

**HOUSE . . . . . No.**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Mark J. Cusack***

*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 rights and obligations of transportation network drivers and transportation network companies.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>	<i>1/18/2023</i>

**HOUSE . . . . . No.**

[Pin Slip]

**The Commonwealth of Massachusetts**

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

An Act establishing rights and obligations of transportation network drivers and transportation network companies.

*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. The General Laws, as appearing in the 2020 Official Edition, are hereby  
2 amended by inserting after chapter 159A½ the following chapter:-

3 CHAPTER 159AA.

4 Section 1. This chapter shall be known as the "Relationship Between Transportation  
5 Network Companies and Transportation Network Drivers Act."

6 Section 2. The purpose of this Act is to define and regulate the contract-based  
7 relationship between transportation network companies and transportation network drivers as  
8 independent contractors with required minimum compensation and benefits that will operate  
9 uniformly throughout the commonwealth, guaranteeing drivers the freedom and flexibility to  
10 choose when, where, how, and for whom they work.

11 Section 3. For the purposes of this chapter, the following words shall have the following  
12 meanings:

13 "Average ACA contribution", 82 per cent of the dollar amount of the average monthly  
14 Health Connector premium.

15 "Average hourly earnings", a transportation network driver's earnings facilitated by the  
16 transportation network company during the 365 days immediately prior to the day that earned  
17 paid sick time is used, divided by the total hours of engaged time worked by the transportation  
18 network driver on that transportation network company's online-enabled application or platform  
19 during that period.

20 "Average monthly Health Connector premium", the dollar amount published pursuant to  
21 subsection (f) of section 6 of this chapter.

22 "Contract", a written agreement, which may be electronic, between a transportation  
23 network driver and a transportation network company.

24 "Earnings", all amounts, including incentives and bonuses, remitted to a transportation  
25 network driver, provided that the amount does not include toll fees, cleaning fees, airport fees, or  
26 other customer pass-throughs. Amounts remitted are net of service fees or similar fees charged to  
27 the transportation network driver by the transportation network company. Amounts remitted do  
28 not include tips or gratuities.

29 "Engaged miles", all miles driven during engaged time in a private passenger motor  
30 vehicle that is not owned, leased, or rented by the transportation network company, or any of its  
31 affiliates. Transportation network companies may exclude miles if doing so is reasonably  
32 necessary to remedy or prevent fraudulent use of the transportation network company's online-  
33 enabled application or platform.

34 "Engaged time", (a) subject to the conditions set forth in subsection (b) in this definition,  
35 the period of time, as recorded in a transportation network company's online-enabled application  
36 or platform, from when a driver accepts a request for transportation services to when the driver  
37 fulfills that request. For requests that are scheduled in advance and for which the driver accepts  
38 the request but is not immediately en route to fulfill that request, a driver shall only be  
39 considered engaged on a transportation network company's platform when the driver is en route  
40 to fulfill that scheduled request, regardless of when the driver accepted the request. Engaged time  
41 shall not include (1) any time spent performing transportation services after the request has been  
42 canceled by the customer; or (2) any time spent on a request for transportation services where the  
43 driver abandons performance of the service prior to completion. Transportation network  
44 companies may also exclude time if doing so is reasonably necessary to remedy or prevent  
45 fraudulent use of the transportation network company's online-enabled application or platform.

46 "Health Connector", the Commonwealth Health Insurance Connector Authority  
47 established by chapter 58 of the acts of 2006 and section 2 of chapter 176Q.

48 "Person", shall have the same definition as provided in clause twenty-third of section 7 of  
49 chapter 4.

50 "Private passenger motor vehicle", any passenger vehicle which has a vehicle weight  
51 rating or curb weight of 6,000 lbs. or less as per manufacturer's description of said vehicle or is a  
52 sport utility vehicle, passenger van, or pickup truck.

53 "Qualifying health plan", a health insurance plan in which the transportation network  
54 driver is the subscriber, that is not paid for in full or in part by any current or former employer,  
55 and that is not a Medicare or Medicaid plan.

56 "Quarter", each of the following 4 time periods: (a) January 1 through March 31; (b)  
57 April 1 through June 30; (c) July 1 through September 30; (d) October 1 through December 31.

58 "Transportation network company", has the same meaning as provided in section 1 of  
59 chapter 159A½.

