

HOUSE No. 1094

The Commonwealth of Massachusetts

PRESENTED BY:

Denise C. Garlick, (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing a rideshare driver bill of rights.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>William J. Okerman</i>	<i>100 Meetinghouse Circle, Needham MA 02492</i>	<i>2/19/2021</i>

HOUSE No. 1094

By Ms. Garlick of Needham (by request), a petition (accompanied by bill, House, No. 1094) of William J. Okerman relative to the rights of rideshare drivers. Financial Services.

The Commonwealth of Massachusetts

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

An Act establishing a rideshare driver bill of rights.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 159A1/2 of the General Laws, as appearing in the
2 2018 Official Edition, is hereby amended by inserting after the last paragraph:-

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

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

12 "Compensation" means payment owed to a TNC driver by reason of providing TNC
13 services.

14 "Days" means calendar days.

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

18 "Dispatch platform time" means the time a TNC driver spends traveling from dispatch
19 location to passenger pick-up location. Dispatch platform time ends when a passenger cancels a
20 trip, a driver cancels a trip, or the driver begins the trip in the driver platform. A TNC driver
21 cannot simultaneously be engaged in available platform time, dispatch platform time, and/or
22 passenger platform time for the same TNC. For trips involving multiple passengers picked up
23 from different passenger pick-up locations, dispatch platform time means the time a TNC driver
24 spends traveling from the first dispatch location to the first passenger pick-up location.

25 "Driver Resolution Center" means a non-profit organization registered with the
26 Massachusetts Secretary of State that contracts with the Agency to provide culturally competent
27 TNC driver representation services, outreach, and education; that is affiliated with an
28 organization with experience advocating for the civil and economic rights of drivers, contractors,
29 and workers from disadvantaged socioeconomic groups and representing workers in grievance
30 proceedings; and whose administration and/or formation was/is not funded, excessively
31 influenced, or controlled by a TNC. This organization shall have a proven commitment to worker
32 rights and experience in providing resources, programs, and services to TNC drivers, contractors,
33 and workers that allow them to build sustainable economic opportunities while competing in a

34 changing business environment. The Driver Resolution Center should consider contractual
35 partnerships among entities to achieve the direct participation of organizations primarily focused
36 on diversity and advocating for the civil and economic rights of workers from disadvantaged
37 socioeconomic groups.

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

40 “Food delivery network company” or “FDNC”, a corporation, partnership, sole
41 proprietorship or other entity that uses a digital network to connect customers to drivers to pre-
42 arrange and provide delivery of meals or groceries.

43 “Food delivery network driver”, a driver certified by a food delivery network company.

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

47 “Passenger platform time” means the period of time commencing when the TNC driver
48 starts the trip in the driver platform until the time when the TNC driver ends the trip in the driver
49 platform. For trips involving multiple passengers picked up from different passenger pick-up
50 locations, passenger platform time means the period of time commencing when the TNC driver
51 starts the trip in the driver platform after the first passenger enters the TNC driver’s vehicle until
52 the time when the TNC driver ends the trip in the driver platform after the last passenger exits
53 the TNC driver’s vehicle at the end of the trip. A TNC driver cannot simultaneously be engaged
54 in available platform time, dispatch platform time, and/or passenger platform time for the same
55 TNC. “Passenger platform time utilization rate” means the percentage of time that TNC drivers

56 spend during passenger platform time relative to the total of the time TNC drivers spend during
57 available platform time, dispatch platform time, and passenger platform time.

58 “Per mile rate” means the per mile equivalent of the reasonable expenses necessary for a
59 TNC driver to provide TNC services.

60 “Per minute rate” means the per minute equivalent of the living wage necessary for two
61 working adults to support a family with two children in the Boston-Cambridge-Newton area as
62 calculated by the Massachusetts Institute of Technology Living Wage Calculator. This wage has
63 been calculated at a rate of twenty dollars and forty one cents an hour, making the per minute
64 rate equal to thirty four cents.

