

“An Act Establishing A Rideshare Driver Bill Of Rights”

Draft by Boston Independent Drivers Guild

Executive Summary:

- Our bill, drafted democratically by drivers themselves, provides a novel approach to the issue by giving drivers rights directly as drivers, ensuring that drivers receive basic worker rights regardless of their classification status.
- Provides TNC and food delivery drivers access to paid sick leave, anti-discrimination protections, overtime, and paid family leave.
- Protects driver flexibility.
- Creates a minimum compensation for drivers based on Seattle’s system.
- Creates a Driver Resolution Center for drivers based on Seattle’s system.
- Provides collective bargaining rights to drivers based on an updated version of S2778, covering drivers whether they are employees or independent contractors.
- Restores surge pricing during emergencies.
- Imposes a 2-year moratorium on new TNC drivers.

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

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

“Dispatch platform time” means the time a TNC driver spends traveling from dispatch location to passenger pick-up location. Dispatch platform time ends when a passenger cancels a trip, a driver cancels a trip, or the driver begins the trip in the driver platform. A TNC driver cannot simultaneously be engaged in available platform time, dispatch platform time, and/or passenger platform time for the same TNC. For trips involving multiple passengers picked up from different passenger pick-up locations, dispatch platform time means the time a TNC driver spends travelling from the first dispatch location to the first passenger pick-up location;

“Passenger platform time” means the period of time commencing when the TNC driver starts the trip in the driver platform until the time when the TNC driver ends the trip in the driver platform. For trips involving multiple passengers picked up from different passenger pick-up locations, passenger platform time means the period of time commencing when the TNC driver starts the trip in the driver platform after the first passenger enters the TNC driver’s vehicle until the time when the TNC driver ends the trip in the driver platform after the last passenger exits the TNC driver’s vehicle at the end of the trip. A TNC driver cannot simultaneously be engaged in available platform time, dispatch platform time, and/or passenger platform time for the same TNC;

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

“Passenger platform time utilization rate” means the percentage of time that TNC drivers spend during passenger platform time relative to the total of the time TNC drivers spend during available platform time, dispatch platform time, and passenger platform time.

“Per minute rate” means the per minute equivalent of the living wage necessary for two working adults to support a family with two children in the Boston-Cambridge-Newton area as calculated by the Massachusetts Institute of Technology Living Wage Calculator.

This wage has been calculated at a rate of twenty dollars and forty one cents an hour, making the per minute rate equal to thirty four cents.

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

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

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

1. Vehicle acquisition and financing costs;
2. Depreciation;
3. Lease payments;
4. Maintenance and repairs;
5. Vehicle cleaning;
6. Tires;
7. Gasoline (including all taxes thereon);
8. Oil;
9. Vehicle insurance;
10. License and vehicle registration fees;
11. Cell phone and cell phone service plans;
12. Cost of medical, dental, and vision insurance;
13. The amount of employer-side payroll taxes that TNC drivers must pay;
14. The amount of business taxes that TNC drivers must pay;
15. Business license fees that TNC drivers must pay;
16. Rest breaks; and
17. Any other cost or information the Department of Labor Standards determines is necessary to further the purposes of section 13(a);

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

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

"Days" means calendar days.

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

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

"Driver Resolution Center" means a non-profit organization registered with the Massachusetts Secretary of State that contracts with the Agency to provide culturally competent TNC driver representation services, outreach, and education; that is affiliated with an organization with experience advocating for the civil and economic rights of drivers, contractors, and workers from disadvantaged socioeconomic groups and representing workers in grievance proceedings; and whose administration and/or formation was/is not funded, excessively influenced, or controlled by a TNC. This organization shall have a proven commitment to worker rights and experience in providing resources, programs, and services to TNC drivers, contractors, and workers that allow them to build sustainable economic opportunities while competing in a changing business environment. The Driver Resolution Center should consider contractual partnerships among entities to achieve the direct participation of organizations primarily focused on diversity and advocating for the civil and economic rights of workers from disadvantaged socioeconomic groups.

