employer or TNC can demonstrate that the accommodation required
1759 to be made to the physical or mental limitations of the person would impose an undue hardship
1760 to the employer's or TNC's business. For purposes of this subsection, the word employer or TNC
1761 shall include an agency which employs individuals directly for the purpose of furnishing part-
1762 time or temporary help to others.

1763 In determining whether an accommodation would impose an undue hardship on the
1764 conduct of the employer's business, factors to be considered include:--

1765 (1) the overall size of the employer's or TNC's business with respect to the number of
1766 employees, number and type of facilities, and size of budget or available assets;

1767 (2) the type of the employer's or TNC's operation, including the composition and
1768 structure of the employer's or TNC's workforce; and

1769 (3) the nature and cost of the accommodation needed.

1770 Physical or mental job qualification requirement with respect to hiring, promotion,
1771 demotion or dismissal from employment or any other change in employment status or

1772 responsibilities shall be functionally related to the specific job or jobs for which the individual is
1773 being considered and shall be consistent with the safe and lawful performance of the job.

1774 An employer or TNC may not make preemployment inquiry of an applicant as to whether
1775 the applicant is a handicapped individual or as to the nature or severity of the handicap, except
1776 that an employer or TNC may condition an offer of employment on the results of a medical
1777 examination conducted solely for the purpose of determining whether the employee or TNC,
1778 with reasonable accommodation, is capable of performing the essential functions of the job, and
1779 an employer may invite applicants to voluntarily disclose their handicap for purposes of assisting
1780 the employer in its affirmative action efforts.

1781 Section 17. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1782 striking out subsection 16A and inserting in place thereof the following subsection:-

1783 16A. For an employer or TNC, personally or through its agents, to sexually harass any
1784 employee or TND.

1785 Section 18. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1786 striking out subsection 17 and inserting in place thereof the following subsection:-

1787 17. Notwithstanding any provision of this chapter, it shall not be an unlawful
1788 employment practice for any person, employer, TNC, labor organization or employment agency
1789 to:

1790 (a) observe the terms of a bona fide seniority system or any bona fide employee or TND
1791 benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade
1792 the purposes of this section, except that no such employee or TND benefit plan shall excuse the

1793 failure to hire any person, and no such seniority system or employee benefit plan shall require or
1794 permit the involuntary retirement of any person because of age except as permitted by paragraph
1795 (b).

1796 (b) require the compulsory retirement of any person who has attained the age of sixty-five
1797 and who, for the two year period immediately before retirement, is employed in a bona fide
1798 executive or high policymaking position, if such person entitled to an immediate nonforfeitable
1799 annual retirement benefit from a pension, profit-sharing, savings or deferred compensation plan,
1800 or any combination of such plans, of the employer, which equals, in the aggregate, at least forty-
1801 four thousand dollars.

1802 (c) require the retirement of any employee or TND who has attained seventy years of age
1803 and who is serving under a contract of unlimited tenure or similar arrangement providing for
1804 unlimited tenure at an independent institution of higher education, or to limit the employment in
1805 a faculty capacity of such an employee or TND, or another person who has attained seventy
1806 years of age who was formerly employed under a contract of unlimited tenure or similar
1807 arrangement, to such terms and to such a period as would serve the present and future needs of
1808 the institution, as determined by it; provided, however, that in making such a determination, no
1809 institution shall use as a qualification for employment or reemployment, the fact that the
1810 individual is under any

1811 Section 19. Section 4 of Chapter 151B of the General Laws is hereby further amended by
1812 striking out subsection 18 and inserting in place thereof the following subsection:-

1813 18. For the owner, lessee, sublessee, licensed real estate broker, assignee, or managing
1814 agent of publicly assisted or multiple dwelling or contiguously located housing accommodations

1815 or other covered housing accommodations, or other person having the right of ownership or
1816 possession, or right to rent or lease, or sell or negotiate for the sale of such accommodations, or
1817 any agent or employee of such person or any organization of unit owners in a condominium or
1818 housing cooperative to sexually harass any tenant, prospective tenant, purchaser or prospective
1819 purchaser of property.

1820 Notwithstanding the foregoing provisions of this section, it shall not be an unlawful
1821 employment practice for any person, employer, TNC, labor organization or employment agency
1822 to inquire of an applicant for employment or membership as to whether or not he or she is a
1823 veteran or a citizen.

1824 Notwithstanding the provisions of any general or special law nothing herein shall be
1825 construed to bar any religious or denominational institution or organization, or any organization
1826 operated for charitable or educational purposes, which is operated, supervised or controlled by or
1827 in connection with a religious organization, from limiting admission to or giving preference to
1828 persons of the same religion or denomination or from taking any action with respect to matters of
1829 employment, discipline, faith, internal organization, or ecclesiastical rule, custom, or law which
1830 are calculated by such organization to promote the religious principles for which it is established
1831 or maintained.

