

HOUSE No. 1953

The Commonwealth of Massachusetts

PRESENTED BY:

Marjorie C. Decker

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

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

An Act establishing collective bargaining rights for TNC drivers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>2/5/2021</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>2/8/2021</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>2/8/2021</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>3/8/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>4/1/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/1/2021</i>

HOUSE No. 1953

By Ms. Decker of Cambridge, a petition (accompanied by bill, House, No. 1953) of Marjorie C. Decker and others relative to establishing collective bargaining rights for transportation network company drivers. Labor and Workforce Development.

The Commonwealth of Massachusetts

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

An Act establishing collective bargaining rights for TNC drivers.

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

1 SECTION 1. Chapter 159A1/2 of the General Laws, as appearing in the 2018 Official
2 Edition, is hereby amended by inserting after section 11 the following sections:-

3 Section 11(a). - Findings and Policy

4 The legislature finds and declares that:

5 a. Privately operated Transportation Network Companies and the drivers who work with
6 them are vital parts of the transportation system of the state, and the well-being of the drivers
7 who operate vehicles that enable the Transportation Network Companies, and the safety,
8 reliability, and stability of the services offered by privately operated Transportation Network
9 Companies are matters of statewide importance;

10 b. For these reasons, it is the public policy of the state of Massachusetts to exempt from
11 federal antitrust laws, and replace from the competition requirements of those laws with

12 regulations imposed by the executive office and for the executive office to have an ongoing
13 supervisory role in ensuring that these regulations are implemented by Transportation Network
14 Companies and their associated drivers in a way that encourages the safety, reliability and
15 stability of the services offered.

16 c. Furthermore, because collective negotiations between Transportation Network
17 Companies and their respective drivers, and the resulting collectively negotiated
18 recommendations concerning the terms and conditions of work for drivers is likely to improve
19 the regulations promulgated by the executive office, the state of Massachusetts will establish a
20 process through which Transportation Network Companies and their drivers collectively
21 negotiate in an industry council to make recommendations that will enable more stable and
22 sustainable working conditions and better ensure that drivers can perform their services in a safe,
23 reliable, stable, cost-effective, and economically viable manner, and thereby promote the welfare
24 of the people who rely on safe and reliable transportation and delivery services to meet their
25 needs;

26 All the provisions of this article shall be liberally construed for the accomplishment of
27 these purposes.

28 This article shall be deemed an exercise of the police power of the state for the protection
29 of the public welfare, prosperity, health and peace of the people of the state.

30

31 Section 12. (a) For the purposes of this section, the following words shall have the
32 following meanings:-

33 “Commencement date” means a calendar date set by the executive office of labor and
34 workforce development for the purpose of initiating certain processes pursuant to Section
35 6.310.735 and establishing timelines and deadlines associated with them.

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

37 “Exclusive driver representative”, a driver representative, certified by the executive office
38 to be the sole and exclusive representative of all licensed for-hire drivers operating within
39 the commonwealth for a particular transportation network company.

40 “Driver representative”, an entity that can assist drivers in negotiating with
41 Transportation Network Companies on desired terms of work and negotiate those terms on their
42 behalf with transportation network companies.

43 “Qualifying driver,” means a for-hire driver who drives for a transportation network
44 company and who has performed one hundred and twenty (120) requests through the
45 transportation network company’s platform in the last ninety (90) days.

46 “Industry council” means the body comprised of member transportation network
47 companies, when their drivers are represented by an exclusive driver representative, and their
48 respective exclusive driver representative.

49 (b) The process of designating a driver representative shall be prescribed by executive
50 office and shall be based on, but not limited to, consideration of the following factors: (i)
51 organization bylaws that give drivers the right to be members of the organization and participate
52 in the democratic control of the organization; and (ii) experience in assisting stakeholders in

53 reaching agreements with Transportation Network Companies related to recommendations to
54 the executive office concerning the terms and conditions of work.