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

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

72 1. Vehicle acquisition and financing costs; 2. Depreciation;

73 3. Lease payments;

74 4. Maintenance and repairs;

75 5. Vehicle cleaning;

- 76 6. Tires;
- 77 7. Gasoline (including all taxes thereon);
- 78 8. Oil;
- 79 9. Vehicle insurance;
- 80 10. License and vehicle registration fees;
- 81 11. Cell phone and cell phone service plans;
- 82 12. Cost of medical, dental, and vision insurance;
- 83 13. The amount of employer-side payroll taxes that TNC drivers must pay;
- 84 14. The amount of business taxes that TNC drivers must pay;
- 85 15. Business license fees that TNC drivers must pay;
- 86 16. Rest breaks; and
- 87 17. Any other cost or information the Department of Labor Standards determines is
88 necessary to further the purposes of section 13(a).

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

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

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

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

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

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

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

113 (e). No TNC shall subject a TNC or FDNC driver to unwarranted deactivation, as defined
114 by Department of Labor Standards' rule. The Department of Labor Standards definition of

115 unwarranted deactivation shall be based on, but not limited to, consideration of the following
116 factors:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

168 (1) The utilization of the Panel arbitration proceeding created by this section is voluntary
169 upon agreement by both parties, except as provided for under section 12(j), and shall be of no
170 cost to the TNC or FDNC driver. If utilized, the Panel shall be the sole arbitration proceeding for
171 challenging the deactivation.

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

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

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

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

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

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

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

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

194 (10) The Department shall issue rules to effectuate the terms of this section including, but
195 not limited to, rules regarding the definition of unwarranted deactivation, driver eligibility to
196 challenge deactivations, the selection of and criteria for the neutral arbitrator and partisan panel

197 members, and the number of partisan panel members. The Department shall further issue rules
198 on methods to protect passenger privacy and address potential safety concerns during Panel
199 arbitrations for deactivations that include but are not limited to allegations of egregious
200 misconduct.

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

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

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

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

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

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

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

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

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

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

223 (vi) The circumstances of each situation;

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

225 (3) A respondent found to be in violation of this section shall be liable for full payment of
226 unpaid compensation plus interest in favor of the aggrieved party for the period of deactivation
227 under the terms of this section, and other equitable relief. The Department of Labor Standards
228 shall issue rules regarding the method of calculating unpaid compensation. The Department of
229 Labor Standards is authorized to designate a daily amount for unpaid compensation. For any
230 violation of this section, the Panel may assess liquidated damages in an additional amount of up
231 to thrice the unpaid compensation.

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

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

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

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

251 (1) Are or were contracted to perform TNC services by the same TNC, FDNC, TNCs, or
252 FDNCs, whether concurrently or otherwise, at some point during the applicable statute of
253 limitations period,

254 (2) Allege one or more violations that raise similar questions as to liability, and

255 (3) Seek similar forms of relief.

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

258 (1) Claims seek damages that differ in amount, or

259 (2) Job titles or other means of classifying TNC drivers differ in ways that are
260 unrelated to their claims.

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

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

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

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

276 (b) For each TNC dispatched trip, a TNC shall compensate TNC drivers by providing at
277 least the equivalent of: (1) the minimum per minute amount for passenger platform time under
278 section 13(b)(1)(i) plus the minimum per-mile amount for passenger platform time under section

279 13(b)(1)(ii); or (2) the minimum per trip amount for each TNC dispatched trip under section
280 13(b)(2)(iii), whichever amount is greater.

281 (1) Minimum payment

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

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

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

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

294 (iv) For the purposes of section 13(b)(1)(iii), “each TNC dispatched trip” includes but is
295 not limited to a trip in which the TNC driver transports the passenger to the passenger’s desired
296 drop-off location, a trip cancelled by a passenger or the TNC unless the TNC refunds the
297 passenger cancellation fee due to driver conduct, and a trip where the passenger does not appear
298 at the passenger pick-up location. For trips involving multiple passengers picked-up from
299 different locations, the minimum per trip amount applies to the period of time commencing when

300 the TNC driver starts the trip in the driver platform after the first passenger enters the TNC
301 driver's vehicle until the time when the TNC driver ends the trip in the driver platform after the
302 last passenger exits the TNC driver's vehicle at the end of the trip. "Each TNC dispatched trip"
303 does not include a trip cancelled by the TNC driver, unless the driver is forced to cancel the trip
304 in order to comply with any law or regulation.

