

INITIATIVE PETITION FOR A LAW

Be it enacted by the People, and by their authority:

A Law Defining and Regulating the Contract-Based Relationship Between Network Companies and App-Based Drivers

SECTION 1. The General Laws are hereby amended by inserting after chapter 159A1/2 the following chapter:

Chapter 159AA

Section 1. Title. This chapter shall be known as the “Relationship Between Network Companies and App-Based Drivers Act.”

Section 2. Purpose. The purpose of this Act is to define and regulate the contract-based relationship between network companies and app-based drivers as independent contractors with required minimum compensation and benefits standards that will operate uniformly throughout the commonwealth, guaranteeing drivers the freedom and flexibility to choose when, where, how, and for whom they work.

Section 3. Definitions. For the purposes of this chapter, the following words shall have the following meanings:

“App-based driver” or “driver”, a person (a) who is a DNC courier and/or TNC driver; and (b) for whom the following conditions are satisfied: (1) the network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the DNC courier and/or TNC driver must be logged into the network company’s online-enabled application or platform; (2) the network company may not terminate the contract of the DNC courier and/or TNC driver for not accepting a specific transportation service or delivery service request; (3) the network company does not restrict the DNC courier and/or TNC driver from performing services through other network companies except while performing services through the network company’s online-enabled application or platform; and (4) the network company does not contractually restrict the DNC courier and/or TNC driver from working in any other lawful occupation or business. Notwithstanding any other law to the contrary, a DNC courier and/or TNC driver who is an app-based driver as defined herein shall be deemed to be an independent contractor and not an employee or agent for all purposes with respect to his or her relationship with the network company.

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“Average ACA contribution,” 82 per cent of the dollar amount of the average monthly Health Connector premium.

“Average hourly earnings”, an app-based driver’s earnings from, or facilitated by, the network company during the 365 days immediately prior to the day that earned paid sick time is used, divided by the total hours of engaged time worked by the app-based driver on that network company’s online-enabled application or platform during that period.

“Average monthly Health Connector premium”, the dollar amount published pursuant to subsection (f) of section 5 of this chapter.

“Contract,” a written agreement, which may be electronic, between an app-based driver and a network company.

“Delivery Network Company” or “DNC”, a business entity that (a) maintains an online-enabled application or platform used to facilitate delivery services within the Commonwealth and (b) maintains a record of the amount of engaged time and engaged miles accumulated by DNC couriers.

“Delivery Network Company Courier” or “DNC courier”, a person who provides delivery services through a DNC’s online-enabled application or platform.

“Delivery services”, the fulfillment of a delivery request, meaning the pickup from any location in the Commonwealth of any item or items and the delivery of the items using a private passenger motor vehicle, bicycle, electric bicycle, motorized bicycle, scooter, motorized scooter, walking, public transportation, or other similar means of transportation, to a location selected by the customer located within 50 miles of the pickup location. A delivery request may include more than 1, but not more than 30, distinct orders placed by different customers. Delivery services may include the selection, collection, or purchase of items by a DNC courier, as well as other tasks incident to a delivery. Delivery services do not include assistance with residential moving services.

“Earnings”, all amounts, including incentives and bonuses, remitted to an app-based driver, provided that the amount does not include toll fees, cleaning fees, airport fees, or other customer pass-throughs. Amounts remitted are net of service fees or similar fees charged to the app-based driver by the network company. Amounts remitted do not include tips or gratuities.

“Engaged miles”, all miles driven during engaged time in a private passenger motor vehicle that is not owned, leased, or rented by the network company, or any of its affiliates. Network

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companies may exclude miles if doing so is reasonably necessary to remedy or prevent fraudulent use of the network company's online-enabled application or platform.

"Engaged time", (a) subject to the conditions set forth in subsection (b) in this definition, the period of time, as recorded in a network company's online-enabled application or platform, from when a driver accepts a request for delivery or transportation services to when the driver fulfills that request. For requests that are scheduled in advance and for which the driver accepts the request but is not immediately en route to fulfill that request, a driver shall only be considered engaged on a network company's platform when the driver is en route to fulfill that scheduled request, regardless of when the driver accepted the request.

