

INITIATIVE PETITION FOR A LAW

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

An Act Giving Transportation Network Drivers the Option to Form a Union and Bargain Collectively

This Act, which adds Chapter 150F to the General Laws, creates the opportunity for workers in the digital transportation industry to form transportation network driver organizations and to negotiate on an industry-wide basis with companies in this industry on recommendations to the commonwealth that raise standards for the terms and conditions of work in this industry.

There shall be a new Chapter 150F that shall provide as follows:

Section 1. Findings and policy.

A. The commonwealth of Massachusetts recognizes that technological advancement has generated new “digital marketplaces” in the transportation sector, in which companies connect, through electronic media, customers seeking passenger transportation services to persons willing to supply that transportation service. These persons often suffer poor pay, inadequate health coverage, and irregular or inadequate working hours. It is hereby declared that the best interests of the commonwealth are served by providing transportation network drivers the opportunity to self-organize and designate representatives of their own choosing, and to bargain collectively in order to obtain sustainable wages, benefits and working conditions, subject to approval and ongoing supervision by the commonwealth. It is further declared that the best interests of the

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commonwealth are served by the prevention or prompt resolution of disputes between rideshare network companies and the persons who supply the labor to effectuate those services. This chapter shall be deemed an exercise of the police power of the commonwealth, and shall be liberally construed for the accomplishment of its purposes.

B. For the reasons set forth in subdivision A, it is the public policy of the commonwealth to displace competition with regulation of the terms and conditions of work for transportation network drivers set forth herein; and, consistent with this policy, to exempt from federal and commonwealth antitrust laws, the formation of transportation network driver organizations and multi-company associations for the purposes of collective bargaining between transportation network companies and transportation network drivers on an industry-wide basis, and to supervise, evaluate, and if approved, implement the resulting negotiated recommendations concerning the terms and conditions of work for all transportation network drivers in an industry when those recommendations are found by the Secretary of Labor to advance the public purposes stated in this section and are then made binding, regardless of the competitive consequences thereof.

1. The commonwealth intends that transportation network drivers have the right to form, join, or assist labor organizations, to be represented through representatives of their own choosing, and to engage in other concerted activities for the purpose of bargaining with

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transportation network companies and create negotiated recommendations, which shall form the basis for industry regulations.

2. The commonwealth intends transportation network companies have the right to form multi-company associations to represent them while bargaining with a transportation network driver organization to create negotiated recommendations, which shall form the basis for industry regulations.

3. The intent and policy of the commonwealth is for the statutory and non-statutory labor exemptions from the federal antitrust laws and analogous commonwealth laws, to apply to transportation network drivers who choose to form, join or assist labor organizations in labor activity in Massachusetts permitted hereby.

4. The commonwealth intends in authorizing and regulating transportation network companies and transportation network drivers engaging in labor activity permitted hereby that state action immunity apply to this statute, and that such companies and drivers be immune from the federal and commonwealth antitrust laws to the fullest extent possible in their conduct pursuant to this statute.

5. The commonwealth will actively supervise the labor activity permitted hereby conducted by transportation network companies and transportation network drivers pursuant to this statute to ensure that the conduct permitted by the statute protects the rights of workers and

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companies, encourages collective negotiation and labor peace, and otherwise advances the purposes of this Act.

Section 2. Definitions.

- A. "Active transportation network driver" or "active TND" means a transportation network driver so designated pursuant to the following process: Upon request by the board, and at the completion of each calendar quarter thereafter, each transportation network company ("TNC") shall provide the board with information that identifies all transportation network drivers ("TND") who completed five or more rides that originated in the commonwealth of Massachusetts on the TNC's platform in the previous six months. Each TNC shall provide this information within two weeks after the end of each calendar quarter (March 31st, June 30th, September 30th, December 31st). Such information shall include only the name of the TND, the TND driver's license number, and the number of rides the TND completed through the TNC's platform in the previous six months. The board shall combine the data provided by all TNCs to determine the distribution of the number of rides completed by all TNDs for which data has been submitted, and then shall determine the median number of rides across TNDs for whom data has been submitted in the previous six months. Any TND who completed more than the median number of rides shall be considered an active transportation network driver in the rideshare industry.