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

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

312 (vii) The per mile rate for luxury rides shall be two times the standard per mile rate. The
313 per mile rate for extra large rides shall be one and one half times the standard per mile rate. The
314 per mile rate for a ride which is both a luxury ride and an extra large ride shall be two and one
315 half times the standard mile rate.

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

320 (c) Adjustment of the per mile rate, passenger platform time utilization rate, and the
321 passenger mileage utilization rate

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

332 (i) The Department of Labor Standards may consider the following non-exhaustive
333 factors or costs: Vehicle acquisition and financing costs; Depreciation; Lease payments;
334 Maintenance and repairs; Vehicle cleaning; Tires; Gasoline (including all taxes thereon); Oil;
335 Vehicle Insurance; License and vehicle registration fees; Cell phone and cell phone plans; Cost
336 of medical, dental, and vision insurance; The amount of employer-side payroll taxes that TNC
337 drivers must pay; The amount of businesses taxes that TNC drivers must pay; Business license
338 fees that TNC drivers must pay; Rest breaks; and Any other cost or information the Department
339 of Labor Standards determines is necessary to further the purposes of section 13(a).

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

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

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

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

363 (iii) Prior to beginning any assessment period on which the Department of Labor
364 Standards will base a passenger platform time utilization rate or the passenger mileage utilization

365 rate adjustment, the Department of Labor Standards shall provide reasonable notice to the TNCs
366 and other stakeholders of the date on which the assessment period begins.

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

376 (iv) The Department of Labor Standards shall base any adjustment to the passenger
377 platform time utilization rate or passenger mileage utilization rate on an assessment of relevant
378 factors during an assessment period prior to the date of adjustment. The assessment period for
379 the first adjustment of the passenger platform time utilization rate or passenger mileage
380 utilization rate shall be 12 months in duration. The assessment period for any subsequent
381 adjustment to the passenger platform time utilization rate or passenger mileage utilization rate
382 shall be up to 12 months in duration.

383 (v) The Department of Labor Standards may consider the following factors for the
384 assessment: The average and median amount of available platform time, dispatch platform time,
385 and passenger platform time for TNC drivers; The average and median mileage driven by TNC
386 drivers during available platform time, dispatch platform time, and passenger platform time; The

387 average and median speeds driven by TNC drivers during available platform time, dispatch
388 platform time, and passenger platform time; The percentage of total trips that each TNC covered
389 by this section 13 represents; The impact of the adjustment of the passenger platform time
390 utilization rate or the passenger mileage utilization rate on TNCs, TNC passengers, and TNC
391 drivers, including the impact on TNC driver earnings and work hours, the availability of TNC
392 services, and any other factor the Department of Labor Standards deems relevant. And Any other
393 information the Department of Labor Standards determines is necessary to further the purposes
394 of section 13(a).

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

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

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

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

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

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

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

413 “Commencement date”, a calendar date set by the executive office of labor and
414 workforce development for the purpose of initiating certain processes pursuant to Section
415 6.310.735 and establishing timelines and deadlines associated with them.

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

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

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

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

428 “Qualifying driver,” a for-hire driver who drives for a transportation network company,
429 livery vehicle service, or food delivery network company and who satisfies the conditions

430 established by the executive office with regard to the length, frequency, total number of trips, or
431 average number of trips in a given time period.

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

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

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

439 (2) Is a 501(c)(3), 501(c)(4), or 501(c)5 non-profit organization, or is otherwise registered
440 with the Commonwealth of Massachusetts as a non-profit organization, that exists for the
441 betterment of Transportation Network Company or Food Delivery Network Company drivers;

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

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

446 (5) Has a governing structure that promotes workers’ decision-making power; and

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

449 An entity wishing to be considered as a driver representative for drivers in an appropriate
450 unit, as prescribed by the executive office, must submit a request to the executive office within
451 30 days of the commencement date. Within 14 days of the receipt of the request, the executive
452 office shall notify the applicant in writing of its determination.