60 "Transportation network driver", a Transportation network driver, as defined in section 1  
61 of chapter 159A½, that provides transportation services, or a person operating a livery vehicle as  
62 defined in 540 CMR 2.00 on a transportation network company's digital network, as defined in  
63 section 1 of chapter 159A½.

64 "Transportation services", the provision of transportation facilitated by the digital  
65 network, as defined in section 1 of chapter 159A½, of a transportation network company for  
66 which the pickup of the passenger by a transportation network driver occurs in the  
67 Commonwealth.

68 Section 4. (a) Notwithstanding any general or special law or rule or regulation to the  
69 contrary, a transportation network driver is an independent contractor and not an employee for  
70 all purposes under state law with respect to his or her relationship with the transportation  
71 network company if the following conditions are satisfied:

72 (1) the transportation network company does not unilaterally prescribe specific dates,  
73 times of day, or a minimum number of hours during which the person must be logged into the  
74 transportation network company's online-enabled application or platform;

75 (2) the transportation network company may not terminate the contract of the person for  
76 not accepting a specific transportation service request except where refusal constitutes a violation  
77 of governing federal, state, or local regulations;

78 (3) the transportation network company does not restrict the transportation network driver  
79 from performing services through other transportation network companies except while  
80 performing services through the transportation network company's online-enabled application or  
81 platform; and

82 (4) the transportation network company does not contractually restrict the transportation  
83 network driver from working in any other lawful occupation or business.

84 (b) Compliance with the provisions of this chapter shall not be construed as an indicia of  
85 an employment relationship between a transportation network driver and a transportation  
86 network company.

87 (c) Any party seeking to establish that the requirements of paragraphs (1) through (4) of  
88 subsection (a) are not met with respect to a driver's relationship with a transportation network  
89 company bears the burden of proof.

90 Section 5. (a) A transportation network company shall ensure that for each earnings  
91 period, a driver is compensated at not less than the net earnings floor as set forth in this section.  
92 The net earnings floor establishes a guaranteed minimum level of compensation for drivers that  
93 cannot be reduced. In no way does the net earnings floor prohibit drivers from earning a higher  
94 level of compensation.

95 (b) For each earnings period, a transportation network company shall compare a driver's  
96 net earnings against the net earnings floor for that driver during the earnings period. In the event  
97 that the driver's net earnings in the earnings period are less than the net earnings floor for that  
98 earnings period, the transportation network company shall include an additional sum accounting  
99 for the difference in the driver's earnings no later than during the next earnings period.

100 (c) For purposes of this section, the following definitions apply:

101 (1) "Minimum wage", the state mandated minimum wage for all industries as provided by  
102 section 1 of chapter 151.

103 (2) "Earnings period", a time period, set by the transportation network company, not to  
104 exceed 14 consecutive calendar days.

105 (3) "Net earnings", all earnings remitted to a transportation network driver in an earnings  
106 period.

107 (4) "Net earnings floor", any earnings period, a total amount that consists of:

108 (i) For all engaged time, the sum of 120 per cent of the minimum wage for that engaged  
109 time.

110 (ii) The per-mile compensation for vehicle expenses set forth in this clause multiplied by  
111 the total number of engaged miles.

112 (d) After the effective date of this chapter and for the 2024 calendar year, the per-mile  
113 compensation for vehicle expenses shall be 26 cents per engaged mile. For calendar years after  
114 2024, the amount per engaged mile shall be adjusted pursuant to subsection (e).

115 (e) For calendar years following 2024, the per-mile compensation for vehicle expenses  
116 described in subclause (B) shall be adjusted every five years to reflect any change in inflation as  
117 measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the  
118 United States Bureau of Labor Statistics, or any successor index or agency. The commissioner of  
119 administration shall calculate and publish the adjustments required by this subclause.

120 (f) Nothing in this section shall be interpreted to require a transportation network  
121 company to provide a particular amount of compensation to a driver for any given transportation  
122 request, as long as the driver's net earnings for each earnings period equals or exceeds that  
123 driver's net earnings floor for that earnings period as set forth in subsection (b) of this section.