55 (c) Transportation network companies who have hired, contracted with, or partnered with
56 50 or more drivers at any one time in the 30 days prior to the commencement date in the unit,
57 other than in the context of an employer-employee relationship must, within 60 days of the
58 commencement date, provide all driver representatives seeking to represent their drivers the
59 names, addresses, email addresses, and phone numbers, of all qualifying drivers they hire,
60 contract with, or partner with in the unit.

61 Driver representatives shall use driver contact information for the sole purpose of
62 contacting drivers to solicit their interest in being represented by the driver representative. The
63 driver representative shall not sell, publish, or otherwise disseminate the driver contact
64 information.

65 (d) The executive office shall certify a driver representative as the exclusive driver
66 representative for all qualifying drivers contracted with a particular transportation network
67 company in the unit, according to the following:

68 (1) Within 120 days of receiving the driver contact information, a driver representative
69 shall submit statements of interest to the executive office from 10% of qualifying drivers from
70 the list described in subsection (c). Each statement of interest shall be signed, dated, and clearly
71 state that the driver wants to be represented by the driver representative for the purpose of
72 collective bargaining. The executive office shall determine the procedures for submitting and
73 verifying statements of interest by drivers choosing an exclusive driver representative. The
74 methods for submitting and verifying statements of interest by drivers choosing an exclusive

75 driver representative may include, but not be limited to: signature verification, electronic
76 authorization, unique personal identification number verification, statistical methods, or third
77 party verification.

78 (2) Within 30 days of receiving such statements of interest, the executive office shall
79 determine if they are sufficient to designate the driver representative as the exclusive driver
80 representative for all qualifying drivers for that particular transportation network company in the
81 unit. If the executive office determines that they are sufficient, the associated transportation
82 network company may voluntarily recognize the drivers representative as the exclusive drivers
83 representative for the purpose of joining the industry council and commencing negotiations
84 under this article. If the company fails to voluntarily recognize the driver representative, or if an
85 organization wishes to take the place of an exclusive drivers representative for the workers of a
86 transportation network company, the organization may do so by presenting proof of interest from
87 thirty percent (30%) of qualifying drivers with that company under the same terms and
88 conditions described above, at which point the executive office shall hold an election to
89 determine if the qualifying drivers wish to be represented by the drivers representative. An
90 exclusive drivers representative that has been voluntarily recognized by their associated
91 transportation network company may choose to gather statements of interest from 30% of their
92 qualifying drivers and trigger the vote described in this section as well. Any exclusive drivers
93 representative that has won an election under this subsection may only be removed or displaced
94 through the decertification process described in section j below.

95 (3) Within 30 days of receiving submissions from all driver representatives for a
96 particular transportation network company, the executive office shall either certify one to be the

97 exclusive driver representative or announce that no driver representative met the threshold for
98 certification.

99 (e) If no exclusive driver representative is certified for a transportation network company
100 in the unit, the executive office shall promulgate a new commencement date that is no earlier
101 than 180 days and no later than 360 days from the determination that no driver representative
102 met the required threshold, provided that no transportation network company shall be subject to
103 the requirements of this section more than once in any calendar year. The affected exclusive
104 driver representative and transportation network company may repeat the processes set forth in
105 subsections (c) and (d). If the executive office again fails to certify an exclusive driver
106 representative, all driver representatives shall lose their certification, and the processes in
107 subsections (c) and (d) shall end until the executive office establishes a new commencement
108 date.

109 (f) Upon certification of the exclusive driver representative by the executive office, the
110 transportation network company and their associated exclusive driver representative will join the
111 industry council. The transportation network companies and the exclusive driver representatives
112 shall each have votes on the industry council equal to their share of the overall market the
113 transportation network company they are connected with had in the previous calendar year.