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- B. "Board" means the commonwealth employment relations board created by section 9R of Chapter 23 of the General Laws.
- C. "Company union" means any committee, employee representation plan, or association of workers or others that exists for the purpose, in whole or in part, of dealing with TNCs concerning grievances or terms and conditions of work for TNDs, which (1) a TNC has initiated or created or whose initiation or creation it has suggested, participated in or in the formulation of whose governing rules or policies or the conducting of whose management, operations or elections the TNC participates in or supervises; or (2) which the TNC maintains, finances, controls, dominates, or assists in maintaining or financing unless required to do so by this chapter or any regulations implementing this chapter, whether by compensating anyone for services performed in its behalf or by donating free services, equipment, materials, office or meeting space or anything else of value, or by any other means. A TND organization shall not be deemed a company union only because it has negotiated or been granted the right to designate workers to be released with pay for the purpose of providing representational services in labor-management affairs on behalf of workers represented by the TND organization, or where, in the course of providing representational services to workers for whom it is the exclusive bargaining representative, a TNC allows agents of the TND organization to meet with workers at the TNC's premises.

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- D. "Exclusive bargaining representative" means a TND organization certified by the board, in accordance with this chapter, as the representative of TNDs in a bargaining unit.
- E. "Network company" means a TNC, except that a business entity that maintains an online-enabled application or platform that meets all three of the following tests is not a network company: (1) it is used to facilitate primarily non-rideshare services within the commonwealth of Massachusetts, (2) less than seven and one-half percent of service requests fulfilled through the platform on an annual basis are for rideshare services, and (3) fewer than ten thousand service requests fulfilled through the platform in any year are for rideshare services. For purposes of this paragraph, all applications or platforms used by corporate entities under common control shall be considered a single application or platform.
- F. "Transportation network driver" or "TND" means a transportation network driver as described by § 1 of Chapter 159A1/2 of the General Laws. TND shall not include any individual who, with respect to the provision of services through a TNC's online enabled-application or platform, is an employee within the meaning of section 29 U.S.C. § 152(3).
- G. "Transportation network driver organization" or "TND organization" means any organization in which network drivers participate, and which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with network

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companies concerning grievances, terms or conditions of work, or of other mutual aid or protection and which is not a company union as defined herein.

- H. "Transportation network company" or "TNC" means a transportation network company as described by § 1 of Chapter 159A1/2 of the General Laws.
- I. "Unfair work practices" means only those unfair work practices listed in section 4, below.

Section 3. Rights of TNDs.

TNDs shall have the right of self-organization, to form, join, or assist TND organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion by TNCs, and shall also have the right to refrain from any of these activities. Nothing contained in this chapter shall be interpreted to prohibit TNDs from exercising the right to confer with TNCs at any time, provided that during such conference there is no attempt by such TNC, directly or indirectly, to interfere with, restrain or coerce such workers in the exercise of the rights guaranteed by this section.

Section 4. Unfair work practices.

- A. It shall be an unfair work practice for a TNC to:
1. fail or refuse to provide the board with an accurate list of the names, trips made, and contact information for TNDs, as required by this chapter;

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2. refuse to negotiate in good faith with a certified or recognized TND organization representing TNDs engaged with such TNC concerning wages, hours, or terms and conditions of work. Since the obligation to negotiate in good faith includes an obligation to provide requested information that has a bearing on the bargaining process, it is also an unfair work practice for a TNC to refuse to provide a certified or recognized TND organization with relevant information requested by the TND organization for the performance of its duties as the TND's bargaining representative;
3. refuse to provide a TND organization with a list of the names, addresses and telephone numbers of TNDs where the provision of such list is required by this chapter;
4. refuse to continue all the terms of a determination of terms and conditions of work prescribed by the Secretary of Labor pursuant to this chapter until a new determination is prescribed;
5. lockout TNDs. The term "lockout" shall mean, for the purposes of this section, a refusal by a TNC to permit a TND normal access to the TNC's means of connecting TNDs to individuals seeking transportation service as a result of a dispute with such workers or a TND organization representing such workers that affects wages, hours and other terms and conditions of work of such workers, provided, however, that a lockout shall not include a termination of engagement of a worker for good cause that does not involve such worker exercising any rights guaranteed by this chapter.

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6. To spy upon or keep under surveillance, whether directly or through agents or any other person, any activities of TNDs, those workers' representatives, or any other person, or any activities of such workers or those workers' representatives in the exercise of the rights guaranteed by this chapter.

7. To dominate or interfere with the formation, existence, or administration of any TND organization, or to contribute financial or other support to any such organization, directly or indirectly, unless required to by this chapter or by any regulations implementing this chapter, including but not limited to the following:

(a) by participating or assisting in, supervising, or controlling (i) the initiation or creation of any such organization or (ii) the meetings, management, operation, elections, formulation or amendment of constitution, rules or policies, of any such organization

(b) by offering incentives to TNDs to join any such organization;

(c) by donating free services, equipment, materials, office or meeting space or anything else of value for the use of any such organization; provided that a TNC shall not be prohibited from permitting workers to perform representational work protected under this chapter during working hours without loss of time or pay or from allowing agents of a TND organization that is the exclusive representative of its network workers from meeting with workers on its premises.

