

SENATE No. 1022

The Commonwealth of Massachusetts

PRESENTED BY:

Jason M. Lewis

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

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

An Act establishing collective bargaining rights for TNC drivers.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|-----------------------------|--------------------------------------|------------------|
| <i>Jason M. Lewis</i> | <i>Fifth Middlesex</i> | |
| <i>Chris Walsh</i> | <i>6th Middlesex</i> | <i>1/24/2017</i> |
| <i>Barbara A. L'Italien</i> | <i>Second Essex and Middlesex</i> | <i>1/25/2017</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> | <i>1/26/2017</i> |
| <i>Steven Ultrino</i> | <i>33rd Middlesex</i> | <i>2/2/2017</i> |
| <i>Michael D. Brady</i> | <i>Second Plymouth and Bristol</i> | <i>1/30/2017</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> | <i>1/30/2017</i> |
| <i>Kenneth J. Donnelly</i> | <i>Fourth Middlesex</i> | <i>1/31/2017</i> |
| <i>Walter F. Timilty</i> | <i>Norfolk, Bristol and Plymouth</i> | <i>2/2/2017</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> | <i>2/2/2017</i> |
| <i>Julian Cyr</i> | <i>Cape and Islands</i> | <i>2/3/2017</i> |
| <i>Michael F. Rush</i> | <i>Norfolk and Suffolk</i> | <i>2/3/2017</i> |

SENATE No. 1022

By Mr. Lewis, a petition (accompanied by bill, Senate, No. 1022) of Jason M. Lewis, Chris Walsh, Barbara A. L'Italien, Marjorie C. Decker and other members of the General Court for legislation to establish collective bargaining rights for TNC drivers. Labor and Workforce Development.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 is hereby amended by inserting after
2 section 11 the following section:-

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

5 "Commencement date" means a calendar date set by the executive office of labor and
6 workforce development for the purpose of initiating certain processes pursuant to Section
7 6.310.735 and establishing timelines and deadlines associated with them.

8 "Executive office", the executive office of labor and workforce development

9 "Exclusive driver representative", a driver representative, certified by the executive office
10 to be the sole and exclusive representative of all licensed for-hire drivers operating within the
11 commonwealth for a particular transportation network company.

12 “Driver representative”, an entity that can assist drivers in reaching consensus on desired
13 terms of work and negotiate those terms on their behalf with transportation network companies.

14 “Qualifying driver,” means a for-hire driver who drives for a transportation network
15 company and who satisfies the conditions established by the executive office with regard to the
16 length, frequency, total number of trips, or average number of trips in a given time period.

17 (b) The process of designating a driver representative shall be prescribed by executive
18 office and shall be based on, but not limited to, consideration of the following factors: (i)
19 organization bylaws that give drivers the right to be members of the organization and participate
20 in the democratic control of the organization; and (ii) experience in assisting stakeholders in
21 reaching consensus agreements with, or related to, employers and contractors.

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

26 (c) Transportation network companies who have hired, contracted with, or partnered with
27 50 or more drivers at any one time in the 30 days prior to the commencement date in the unit,
28 other than in the context of an employer-employee relationship must, within 60 days of the
29 commencement date, provide all driver representatives seeking to represent their drivers the
30 names, addresses, email addresses, and phone numbers, of all qualifying drivers they hire,
31 contract with, or partner with in the unit.

32 Driver representatives shall use driver contact information for the sole purpose of
33 contacting drivers to solicit their interest in being represented by the driver representative. The

34 driver representative shall not sell, publish, or otherwise disseminate the driver contact
35 information.

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

39 (1) Within 120 days of receiving the driver contact information, a driver representative
40 shall submit statements of interest to the executive office from a majority of qualifying drivers
41 from the list described in subsection (c). Each statement of interest shall be signed, dated, and
42 clearly state that the driver wants to be represented by the driver representative for the purpose of
43 collective bargaining. The executive office shall determine the procedures for submitting and
44 verifying statements of interest by drivers choosing an exclusive driver representative. The
45 methods for submitting and verifying statements of interest by drivers choosing an exclusive
46 driver representative may include, but not be limited to: signature verification, unique personal
47 identification number verification, statistical methods, or third party verification.

48 (2) Within 30 days of receiving such statements of interest, the executive office shall
49 determine if they are sufficient to designate the driver representative as the exclusive driver
50 representative for all qualifying drivers for that particular transportation network company in the
51 unit. If more than one driver representative establishes that a majority of drivers have expressed
52 interest in being represented by that driver representative, the executive office shall designate the
53 driver representative that received the largest number of verified affirmative statements of
54 interest to be the exclusive driver representative.

55 (3) Within 30 days of receiving submissions from all driver representatives for a
56 particular transportation network company, the executive office shall either certify one to be the
57 exclusive driver representative or announce that no driver representative met the majority
58 threshold for certification.