114 (g) Upon formation with the first transportation network company and their associated
115 exclusive driver representative, and at least 90 days before expiration of any existing agreement,
116 the industry council shall meet and negotiate in good faith certain specified subjects. Any agreed
117 upon recommendations must include

118 (i) The provision of occupational accident coverage or other insurance coverage for
119 drivers. This coverage shall include, at no cost to the drivers, benefits for drivers reasonably
120 equal to benefits of this type provided required under the laws related to workers compensation
121 coverage in Massachusetts.

122 (ii) Written affirmation of anti-discrimination rights provided to drivers. Such rights shall
123 be no less restrictive upon the network transportation company than the anti-discrimination laws
124 of {the MA human rights law cited here}.

125 (iii) Benefits for drivers which may include health, retirement, and other benefits. Such
126 benefits will be administered by a non-profit entity controlled by the driver representatives on the
127 Industry Council.

128 (iv) Wage regulations that have the effect of providing a minimum wage not lower than
129 the existing state regulation when wait time and expenses are considered.

130 (v) The imposition of a 0.5% surcharge on every ride to be provided to the exclusive
131 drivers representatives to provide representation, training benefits, and services for their
132 members.

133 (vi) Other issues including, but not limited to, best practices regarding vehicle equipment
134 standards, safe driving practices, the nature and amount of payments to be made by, or withheld
135 from, the transportation network company to or by the drivers, minimum hours of work,
136 conditions of work and applicable rules, and any other subject prescribed by the executive office
137 and shall reduce their discussion to a written set of recommendations.

138 If an agreement concerning such recommendations is reached, the exclusive driver
139 representative(s) shall put the recommendations to a vote of their members. If a majority of the
140 voting members approves the recommendations, the industry council shall transmit the
141 recommendations to the executive office. The executive office shall have 30 days upon receipt of
142 such recommendations to determine if the agreement complies with this section and the public
143 policy intent of section 11(a) and to notify the industry council of the determination in writing. If
144 the executive office finds the recommendations compliant, the recommendations shall be
145 considered final and binding on all network transportation companies operating in the state of
146 Massachusetts. If the executive office finds that the recommendations fail to comply with this
147 section, the executive office shall remand it to the industry council with a written explanation.

148 (g) If the industry council fails to reach a set of recommendations that are then approved
149 by the members of the drivers representative(s) within 90 days of the creation of the industry
150 council or within 90 days after the expiration of an existing agreement, either the transportation
151 network company(ies) or the exclusive driver representative(s) must submit to interest
152 arbitration upon the request of the other party. The arbitrator may be selected by mutual
153 agreement of the parties. If the parties cannot agree on an arbitrator, the superior court on
154 application of a party shall appoint the arbitrator. The court shall submit to the

155 parties a list of 5 persons experienced in labor arbitration from which the transportation
156 network companies and the exclusive driver representatives may each delete two names and the
157 appointment shall be made from the name or names remaining. An arbitrator so appointed shall
158 have all the powers of an arbitrator specifically named in the agreement.

159 The arbitrator shall transmit any recommendations to the executive office for review for
160 compliance with the provisions of this section and section 11(a). The executive office shall have
161 30 days upon receipt of an agreement to determine its compliance and to notify the interest
162 arbitrator of the determination in writing. If the executive office finds the recommendations
163 compliant, the recommendations shall be considered final and binding on all transportation
164 network companies in the state of Massachusetts. No recommendations approved by a vote of
165 the qualifying drivers shall be approved for a period longer than four (4) years. No
166 recommendations made by an arbitrator shall be approved for a period of longer than two (2)
167 years. If the executive office finds that the agreement fails to comply with this section and/or
168 section 11(a), the executive office shall remand it to the arbitrator with a written explanation. If
169 either party refuses to enter interest arbitration, upon the request of the other, either party may
170 pursue any available judicial remedies.