1832 Notwithstanding the foregoing provisions of this section, (a) every employer, every TNC,
1833 every employment agency, including the division of employment and training, and every labor
1834 organization shall make and keep such records relating to race, color or national origin as the
1835 commission may prescribe from time to time by rule or regulation, after public hearing, as
1836 reasonably necessary for the purpose of showing compliance with the requirements of this

1837 chapter, and (b) every employer, TNC and labor organization may keep and maintain such
1838 records and make such reports as may from time to time be necessary to comply, or show
1839 compliance with, any executive order issued by the President of the United States or any rules or
1840 regulations issued thereunder prescribing fair employment practices for contractors and
1841 subcontractors under contract with the United States, or, if not subject to such order, in the
1842 manner prescribed therein and subject to the jurisdiction of the commission. Such requirements
1843 as the commission may, by rule or regulation, prescribe for the making and keeping of records
1844 under clause (a) shall impose no greater burden or requirement on the employer, TNC,
1845 employment agency or labor organization subject thereto, than the comparable requirements
1846 which could be prescribed by Federal rule or regulation so long as no such requirements have in
1847 fact been prescribed, or which have in fact been prescribed for an employer, TNC, employment
1848 agency or labor organization under the authority of the Civil Rights Act of 1964, from time to
1849 time amended.¹ This paragraph shall apply only to employers or TNCs who on each working
1850 day in each of twenty or more calendar weeks in the annual period ending with each date set
1851 forth below, employed more employees or TNDs than the number set forth beside such date, and
1852 to labor organizations which have more members on each such working day during such period.

1853 Minimum Employees or TNDs

1854 Period Ending.

1855 or Members.

1856 June 30, 1965

1857 100

1858 June 30, 1966

1859 75

1860 June 30, 1967

1861 50

1862 June 30, 1968 and thereafter

1863 25

1864 Nothing contained in this chapter or in any rule or regulation issued by the commission
1865 shall be interpreted as requiring any employer, TNC, employment agency or labor organization
1866 to grant preferential treatment to any individual or to any group because of the race, color,
1867 religious creed, national origin, sex, gender identity, sexual orientation, which shall not include
1868 persons whose sexual orientation involves minor children as the sex object, age, genetic
1869 information or ancestry of such individual or group because of imbalance which may exist
1870 between the total number or percentage of persons employed by any employer or TNC, referred
1871 or classified for employment by any employment agency or labor organization, admitted to
1872 membership or classified by any labor organization or admitted to or employed in, any
1873 apprenticeship or other training program, and the total number or percentage of persons of such
1874 race, color, religious creed, national origin, sex, gender identity, sexual orientation, which shall
1875 not include persons whose sexual orientation involves minor children as the sex object, age,
1876 genetic information or ancestry in the commonwealth or in any community, section or other area
1877 therein, or in the available work force in the commonwealth or in any of its political
1878 subdivisions.

1879 Section 20. Section 4, subsection 19 of Chapter 151B of the General Laws is hereby
1880 amended by inserting after “employer” in the first sentence of subsection (a) the following
1881 word:- “TNC”

1882 SECTION 6. Paid Family Medical Leave

1883 Section 1. Section 1 of Chapter 175M of the General Laws is hereby amended by
1884 inserting after the sentence defining “Department” the following words:-

1885 “Digital network”, the same as defined in section 1 of chapter 159A ½.

1886 Section 2. Section 1 of Chapter 175M of the General Laws is hereby further amended by
1887 inserting after the sentence defining “State average weekly wage” the following words:-

1888 “Discharging,” “firing” and “terminating”, any termination of services of a
1889 transportation network worker by a transportation network company from an application or
1890 platform, including suspension, refusal to contract, termination of contract, and deactivation.

1891 “Transportation network company” or “TNC”, the same as defined in section 1 of chapter
1892 159A ½.

1893 “Transportation network driver” or “TND”, the same as defined in section 1 of chapter
1894 159A ½.

1895 Section 3. Chapter 175M of the General Laws is hereby amended by striking out section
1896 4 and inserting in place thereof the following section:-

1897 Section 4: Notice

1898 Section 4. (a) Each employer and covered business entity shall post in a conspicuous
1899 place on each of its premises a workplace notice prepared or approved by the department
1900 providing notice of benefits available under this chapter. Where the employer or covered
1901 business entity does not control the daily workplace, employer or covered business entity shall
1902 post electronically or other means which are the usual means of communication with employee
1903 or covered business entity. The workplace notice shall be issued in English, Spanish, Chinese,
1904 Haitian Creole, Italian, Portuguese, Vietnamese, Laotian, Khmer, Russian and any other
1905 language that is the primary language of at least 10,000 or .5 of one per cent of all residents of
1906 the commonwealth. The required workplace notice shall be in English and each language other
1907 than English which is the primary language of 5 or more employees or self-employed individuals
1908 of that workplace, if such notice is available from the department.