124 Section 6. (a) Consistent with the average contributions required under the federal Patient  
125 Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), a transportation network  
126 company shall provide a quarterly healthcare stipend to transportation network drivers who meet  
127 the conditions set forth in this section. A transportation network driver that averages the  
128 following amounts of engaged time per week on a transportation network company's platform  
129 during a quarter that commences on or after January 1, 2023 shall receive the following stipends  
130 from that transportation network company:

131 (1) For an average of 25 hours or more per week of engaged time in the quarter, a  
132 payment greater than or equal to 100 per cent of the average ACA contribution for the applicable  
133 average monthly Health Connector premium for each month in the quarter.

134 (2) For an average of at least 15 but less than 25 hours per week of engaged time in the  
135 quarter, a payment greater than or equal to 50 per cent of the average ACA contribution for the  
136 applicable average monthly Health Connector premium for each month in the quarter.

137 (b) At the end of each earnings period, a transportation network company shall provide to  
138 each transportation network driver the following information:

139 (1) The number of hours of engaged time the transportation network driver recorded in  
140 the transportation network company's online-enabled application or platform during that earnings  
141 period.

142 (2) The number of hours of engaged time the transportation network driver has recorded  
143 in the transportation network company's online-enabled application or platform during the  
144 current quarter up to that point.

145 (c) The Health Connector may adopt or amend regulations as it deems appropriate to  
146 implement this section, including to permit transportation network drivers receiving stipends  
147 pursuant to this section to enroll in health plans offered through the Health Connector.

148 (d)(1) As a condition of providing the healthcare stipend set forth in subsection (a), a  
149 transportation network company may require a transportation network driver to submit proof of  
150 current enrollment in a qualifying health plan as of the last day of the quarter for which the  
151 stipend would be provided. Proof of current enrollment may include, but is not limited to, health  
152 insurance membership or identification cards, evidence of coverage and disclosure forms from  
153 the health plan, or claim forms and other documents necessary to submit claims.

154 (2) A transportation network driver shall have not less than 15 calendar days from the end  
155 of the quarter to provide proof of enrollment as set forth in paragraph (1) of this subsection.

156 (3) A transportation network company shall provide a healthcare stipend due for a quarter  
157 under subsection within 15 days of the end of the quarter or within 15 days of the transportation

158 network driver's submission of proof of enrollment as set forth in paragraph (1) of this  
159 subsection, whichever is later.

160 (e) Nothing in this section shall be interpreted to prevent a transportation network driver  
161 from receiving a healthcare stipend from more than one transportation network company for the  
162 same quarter.

163 (f)(1) On or before 14 days following the effective date of this section, and on or before  
164 each September 1 thereafter, the Health Connector shall publish the average statewide monthly  
165 premium paid, or anticipated to be paid, by an individual for the following calendar year for a  
166 Health Connector bronze tier health insurance plan, or any future successor equivalent plan.

167 (2) When computing the average as required by paragraph (1) of this subsection, the  
168 Health Connector shall divide the total monthly premium paid, or anticipated to be paid, by all  
169 enrollees in an individual Health Connector bronze tier health insurance plan, or any future  
170 successor equivalent plan, by the total number of individuals in the commonwealth who are  
171 enrolled in, or anticipated to be enrolled in, such plans.

172 (g) This section shall become inoperative in the event that the United States or the  
173 Commonwealth implements a single-payer universal healthcare system or substantially similar  
174 system that expands coverage to the recipients of stipends under this section.

175 Section 7. Transportation network companies shall provide transportation network drivers  
176 with earned paid sick time as set forth in this section.

177 (a) "Earned paid sick time", the time provided by a transportation network company to a  
178 transportation network driver as calculated under subsection (c) of this section. For each hour of

179 earned paid sick time used by a transportation network driver, the transportation network  
180 company shall compensate the driver at a rate equal to the greater of the following:

181 (1) The transportation network driver's average hourly earnings.

182 (2) 120 per cent of the minimum wage described in paragraph (1) of subsection (c) of  
183 section 5 of this chapter.

184 (b) A transportation network driver shall only use earned paid sick time for the same  
185 reasons set forth for employees in paragraph (1) through paragraph (4) of subsection (c) of  
186 section 148C of chapter 149.

187 (c) A transportation network company shall provide a minimum of one hour of earned  
188 paid sick time for every 30 hours of engaged time recorded on or after the effective date of this  
189 section by an app- based driver in the transportation network company's online-enabled  
190 application or platform. Transportation network drivers shall be entitled to first use accrued  
191 earned paid sick time upon recording 90 hours of engaged time on the transportation network  
192 company's online-enabled application or platform. From that day forward, a transportation  
193 network driver may use earned sick time as it accrues. A contract between a transportation  
194 network company and a transportation network driver may require the driver to use earned paid  
195 sick time in increments of up to 4 hours.