(b) Engaged time shall not include (1) any time spent performing delivery or transportation services after the request has been cancelled by the customer; or (2) any time spent on a request for delivery or transportation services where the driver abandons performance of the service prior to completion. Network companies may also exclude time if doing so is reasonably necessary to remedy or prevent fraudulent use of the network company's online-enabled application or platform.

"Health Connector", the Commonwealth Health Insurance Connector Authority established by chapter 58 of the acts of 2006 and section 2 of chapter 176Q of the Massachusetts General Laws.

"Network company", a DNC and/or TNC.

"Person", shall have the same definition as provided in clause twenty-third of section 7 of chapter 4 of the Massachusetts General Laws.

"Private passenger motor vehicle," any passenger vehicle which has a vehicle weight rating or curb weight of 6,000 lbs. or less as per manufacturer's description of said vehicle or is a sport utility vehicle, passenger van, or pickup truck.

"Qualifying health plan", a health insurance plan in which the app-based driver is the subscriber, that is not paid for in full or in part by any current or former employer, and that is not a Medicare or Medicaid plan.

"Quarter", each of the following 4 time periods: (a) January 1 through March 31; (b) April 1 through June 30; (c) July 1 through September 30; (d) October 1 through December 31.

"Transportation network company" or "TNC", has the same meaning as provided in section 1 of chapter 159A1/2 of the Massachusetts General Laws.

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“Transportation network company driver” or “TNC driver”, a Transportation network driver, as defined in section 1 of chapter 159A1/2 of the Massachusetts General Laws, that provides transportation services, or a person operating a livery vehicle as defined in 540 CMR 2.00 on a TNC’s digital network, as defined in section 1 of chapter 159A1/2.

“Transportation services”, the provision of transportation facilitated by the digital network, as defined in section 1 of chapter 159A1/2 of the Massachusetts General Laws, of a TNC for which the pickup of the passenger occurs in the Commonwealth.

Section 4: Guaranteed Earnings Floor.

(a) A network company shall ensure that for each earnings period, a driver is compensated at not less than the net earnings floor as set forth in this section. The net earnings floor establishes a guaranteed minimum level of compensation for drivers that cannot be reduced. In no way does the net earnings floor prohibit drivers from earning a higher level of compensation.

(b) For each earnings period, a network company shall compare a driver’s net earnings against the net earnings floor for that driver during the earnings period. In the event that the driver’s net earnings in the earnings period are less than the net earnings floor for that earnings period, the network company shall include an additional sum accounting for the difference in the driver’s earnings no later than during the next earnings period.

(c) For purposes of this section, the following definitions apply:

(1) “Minimum wage”, means the state mandated minimum wage for all industries as provided by section 1 of chapter 151 of the Massachusetts General Laws.

(2) “Earnings period”, means a pay period, set by the network company, not to exceed 14 consecutive calendar days.

(3) “Net earnings”, means all earnings received by an app-based driver in an earnings period.

(4) “Net earnings floor”, means, for any earnings period, a total amount that consists of:

(i) For all engaged time, the sum of 120 per cent of the minimum wage for that engaged time.

(ii)(A) The per-mile compensation for vehicle expenses set forth in this clause multiplied by the total number of engaged miles.

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(B) After the effective date of this chapter and for the 2023 calendar year, the per-mile compensation for vehicle expenses shall be 26 cents per engaged mile. For calendar years after 2023, the amount per engaged mile shall be adjusted pursuant to the following subclause (C).

(C) For calendar years following 2023, the per-mile compensation for vehicle expenses described in subclause (B) shall be adjusted every five years to reflect any change in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics, or any successor index or agency. The commissioner of administration shall calculate and publish the adjustments required by this subclause.

(d) Nothing in this section shall be interpreted to require a network company to provide a particular amount of compensation to a driver for any given transportation or delivery request, as long as the driver's net earnings for each earnings period equals or exceeds that driver's net earnings floor for that earnings period as set forth in subsection (b) of this section.

Section 5. Healthcare Stipend.