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

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

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

"Food delivery network driver", a driver certified by a food delivery network company.

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

Section 12: Transportation Network Company Driver Rights

Section 12. (a) Transportation Network Company drivers and food delivery network drivers are entitled to the benefits and protections granted to an employee under section 148C of Chapter 149. Transportation Network Companies are obligated to the responsibilities of an employer

under section 148c of chapter 149. For the purpose of interpreting section 148C(d)(1) of Chapter 149, hours worked shall mean passenger platform time divided by passenger platform time utilization rate.

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

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

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

(e). No TNC shall subject a TNC or FDNC driver to unwarranted deactivation, as defined by Department of Labor Standards' rule. The Department of Labor Standards definition of unwarranted deactivation shall be based on, but not limited to, consideration of the following factors:

- (1) Drivers shall not be deactivated for unsubstantiated customer complaints.
- (2) Drivers shall not be deactivated for failing to accept dispatches.
- (3) Drivers shall not be deactivated on the basis of a passenger or customer rating system that allows for passenger or customer discriminatory practices against a protected class.

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

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

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

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

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

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

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

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

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

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

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

(1). The utilization of the Panel arbitration proceeding created by this section is voluntary upon agreement by both parties, except as provided for under section 12(j), and shall be

of no cost to the TNC or FDNC driver. If utilized, the Panel shall be the sole arbitration proceeding for challenging the deactivation.

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

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

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

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

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

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

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

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

(10) The Department shall issue rules to effectuate the terms of this section including, but not limited to, rules regarding the definition of unwarranted deactivation, driver eligibility to challenge deactivations, the selection of and criteria for the neutral arbitrator and partisan panel members, and the number of partisan panel members. The Department shall further issue rules on methods to protect passenger privacy and address potential safety concerns during Panel arbitrations for deactivations that include but are not limited to allegations of egregious misconduct.

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

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

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

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

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

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

(ii) The nature and persistence of the violations;

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

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

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

(vi) The circumstances of each situation;

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

(3) A respondent found to be in violation of this section shall be liable for full payment of unpaid compensation plus interest in favor of the aggrieved party for the period of deactivation under the terms of this section, and other equitable relief. The Department of Labor Standards shall issue rules regarding the method of calculating unpaid compensation. The Department of Labor Standards is authorized to designate a daily amount for unpaid compensation. For any violation of this section, the Panel may

assess liquidated damages in an additional amount of up to thrice the unpaid compensation.

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

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

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

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

1. Are or were contracted to perform TNC services by the same TNC, FDNC, TNCs, or FDNCs, whether concurrently or otherwise, at some point during the applicable statute of limitations period,
2. Allege one or more violations that raise similar questions as to liability, and
3. Seek similar forms of relief.

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

1. Claims seek damages that differ in amount, or
2. Job titles or other means of classifying TNC drivers differ in ways that are unrelated to their claims.

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

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

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

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

Section 13: Minimum TNC and FDNC Driver Compensation

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

(b) For each TNC dispatched trip, a TNC shall compensate TNC drivers by providing at least the equivalent of: (1) the minimum per minute amount for passenger platform time under section 13(b)(1)(i) plus the minimum per-mile amount for passenger platform time under section 13(b)(1)(ii); or (2) the minimum per trip amount for each TNC dispatched trip under section 13(b)(2)(iii), whichever amount is greater.