196 (d) Transportation network drivers may carry over up to 40 hours of unused earned paid  
197 sick time to the next calendar year, but are not entitled to use more than 40 hours in one calendar  
198 year. Transportation network companies shall not be required to pay out unused earned paid sick  
199 time. If a transportation network driver does not record any engaged time in a transportation  
200 network company's online-enabled application or platform for 365 or more consecutive days or

201 the transportation network driver's contract with a transportation network company is terminated,  
202 any unused earned paid sick time accrued up to that point with that transportation network  
203 company shall no longer be valid or recognized.

204 (e) A transportation network company may require certification when a transportation  
205 network driver makes a request to use more than 24 hours of earned paid sick time in a 72-hour  
206 period or when reasonably necessary to prevent fraud. Any reasonable documentation signed by  
207 a health care provider indicating the need for earned paid sick time taken shall be deemed  
208 acceptable certification for absences. Nothing in this section shall be construed to require a  
209 transportation network driver to provide as certification any information from a health care  
210 provider that would be in violation of federal law.

211 Section 8. (a) A transportation network driver shall be entitled to coverage in the family  
212 leave and medical leave programs established by chapter 175M as set forth in this section unless  
213 the driver declines coverage via a written notification, which may be electronic, to the  
214 transportation network company. Such declination shall continue to be effective until revoked by  
215 the driver. A transportation network company shall provide an opportunity for a transportation  
216 network driver to revoke a declination not less than annually. A declination or revocation of a  
217 declination shall be effective 15 days following a transportation network driver's submission of a  
218 written notification to the transportation network company.

219 (b) For purposes of this section and chapter 175M of the only, all of the following shall  
220 apply:

221 (1) A transportation network driver who has not declined coverage, or revoked a previous  
222 declination, shall be considered a covered individual, as defined in section 1 of chapter 175M, on

223 the same basis as a covered contract worker, as defined in chapter 175M; provided, however, that  
224 a transportation network driver shall not be eligible for benefits until contributions have been  
225 made on the driver's behalf for at least 2 quarters of the driver's last 4 completed quarters.

226 (2) A transportation network company shall be considered a covered business entity, as  
227 defined in chapter 175M, for the limited purpose of making contributions, as defined in chapter  
228 175M, to the Family and Employment Security Trust Fund for each transportation network  
229 driver who has not declined coverage in the family leave and medical leave programs pursuant to  
230 subsection (a). Contributions under this paragraph shall be made in the same manner as provided  
231 in section 6 of chapter 175M for covered contract workers, as defined in chapter 175M.

232 Section 9. (a) For the purposes of this section, the following words shall have the  
233 following meanings:-

234 (1) "Average weekly earnings", the transportation network driver's total earnings from all  
235 transportation network companies during the 28 days prior to the accident divided by four.

236 (2) "Online", means the time when a transportation network driver is utilizing a  
237 transportation network company's online-enabled application or platform and can receive  
238 requests for transportation services from the transportation network company, or during engaged  
239 time.

240 (3) "Maximum weekly compensation rate", has the same meaning as provided in section  
241 1 of chapter 152.

242 (4) "Minimum weekly compensation rate", has the same meaning as provided in section 1  
243 of chapter 152.

244 (b) Each transportation network company, within 240 days of the effective date of this  
245 act, shall purchase occupational accident insurance, as described in this section, for all drivers  
246 who provide transportation services through the transportation network company's online-  
247 enabled application or platform.

248 (c) Each transportation network company shall file with the division of insurance, no later  
249 than 30 days after the commencement of a new policy year, a copy of the occupational accident  
250 insurance policy it has purchased for transportation network drivers. The division of insurance  
251 shall be treated by the insurer as a certificate holder for purposes of receiving notice of  
252 cancellation of the policy.