1909 Each employer shall issue to each employee not more than 30 days from the beginning
1910 date of the employee's employment, provided however that TNC shall issue to each TND not
1911 more than 30 days from certification of the TND by the TNC the following written information
1912 provided or approved by the department in the employee's primary language: (i) an explanation
1913 of the availability of family and medical leave benefits provided under this chapter, including
1914 rights to reinstatement and continuation of health insurance; (ii) the employee's contribution
1915 amount and obligations under this chapter; (iii) the employer's contribution amount and
1916 obligations under this chapter; (iv) the name and mailing address of the employer; (v) the
1917 identification number assigned to the employer by the department; (vi) instructions on how to
1918 file a claim for family and medical leave benefits; (vii) the mailing address, email address and
1919 telephone number of the department; and (viii) any other information deemed necessary by the
1920 department. Delivery is made when an employee provides written acknowledgement of receipt

1921 of the information, or signs a statement indicating the employee's refusal to sign such
1922 acknowledgement.

1923 Section 4. Chapter 175M of the General Laws is hereby amended by striking out section
1924 9 and inserting in place thereof the following section:-

1925 Section 9: Prohibited acts

1926 Section 9. (a) It shall be unlawful for any employer to retaliate by discharging, firing,
1927 suspending, expelling, disciplining, through the application of attendance policies or otherwise,
1928 threatening intimidating, terminating, or harassing a worker, filing a false report with a
1929 government agency, reducing compensation, garnishing tips or gratuities, denying or limiting
1930 access to incentives or bonuses, informing another TNC that a TND has engaged in activities
1931 protected by this section, or in any other manner discriminating against an employee including
1932 actions related to perceived immigration status or work authorization, for exercising any right to
1933 which such employee is entitled under this chapter or with the purpose of interfering with the
1934 exercise of any right to which such employee is entitled under this chapter.

1935 (b) It shall be unlawful for any employer to retaliate by discharging, firing, suspending,
1936 expelling, disciplining, through the application of attendance policies or otherwise, threatening
1937 intimidating, terminating, or harassing a worker, filing a false report with a government agency,
1938 reducing compensation, garnishing tips or gratuities, denying or limiting access to incentives or
1939 bonuses, informing another TNC that a TND has engaged in activities protected by this section,
1940 or in any other manner discriminating including actions related to perceived immigration status
1941 or work authorization, against an employee who has filed a complaint or instituted or caused to
1942 be instituted a proceeding under or related to this section, has testified or is about to testify in an

1943 inquiry or proceeding or has given or is about to give information connected to any inquiry or
1944 proceeding relating to this section.

1945 (c) Any negative change in the seniority, status, employment benefits, pay or other terms
1946 or conditions of employment of an employee or TND which occurs any time during a leave taken
1947 by an employee or TND under this chapter, or during the 6 month period following an
1948 employee's or TND's leave or restoration to a position pursuant to this section, or of an employee
1949 or TND who has participated in proceedings or inquiries pursuant to this section within 6 months
1950 of the termination of proceedings shall be presumed to be retaliation under this section. Such
1951 presumption shall be rebutted only by clear and convincing evidence that such employer's or
1952 TNC's action was not retaliation against the employee or TND and that the employer or TNC
1953 had sufficient independent justification for taking such action and would have in fact taken such
1954 action in the same manner and at the same time the action was taken, regardless of the
1955 employee's or TND's use of leave, restoration to a position or participation in proceedings or
1956 inquiries as described in this subsection. An employer or TNC found to have threatened, coerced
1957 or taken reprisal against any employee or TND pursuant to this subsection shall rescind any
1958 adverse alteration in the terms of employment for such employee or TND and shall offer
1959 reinstatement to any terminated employee or TND and shall also be liable in an action brought
1960 under subsection (d).

1961 (d) An employee or TND or former employee or TND aggrieved by a violation of this
1962 section or subsections (e) and (f) of section 2 of this chapter may, not more than 3 years after the
1963 violation occurs, institute a civil action in the superior court. A party to the action shall be
1964 entitled to a jury trial. All remedies available in common law tort actions shall be available to
1965 prevailing plaintiffs and shall be in addition to any legal or equitable relief provided in this

1966 section. The court may: (i) issue temporary restraining orders or preliminary or permanent
1967 injunctions to restrain continued violations of this section; (ii) reinstate the employee or TND to
1968 the same position held before the violation or to an equivalent position; (iii) reinstate full fringe
1969 benefits and seniority rights to the employee or TND; (iv) compensate the employee or TND for
1970 3 times the lost wages, benefits and other remuneration and the interest thereon; and (v) order
1971 payment by the employer or TNC of reasonable costs and attorneys' fees.

1972 SECTION 7. Severability

1973 The provisions of this act shall be severable and if any phrase, clause, sentence or
1974 provision of this article or the applicability thereof to any person, entity, or circumstance shall be
1975 held invalid, the remainder of this act and the application thereof shall not be affected.