59 (e) If no exclusive driver representative is certified for a transportation network company
60 in the unit, the executive office shall promulgate a new commencement date that is no earlier
61 than 180 days and no later than 360 days from the determination that no driver representative
62 met the majority threshold, provided that no transportation network company shall be subject to
63 the requirements of this section more than once in any calendar year. The affected exclusive
64 driver representative and transportation network company may repeat the processes set forth in
65 subsections (c) and (d). If the executive office again fails to certify an exclusive driver
66 representative, all driver representatives shall lose their certification, and the processes in
67 subsections (c) and (d) shall end until the executive office establishes a new commencement
68 date.

69 (f) Upon certification of the exclusive driver representative by the executive office, and at
70 least 90 days before expiration of any existing agreement, the transportation network company
71 and the exclusive driver representative shall meet and negotiate in good faith certain specified
72 subjects, including, but not limited to, best practices regarding vehicle equipment standards, safe
73 driving practices, the nature and amount of payments to be made by, or withheld from, the
74 transportation network company to or by the drivers, minimum hours of work, conditions of
75 work and applicable rules, and any other subject prescribed by the executive office and shall
76 reduce their discussion to a written agreement.

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

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

84 (g) If a transportation network company and the exclusive driver representative fail to
85 reach an agreement within 90 days of the certification of the exclusive driver representative by
86 the executive office or within 90 days after the expiration of an existing agreement, either party
87 must submit to interest arbitration upon the request of the other party. The arbitrator may be
88 selected by mutual agreement of the parties. If the parties cannot agree on an arbitrator, the
89 superior court on application of a party shall appoint the arbitrator. The court shall submit to the
90 parties a list of 5 persons experienced in labor arbitration from which each party may delete two
91 names and the appointment shall be made from the name or names remaining. An arbitrator so
92 appointed shall have all the powers of an arbitrator specifically named in the agreement.

93 The arbitrator shall transmit any agreement to the executive office for review for
94 compliance with the provisions of this section. The executive office shall have 30 days upon
95 receipt of an agreement to determine its compliance and to notify the interest arbitrator of the
96 determination in writing. If the executive office finds the agreement compliant, the agreement
97 shall be considered final and binding on all parties. If the executive office finds that the
98 agreement fails to comply with this section, the executive office shall remand it to the arbitrator

99 with a written explanation. If either party refuses to enter interest arbitration, upon the request of
100 the other, either party may pursue any available judicial remedies.

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

107 (i) An exclusive driver representative may be decertified if the executive office receives a
108 petition to decertify an exclusive driver representative within 30 days of the expiration of an
109 agreement reached pursuant to this section. A decertification petition must be signed by 10 or
110 more drivers. The executive office shall determine the procedures for submitting the
111 decertification petition.

112 Once a petition has been accepted by the executive office, the executive office shall issue
113 notice to the transportation network company and the exclusive driver representative of the
114 decertification petition and promulgate a new commencement date. The transportation network
115 company shall have 14 days from the commencement date to transmit the list of drivers to any
116 petitioners. Within 90 days of receiving the driver contact information, petitioners for a
117 decertification shall submit statements of interest from a majority of drivers represented to the
118 executive office. The statements of interest shall be signed and dated and shall clearly indicate
119 that the driver no longer wants to be represented by the exclusive driver representative for the

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

122 Within 30 days of receiving such statements of interest, the executive office shall
123 determine if they are sufficient to decertify the exclusive driver representative for that particular
124 transportation network company. The executive office shall decertify the exclusive driver
125 representative or declare that the decertification petition did not meet the majority threshold and
126 reaffirm that the exclusive driver representative shall continue representing all drivers for that
127 particular transportation network company.

128 If an exclusive driver representative is decertified for a particular transportation network
129 company, the process of selecting a new exclusive driver representative may begin.

130 (j) The executive office is authorized to enforce and administer this section. The
131 executive office shall investigate alleged violations. The executive office shall issue a written
132 notice of the violation if a violation has occurred. The notice shall: (i) require the person or entity
133 in violation to comply with the requirement; (ii) include notice that the person or entity in
134 violation is entitled to a hearing before the labor relations commission to respond to the notice
135 and introduce any evidence to refute or mitigate the violation; and (iii) inform the person or
136 entity in violation that a daily penalty of up to \$10,000 for every day the violator fails to cure the
137 violation shall accrue if the violation is uncontested or found committed.

138 The person or entity named on the notice of violation must file with the labor relations
139 commission the request for a hearing within 10 business days after the date of the notice of
140 violation. The labor relations commission may affirm, modify, or reverse the executive office's
141 notice of violation. If the person or entity named on the notice of violation fails to timely request

142 a hearing, the notice of violation shall be final and the daily penalty of up to \$10,000 shall accrue
143 until the violation is cured.

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