253 (d) The occupational accident insurance policy required under subsection (b) shall cover  
254 medical expenses and lost earnings resulting from injuries suffered while the transportation  
255 network driver is online with a transportation network company's online-enabled application or  
256 platform. Policies shall at a minimum include a total combined single limit of \$1,000,000 per  
257 accident and provide for payment of benefits to a covered individual as follows:

258 (1) Coverage for medical expenses incurred, up to at least \$1,000,000 and for up to 156  
259 weeks following the injury;

260 (2) Continuous total disability payments, temporary total disability payments, and partial  
261 disability payments for injuries that occur while the driver is online equal to 66 per cent of the  
262 driver's average weekly earnings as of the date of injury but not more than the maximum weekly  
263 compensation rate, unless the average weekly earnings of the driver is less than the minimum  
264 weekly compensation rate, in which case the weekly compensation shall be equal to the driver's

265 average weekly earnings. Payments under this paragraph shall be made for up to the first 156  
266 weeks following the injury;

267 (3) For the benefit of spouses, children, or other dependents of drivers, accidental death  
268 insurance in the amount equal to 66 per cent of the driver's average weekly earnings as of the  
269 date of injury but not more than the maximum weekly compensation rate, unless the average  
270 weekly earnings of the driver is less than the minimum weekly compensation rate, in which case  
271 the weekly compensation shall be equal to the driver's average weekly earnings, times 156 weeks  
272 for injuries suffered by a transportation network driver while the driver is online with the  
273 transportation network company's online-enabled application or platform that result in death; and

274 (4) When injuries suffered by a transportation network driver while the transportation  
275 network driver is online result in death, an amount to pay for reasonable burial expenses not to  
276 exceed eight times the maximum weekly compensation rate.

277 (e) Occupational accident insurance under subsection (d) of this section shall not be  
278 required to cover an accident that occurs while online but outside of engaged time where the  
279 injured driver is in engaged time on one or more other transportation network company platforms  
280 or where the driver is engaged in personal activities. If an accident is covered by occupational  
281 accident insurance maintained by more than one transportation network company, the insurer of  
282 the transportation network company against whom a claim is filed is entitled to contribution for  
283 the pro-rata share of coverage attributable to one or more other transportation network  
284 companies up to the coverages and limits in subsection (d).

285 (f) Any benefits provided to a driver under this section shall be considered amounts  
286 payable under a driver's compensation law or disability benefit for the purpose of determining

287 amounts payable under any insurance provided under section 1131 of chapter 175 or for personal  
288 injury protection, as defined in section 34A of chapter 90.

289           Section 10. (a) A contract between a transportation network company and a  
290 transportation network driver shall be made in writing, which may be electronic.

291           (b) Every contract between a transportation network driver and a transportation network  
292 company with regard to transportation services shall be deemed to include terms incorporating  
293 the requirements in sections 4 through 9 of this chapter. The parties to such contracts may agree  
294 to supplemental terms which do not conflict with the terms deemed to be included by this  
295 chapter.

296           (c) A transportation network company shall not terminate a contract with a transportation  
297 network driver, except on grounds specified in the contract or as is required by law.

298           (d) A contract between a transportation network company and a transportation network  
299 driver shall provide drivers whose contracts are terminated by the transportation network  
300 company the opportunity to appeal such termination with the transportation network company.

301           (e) A transportation network company shall not, unless based upon a bona fide  
302 occupational qualification or public or transportation network driver safety need, refuse to  
303 contract with or terminate the contract of a transportation network driver based upon race, color,  
304 religious creed, national origin, sex, gender identity, genetic information, ancestry, status as a  
305 veteran, pregnancy or a condition related to said pregnancy including, but not limited to,  
306 lactation or the need to express breast milk for a nursing child, or sexual orientation, which shall  
307 not include persons whose sexual orientation involves minor children as the sex object.

308 SECTION 2. (a) In accordance with section 6 of chapter 4 of the General Laws, if any  
309 section or subsection of this Act or its application to any person or circumstance is adjudged  
310 unconstitutional or invalid, such judgment shall not affect other provisions or applications of this  
311 Act, which can be given effect without the invalid provision or application.

312 (b) Notwithstanding subsection (a), if section 4 of chapter 159AA, as established in  
313 SECTION 1 of this act, is for any reason held to be invalid by a decision of any court of  
314 competent jurisdiction, that decision shall apply to the entirety of the remaining provisions of  
315 this act, and no provision of this act shall be deemed valid or given force of law.

316 SECTION 3. The provisions of this Act shall take effect on January 1, 2024.

317