(a) Consistent with the average contributions required under the federal Patient Protection and Affordable Care Act, Pub. L. 111-148 (March 23, 2010), a network company shall provide a quarterly healthcare stipend to app-based drivers who meet the conditions set forth in this section. An app-based driver that averages the following amounts of engaged time per week on a network company's platform during a quarter that commences on or after January 1, 2023 shall receive the following stipends from that network company:

(1) For an average of 25 hours or more per week of engaged time in the quarter, a payment greater than or equal to 100 per cent of the average ACA contribution for the applicable average monthly Health Connector premium for each month in the quarter.

(2) For an average of at least 15 but less than 25 hours per week of engaged time in the quarter, a payment greater than or equal to 50 per cent of the average ACA contribution for the applicable average monthly Health Connector premium for each month in the quarter.

(b) At the end of each earnings period, a network company shall provide to each app-based driver the following information:

(1) The number of hours of engaged time the app-based driver recorded in the network company's online-enabled application or platform during that earnings period.

(2) The number of hours of engaged time the app-based driver has recorded in the network company's online-enabled application or platform during the current quarter up to that point.

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(c) The Health Connector may adopt or amend regulations as it deems appropriate to implement this section, including to permit app-based drivers receiving stipends pursuant to this section to enroll in health plans offered through the Health Connector.

(d)(1) As a condition of providing the healthcare stipend set forth in subsection (a), a network company may require an app-based driver to submit proof of current enrollment in a qualifying health plan as of the last day of the quarter for which the stipend would be provided. Proof of current enrollment may include, but is not limited to, health insurance membership or identification cards, evidence of coverage and disclosure forms from the health plan, or claim forms and other documents necessary to submit claims.

(2) An app-based driver shall have not less than 15 calendar days from the end of the quarter to provide proof of enrollment as set forth in paragraph (1) of this subsection.

(3) A network company shall provide a healthcare stipend due for a quarter under subsection (a) within 15 days of the end of the quarter or within 15 days of the app-based driver's submission of proof of enrollment as set forth in paragraph (1) of this subsection, whichever is later.

(e) Nothing in this section shall be interpreted to prevent an app-based driver from receiving a healthcare stipend from more than one network company for the same quarter.

(f)(1) On or before 14 days following the effective date of this section, and on or before each September 1 thereafter, the Health Connector shall publish the average statewide monthly premium paid, or anticipated to be paid, by an individual for the following calendar year for a Health Connector bronze tier health insurance plan, or any future successor equivalent plan.

(2) When computing the average as required by paragraph (1) of this subsection, the Health Connector shall divide the total monthly premium paid, or anticipated to be paid, by all enrollees in an individual Health Connector bronze tier health insurance plan, or any future successor equivalent plan, by the total number of individuals in the commonwealth who are enrolled in, or anticipated to be enrolled in, such plans.

(g) This section shall become inoperative in the event that the United States or the commonwealth implements a single-payer universal healthcare system or substantially similar system that expands coverage to the recipients of stipends under this section.

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Section 6. Paid Sick Time. Network companies shall provide app-based drivers with earned paid sick time as set forth in this section.

(a) "Earned paid sick time", is the time provided by a network company to an app-based driver as calculated under subsection (c) of this section. For each hour of earned paid sick time used by an app-based driver, the network company shall compensate the driver at a rate equal to the greater of the following:

(1) The app-based driver's average hourly earnings.

(2) 120 per cent of the minimum wage described in paragraph (1) of subsection (c) of section 4 of this chapter.

(b) An app-based driver shall only use earned paid sick time for the same reasons set forth for employees in paragraph (1) through paragraph (4) of subsection (c) of section 148C of chapter 149 of the Massachusetts General Laws.

(c) A network company shall provide a minimum of one hour of earned paid sick time for every 30 hours of engaged time recorded on or after the effective date of this section by an app-based driver in the network company's online-enabled application or platform. App-based drivers shall be entitled to first use accrued earned paid sick time upon recording 90 hours of engaged time on the network company's online-enabled application or platform. From that day forward, an app-based driver may use earned sick time as it accrues. A contract between a network company and an app-based driver may require the driver to use earned paid sick time in increments of up to 4 hours.