453 (c) Transportation network companies, food delivery network companies, or livery
454 vehicle services who have hired, contracted with, or partnered with 50 or more drivers at any one
455 time in the 30 days prior to the commencement date in the unit must, within 60 days of the
456 commencement date, provide all driver representatives seeking to represent their drivers the
457 names, addresses, email addresses, and phone numbers, of all qualifying drivers they hire,
458 contract with, or partner with in the unit. Driver representatives shall use driver contact
459 information for the sole purposes of contacting drivers to solicit their interest in being
460 represented by the driver representative and to invite them to participate in the affairs of the
461 driver representative organization. The driver representative shall not sell, publish, or otherwise
462 disseminate the driver contact information.

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

467 (1) Within 120 days of receiving the driver contact information, a driver representative
468 shall submit statements of interest to the executive office from a majority of qualifying drivers
469 from the list described in subsection (c). Each statement of interest shall be physically or
470 digitally signed, dated, and clearly state that the driver wants to be represented by the driver

471 representative for the purpose of collective bargaining. The executive office shall determine the
472 procedures for submitting and verifying statements of interest by drivers choosing an exclusive
473 driver representative. The methods for submitting and verifying statements of interest by drivers
474 choosing an exclusive driver representative may include, but not be limited to: signature
475 verification, unique personal identification number verification, statistical methods, or third party
476 verification.

477 (2) Within 30 days of receiving such statements of interest, the executive office shall
478 determine if they are sufficient to designate the driver representative as the exclusive driver
479 representative for all qualifying drivers for that particular transportation network company, food
480 delivery network company, or livery vehicle service in the unit. If more than one driver
481 representative establishes that a majority of drivers have expressed interest in being represented
482 by that driver representative, the executive office shall designate the driver representative that
483 received the largest number of verified affirmative statements of interest to be the exclusive
484 driver representative.

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

489 (4) If the driver representative is unsuccessful in securing a majority of qualified drivers
490 in the 120 day time period, then the executive office must hold an election open to all qualifying
491 drivers to certify the driver representative within 30 days. The driver representative must secure
492 affirmative votes from a majority of the election respondents only in order to be certified as the

493 exclusive driver representative. The voting period must run for 7 days, and drivers must have the
494 ability to access the voting portal from the interface used by the TNC, FDNC or livery service to
495 communicate with and dispatch drivers. An announcement explaining the process for voting
496 must be made at the start of the voting period using the system typically used to relay messages
497 and announcements to drivers by the TNC, FDNC or livery service. The TNC, FDNC or livery
498 service must remain strictly neutral during the voting process. The voting portal shall be secured
499 using blockchain technology.

500 (e) If no exclusive driver representative is certified for a transportation network company,
501 food delivery network company, or livery vehicle service in the unit, the executive office shall
502 promulgate a new commencement date that is no earlier than 180 days and no later than 360 days
503 from the determination that no driver representative met the majority threshold, provided that no
504 transportation network company, food delivery network company, or livery vehicle service shall
505 be subject to the requirements of this section more than once in any calendar year. The affected
506 exclusive driver representative and transportation network company or livery vehicle service
507 may repeat the processes set forth in subsections (c) and (d). If the executive office again fails to
508 certify an exclusive driver representative, all driver representatives shall lose their certification,
509 and the processes in subsections (c) and (d) shall end until the executive office establishes a new
510 commencement date.

511 (f) Upon certification of the exclusive driver representative by the executive office, and at
512 least 90 days before expiration of any existing agreement, the transportation network company,
513 food delivery network company, or livery vehicle service and the exclusive driver representative
514 shall meet and negotiate in good faith certain specified subjects, including, but not limited to,
515 best practices regarding vehicle equipment standards, safe driving practices, the nature and

516 amount of payments to be made by, or withheld from, the transportation network company, food
517 delivery network company, or livery vehicle service to or by the drivers, minimum hours of
518 work, conditions of work and applicable rules, and any other subject prescribed by the executive
519 office and shall reduce their discussion to a written agreement.

