

HOUSE No. 1848

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. 1848

By Representative Cusack of Braintree, a petition (accompanied by bill, House, No. 1848) of Mark J. Cusack for legislation to establish rights and obligations of transportation network drivers and transportation network companies. Labor and Workforce Development.

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.

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