(d) App-based drivers may carry over up to 40 hours of unused earned paid sick time to the next calendar year, but are not entitled to use more than 40 hours in one calendar year. Network companies shall not be required to pay out unused earned paid sick time. If an app-based driver does not record any engaged time in a network company's online-enabled application or platform for 365 or more consecutive days or the app-based driver's contract with a network company is terminated, any unused earned paid sick time accrued up to that point with that network company shall no longer be valid or recognized.

(e) A network company may require certification when an app-based driver makes a request to use more than 24 hours of earned paid sick time in a 72-hour period or when reasonably necessary to prevent fraud. Any reasonable documentation signed by a health care provider indicating the need for earned paid sick time taken shall be deemed acceptable certification for absences. Nothing in this section shall be construed to require an app-based driver to provide as

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certification any information from a health care provider that would be in violation of federal law.

Section 7. Paid Family and Medical Leave.

(a) An app-based driver shall be entitled to coverage in the family leave and medical leave programs established by chapter 175M of the Massachusetts General Laws as set forth in this section unless the driver declines coverage via a written notification, which may be electronic, to the network company. Such declination shall continue to be effective until revoked by the driver. A network company shall provide an opportunity for an app-based driver to revoke a declination not less than annually. A declination or revocation of a declination shall be effective 15 days following an app-based driver's submission of a written notification to the network company.

(b) For purposes of this section and chapter 175M of the Massachusetts General Laws only, all of the following shall apply:

(1) An app-based driver who has not declined coverage, or revoked a previous declination, shall be considered a covered individual, as defined in section 1 of chapter 175M of the Massachusetts General Laws, on the same basis as a covered contract worker, as defined in chapter 175M; provided, however, that an app-based driver shall not be eligible for benefits until contributions have been made on the driver's behalf for at least 2 quarters of the driver's last 4 completed quarters.

(2) A network company shall be considered a covered business entity, as defined in chapter 175M of the Massachusetts General Laws, for the limited purpose of making contributions, as defined in chapter 175M, to the Family and Employment Security Trust Fund for each app-based driver who has not declined coverage in the family leave and medical leave programs pursuant to subsection (a). Contributions under this paragraph shall be made in the same manner as provided in section 6 of chapter 175M for covered contract workers, as defined in chapter 175M.

Section 8. Occupational Accident Insurance.

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

(1) "Average weekly earnings", the app-based driver's total earnings from all network companies during the 28 days prior to the accident divided by four.

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(2) "Online", means the time when an app-based driver is utilizing a network company's online-enabled application or platform and can receive requests for transportation services or delivery services from the network company, or during engaged time.

(3) "Maximum weekly compensation rate", has the same meaning as provided in section 1 of chapter 152 of the Massachusetts General Laws.

(4) "Minimum weekly compensation rate", has the same meaning as provided in section 1 of chapter 152 of the Massachusetts General Laws.

(b) Each network company, within 240 days of the effective date of this act, shall purchase occupational accident insurance, as described in this section, for all drivers who provide transportation or delivery services through the network company's online-enabled application or platform.

(c) Each network company shall file with the division of insurance, no later than 30 days after the commencement of a new policy year, a copy of the policy it has purchased for DNC couriers and TNC drivers, respectively. The division of insurance shall be treated by the insurer as a certificate holder for purposes of receiving notice of cancellation of the policy.