(1) Minimum payment

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

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

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

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

(iv). For the purposes of section 13(b)(1)(iii), “each TNC dispatched trip” includes but is not limited to a trip in which the TNC driver transports the passenger to the passenger’s desired drop-off location, a trip cancelled by a passenger or the TNC unless the TNC refunds the passenger cancellation fee due to driver conduct, and a trip where the passenger does not appear at the passenger pick-up location. For trips involving multiple passengers picked-up from different locations, the minimum per trip amount applies to the period of time commencing when the TNC driver starts the trip in the driver platform after the first passenger enters the TNC driver’s vehicle until the time when the TNC driver ends the trip in the driver platform after the last passenger exits the TNC driver’s vehicle at the end of the trip. “Each TNC dispatched trip” does not include a trip cancelled by the TNC driver, unless the driver is forced to cancel the trip in order to comply with any law or regulation.

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

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

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

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

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

(1). Adjustment of the per mile rate. Beginning one year after the effective date of this section, and thereafter on January 1 of each year, the Department of Labor Standards by rule may adjust the per-mile rate. In adjusting the per-mile rate each year, the Department of Labor Standards shall consider the best available sources of data, which may include, but are not limited to: TNC driver surveys, data provided by TNCs, data

provided by TNC drivers, data provided by passengers, data from other jurisdictions, data available through academic, policy, or community based organizations, and stakeholder interviews. The Department of Labor Standards shall base the adjustment on an assessment of relevant factors or costs during the 12-month period ending in August. Provided however, that this adjustment shall not result in reduction of the per mile rate below \$0.830.

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

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

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

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

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

(iii). Prior to beginning any assessment period on which the Department of Labor Standards will base a passenger platform time utilization rate or the passenger mileage utilization rate adjustment, the Department of Labor Standards shall provide reasonable notice to the TNCs and other stakeholders of the date on which the assessment period begins.

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

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

(v). The Department of Labor Standards may consider the following factors for the assessment: The average and median amount of available platform time, dispatch platform time, and passenger platform time for TNC drivers; The average and median mileage driven by TNC drivers during available platform time, dispatch platform time, and passenger platform time; The average and median speeds driven by TNC drivers during available platform time, dispatch platform time, and passenger platform time; The percentage of total trips that each TNC covered by this section 13 represents; The impact of the adjustment of the passenger platform time utilization rate or the passenger mileage utilization rate on TNCs, TNC passengers, and TNC drivers, including the impact on TNC driver earnings and work hours, the availability of TNC services, and any other factor the Department of Labor Standards deems relevant. And Any other

information the Department of Labor Standards determines is necessary to further the purposes of section 13(a).

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

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

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

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

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

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

Section 14: Collective Bargaining Rights For Transportation Network Company Drivers

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

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

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

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

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

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

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

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

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

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

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

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

(4). Has experience in and/or demonstrated commitment to assisting members in reaching

consensus agreements with, or related to, employees and contractors;

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

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

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

(c) Transportation network companies, food delivery network companies, or livery vehicle services who have hired, contracted with, or partnered with 50 or more drivers at any one time in the 30 days prior to the commencement date in the unit must, within 60 days of the commencement date, provide all driver representatives seeking to represent their drivers the

names, addresses, email addresses, and phone numbers, of all qualifying drivers they hire, contract with, or partner with in the unit.

Driver representatives shall use driver contact information for the sole purposes of contacting drivers to solicit their interest in being represented by the driver representative and to invite them to participate in the affairs of the driver representative organization. The driver representative shall not sell, publish, or otherwise disseminate the driver contact information.

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

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

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

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

(4) If the driver representative is unsuccessful in securing a majority of qualified drivers in the 120 day time period, then the executive office must hold an election open to all qualifying drivers to certify the driver representative within 30 days. The driver representative must secure affirmative votes from a majority of the election respondents only in order to be certified as the exclusive driver representative. The voting period must run for 7 days, and drivers must have the ability to access the voting portal from the interface used by the TNC, FDNC or livery service to communicate with and dispatch drivers. An announcement explaining the process for voting must be made at the start of

the voting period using the system typically used to relay messages and announcements to drivers by the TNC, FDNC or livery service. The TNC, FDNC or livery service must remain strictly neutral during the voting process. The voting portal shall be secured using blockchain technology.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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