171 (h) During the term of any binding terms and conditions of work, the executive office
172 shall have an ongoing supervisory role to ensure that their implementation satisfies the minimum
173 requirements and purposes set out in section 11(a) and advances the public policy goals set forth
174 in this article. The executive office shall have the authority to withdraw approval of the
175 recommendations if the executive office determines that the recommended terms and conditions
176 no longer adhere to the provisions of this section or that they no longer promote the public policy
177 goals set forth in this article. The executive office may withdraw approval only after providing
178 the industry council with written notice of the proposed withdrawal of approval, the grounds
179 therefore, and an opportunity to be heard regarding the proposed withdrawal. The executive
180 office's withdrawal of approval shall be effective only upon the issuance of a written explanation
181 of the reasons why the approved terms and conditions no longer adhere to the provisions of this

182 article. If the executive office withdraws approval of an existing set of binding terms and
183 conditions of work, the industry council may submit a new set of agreed-upon recommendations
184 for consideration within three (3) months' time.

185 (i) It shall be a violation for a transportation network company or its agent, designee,
186 employee, or any person or group of persons acting directly or indirectly in the interest of the
187 transportation network company in relation to the driver to interfere with, restrain, or deny the
188 exercise of, or the attempt to exercise, any right protected under this section including but not
189 limited to threatening, harassing, penalizing, or otherwise discriminating against a driver because
190 the driver has exercised the rights protected under this section.

191 (j) An exclusive driver representative may be decertified if the executive office receives a
192 petition to decertify an exclusive driver representative within 30 days of the expiration of an
193 agreement reached pursuant to this section. A decertification petition must be signed by 10 or
194 more drivers. The executive office shall determine the procedures for submitting the
195 decertification petition.

196 Once a petition has been accepted by the executive office, the executive office shall issue
197 notice to the transportation network company and the exclusive driver representative of the
198 decertification petition and promulgate a new commencement date. The transportation network
199 company shall have 14 days from the commencement date to transmit the list of drivers to any
200 petitioners. Within 90 days of receiving the driver contact information, petitioners for a
201 decertification shall submit statements of interest from a majority of drivers represented to the
202 executive office. The statements of interest shall be signed and dated and shall clearly indicate
203 that the driver no longer wants to be represented by the exclusive driver representative for the

204 purpose of collective bargaining with the transportation network company. The executive office
205 shall determine the procedures for submitting and verifying the statements of interest of drivers.

206 Within 30 days of receiving such statements of interest, the executive office shall
207 determine if they are sufficient to decertify the exclusive driver representative for that particular
208 transportation network company. The executive office shall decertify the exclusive driver
209 representative or declare that the decertification petition did not meet the majority threshold and
210 reaffirm that the exclusive driver representative shall continue representing all drivers for that
211 particular transportation network company.

212 If an exclusive driver representative is decertified for a particular transportation network
213 company, the process of selecting a new exclusive driver representative may begin. The
214 transportation network company whose exclusive driver representative has been decertified may
215 not vote on the industry council until a new exclusive driver representative is chosen.

216 (k) The executive office is authorized to enforce and administer this section. The
217 executive office shall investigate alleged violations. The executive office shall issue a written
218 notice of the violation if a violation has occurred. The notice shall: (i) require the person or entity
219 in violation to comply with the requirement; (ii) include notice that the person or entity in
220 violation is entitled to a hearing before the labor relations commission to respond to the notice
221 and introduce any evidence to refute or mitigate the violation; and (iii) inform the person or
222 entity in violation that a daily penalty of up to \$100,000 for every day the violator fails to cure
223 the violation shall accrue if the violation is uncontested or found committed.

224 The person or entity named on the notice of violation must file with the labor relations

225 commission the request for a hearing within 10 business days after the date of the notice
226 of violation. The labor relations commission may affirm, modify, or reverse the executive
227 office's notice of violation. If the person or entity named on the notice of violation fails to timely
228 request a hearing, the notice of violation shall be final and the daily penalty of up to \$100,000
229 shall accrue until the violation is cured.

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