(d) The occupational accident insurance policy required under subsection (b) shall cover medical expenses and lost income resulting from injuries suffered while the app-based driver is online with a network company's online-enabled application or platform. Policies shall at a minimum include a total combined single limit of \$1,000,000 per accident and provide for payment of benefits to a covered individual as follows:

(1) Coverage for medical expenses incurred, up to at least \$1,000,000 and for up to 156 weeks following the injury;

(2) Continuous total disability payments, temporary total disability payments, and partial disability payments for injuries that occur while the driver is online equal to 66 per cent of the driver's average weekly earnings as of the date of injury but not more than the maximum weekly compensation rate, unless the average weekly earnings of the driver is less than the minimum weekly compensation rate, in which case the weekly compensation shall be equal to the driver's average weekly earnings. Payments under this paragraph shall be made for up to the first 156 weeks following the injury;

(3) For the benefit of spouses, children, or other dependents of drivers, accidental death insurance in the amount equal to 66 per cent of the driver's average weekly earnings as of the date of injury but not more than the maximum weekly compensation rate, unless the average

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weekly earnings of the driver is less than the minimum weekly compensation rate, in which case the weekly compensation shall be equal to the driver's average weekly earnings, times 156 weeks for injuries suffered by an app-based driver while the driver is online with the network company's online-enabled application or platform that result in death; and

(4) When injuries suffered by an app-based driver while the app-based driver is online result in death, an amount to pay for reasonable burial expenses not to exceed eight times the maximum weekly compensation rate.

(e) Occupational accident insurance under subsection (d) of this section shall not be required to cover an accident that occurs while online but outside of engaged time where the injured driver is in engaged time on one or more other network company platforms or where the driver is engaged in personal activities. If an accident is covered by occupational accident insurance maintained by more than one network company, the insurer of the network company against whom a claim is filed is entitled to contribution for the pro-rata share of coverage attributable to one or more other network companies up to the coverages and limits in subsection (d).

(f) Any benefits provided to a driver under this section shall be considered amounts payable under a driver's compensation law or disability benefit for the purpose of determining amounts payable under any insurance provided under section 113L of chapter 175 of the Massachusetts General Laws or for personal injury protection, as defined in section 34A of chapter 90 of the Massachusetts General Laws.

Section 9. Contract Formation and Termination.

(a) A contract between a network company and an app-based driver shall be made in writing, which may be electronic.

(b) Every contract between an app-based driver and a network company with regard to delivery services or transportation services shall be deemed to include terms incorporating the requirements in sections 4 through 8 of this chapter. The parties to such contracts may agree to supplemental terms which do not conflict with the terms deemed to be included by this chapter.

(c) A network company shall not terminate a contract with an app-based driver, except on grounds specified in the contract or as is required by law.

(d) A contract between a network company and an app-based driver shall provide drivers whose contracts are terminated by the network company the opportunity to appeal such termination with the network company.

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(e) A network company shall not, unless based upon a bona fide occupational qualification or public or app-based driver safety need, refuse to contract with or terminate the contract of an app-based driver based upon race, color, religious creed, national origin, sex, gender identity, genetic information, ancestry, status as a veteran, pregnancy or a condition related to said pregnancy including, but not limited to, lactation or the need to express breast milk for a nursing child, or sexual orientation, which shall not include persons whose sexual orientation involves minor children as the sex object.

Section 10. Interpretation of this chapter.

(a) This chapter shall govern the contract-based civil relationship between network-companies and app-based drivers.

(b) Notwithstanding any general or special law to the contrary, compliance with the provisions of this chapter shall not be interpreted or applied, either directly or indirectly, in a manner that treats network companies as employers of app-based drivers, or app-based drivers as employees of network companies, and any party seeking to establish that a person is not an app-based driver bears the burden of proof.

(c) Nothing in this Act shall be construed to impair any contracts in existence as of its effective date.

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Section 11. Effective Date.

(a) Except as provided in subsection (b), chapter 159AA of the Massachusetts General Laws shall take effect on the later of January 1, 2023, or as provided in Article 48 of the Amendments to the Massachusetts Constitution, as amended.

(b) Notwithstanding subsection (a), sections 3 and 4 of chapter 159AA shall take effect as provided in Article 48 of the Amendments to the Massachusetts Constitution, as amended.

The undersigned qualified voters of the Commonwealth of Massachusetts have personally reviewed the final text of this initiative petition, fully subscribe to its contents, agree to be one of its original signers and have signaled that agreement by initialing each page, and hereby submit the measure for approval by the people pursuant to Article 48 of the articles of amendment of the Constitution of the Commonwealth of Massachusetts, as amended by Article 74 of said articles of amendment.

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