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

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

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

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

545 (h) It shall be a violation for a transportation network company, food delivery network
546 company, or livery vehicle service or its agent, designee, employee, or any person or group of
547 persons acting directly or indirectly in the interest of the transportation network company, food
548 delivery network company, or livery vehicle service in relation to the driver to interfere with,
549 restrain, or deny the exercise of, or the attempt to exercise, any right protected under this section
550 including but not limited to threatening, harassing, penalizing, or otherwise discriminating
551 against a driver because the driver has exercised the rights protected under this section.

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

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

565 Once a petition has been accepted by the executive office, the executive office shall issue
566 notice to the transportation network company or livery vehicle service and the exclusive driver
567 representative of the decertification petition and promulgate a new commencement date. The
568 transportation network company, food delivery network company, or livery vehicle service shall
569 have 14 days from the commencement date to transmit the list of drivers to any petitioners.
570 Within 90 days of receiving the driver contact information, petitioners for a decertification shall
571 submit statements of interest from a majority of drivers represented to the executive office. The
572 statements of interest shall be signed and dated and shall clearly indicate that the driver no longer
573 wants to be represented by the exclusive driver representative for the purpose of collective
574 bargaining with the transportation network company or livery vehicle service. The executive
575 office shall determine the procedures for submitting and verifying the statements of interest of
576 drivers.

577 Within 30 days of receiving such statements of interest, the executive office shall
578 determine if they are sufficient to decertify the exclusive driver representative for that particular
579 transportation network company or livery vehicle service. The executive office shall decertify
580 the exclusive driver representative or declare that the decertification petition did not meet the
581 majority threshold and reaffirm that the exclusive driver representative shall continue

582 representing all drivers for that particular transportation network company or livery vehicle
583 service.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

624 Section 15. (a) The Department shall contract with a Driver Resolution Center to provide
625 driver resolution services. Those services shall include, but not be limited to:

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

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

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

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

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

639 (d) The provisions of this section are declared to be separate and severable. If any clause,
640 sentence, paragraph, subdivision, section, subsection, or portion of this section or the application
641 thereof to any TNC, FDNC, TNC driver, FDNC driver, or circumstance, is held to be invalid, it

642 shall not affect the validity of the remainder of this section, or the validity of its application to
643 other persons or circumstances.

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

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

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

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

652 Section 16. (a) The legislature finds and declares that:

653 (1) Privately operated Transportation Network Companies and the drivers who work with
654 them are vital parts of the transportation system of the state, and the well-being of the drivers
655 who operate vehicles that enable the Transportation Network Companies, and the safety,
656 reliability, and stability of the services offered by privately operated Transportation Network
657 Companies are matters of statewide importance;

658 (2) For these reasons, it is the public policy of the state of Massachusetts to exempt from
659 federal antitrust laws, and replace from the competition requirements of those laws with
660 regulations imposed by the executive office and for the executive office to have an ongoing
661 supervisory role in ensuring that these regulations are implemented by Transportation Network

662 Companies and their associated drivers in a way that encourages the safety, reliability and
663 stability of the services offered.

664 (3) Furthermore, because collective negotiations between Transportation Network
665 Companies and their respective drivers, and the resulting collectively negotiated
666 recommendations concerning the terms and conditions of work for drivers is likely to improve
667 the regulations promulgated by the executive office, the state of Massachusetts will establish a
668 process through which Transportation Network Companies and their drivers collectively
669 negotiate in order to enable more stable and sustainable working conditions and better ensure
670 that drivers can perform their services in a safe, reliable, stable, cost-effective, and economically
671 viable manner, and thereby promote the welfare of the people who rely on safe and reliable
672 transportation and delivery services to meet their needs;

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

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

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