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8. To require a TND to join any company union or TND organization or to require a TND to refrain from forming, or joining or assisting a TND organization of their own choosing.

9. To encourage membership in any company union or discourage membership in any TND organization, by discrimination in regard to hire, tenure, or in any term or condition of employment or engagement.

10. To discharge or otherwise discriminate against a TND because they have signed or filed any affidavit, petition or complaint or given any information or testimony under this chapter.

11. To distribute or circulate any blacklist of individuals exercising any right created or confirmed by this chapter or of members of a TND organization, or to inform any person of the exercise by any individual of such right, or of the membership of any individual in a TND organization for the purpose of preventing individuals so blacklisted or so named from obtaining or retaining opportunities for remuneration.

12. To do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce TNDs in the exercise of the rights guaranteed by this chapter.

B. It shall be an unfair work practice for a TND organization to:

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1. refuse to collectively bargain in good faith with a TNC, provided it is the certified or recognized representative of the company's workers. Since the obligation to negotiate in good faith includes an obligation to provide requested information that relates to the bargaining process, it is also an unfair work practice for a certified or recognized TND to refuse to provide information requested by a TNC organization that is relevant to the bargaining process;

2. restrain or coerce TNDs in the exercise of the rights guaranteed by this chapter; provided, however, that this paragraph shall not impair the right of a TND organization to prescribe its own rules with respect to the acquisition or retention of membership in the organization;

3. fail to fulfill its duty of fair representation toward TNDs where it is the exclusive bargaining representative by acts or omissions that are arbitrary, discriminatory, or in bad faith.

4. restrain or coerce a TNC in the selection of its representatives for the purpose of bargaining or the adjustment of grievances.

C. Prevention of unfair work practices.

1. The board is empowered and directed, as hereinafter provided, to prevent any TNC and any TND organization, from engaging in any unfair work practice described in this chapter. This power shall not be affected or impaired by any means of adjustment,

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mediation or conciliation in labor disputes that have been or may hereafter be established by law or by the determination provided for in section 6(F), below. To prevent unfair work practices, each TNC shall, at least once each year, send a text message and an e-mail to each of its active TNDs in a form determined by the board notifying the TNDs of their rights under this chapter, and the procedure for filing an unfair work practice charge. The board shall also post a copy of this notice on its website.

2. Whenever it is charged that any TNC or TND organization has engaged in or is engaging in any such unfair work practice, the board, or any agent or agency designated by the board for such purposes, shall have power to issue and cause to be served upon such TNC or TND organization, a complaint stating the charges in that respect, and containing a notice of hearing before the board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after service of said complaint. Any such complaint may be amended by the member, agent or agency conducting the hearing or the board in its discretion at any time prior to the issuance of an order based thereon. The TNC or TND organization so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the board, any other person may be allowed to intervene in the said proceeding and to present testimony. In

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any such proceeding, the rules of evidence prevailing in courts of law or equity shall not be controlling.

3. If, upon the record before them such member, agent, or agency shall determine that an unfair work practice has been committed by a TNC or TND organization named in the complaint, they shall issue and cause to be served upon the person committing the unfair work practice an order requiring such person to cease and desist from such unfair work practice, and to take such further affirmative action as will effectuate the provisions of this chapter including, but not limited to (a) withdrawal of recognition from and refraining from bargaining collectively with any organization or association, agency or plan that is either defined in this chapter as a company union, or established, maintained or assisted by any action defined in this chapter as an unfair work practice; (b) awarding back pay or other restoration of compensation, without any reduction based on the TND's interim earnings or failure to earn interim earnings, consequential damages, and an additional amount as liquidated damages equal to two times the amount of damages awarded; (c) requiring reengagement or reestablishment of the TNC's preexisting relationship with improperly, adversely affected TNDs, with or without compensation, or maintenance of a preferential list from which such worker shall be re-engaged or the relationship reestablished, and such order may further require such respondent to make reports from time to time showing the extent to which the order has been complied with;

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(d) requiring respondent to provide the complainant with a list of all TNDs, together with those workers' physical and e-mail addresses and known telephone numbers; and (e) requiring the TNC to recognize and bargain with a TND organization if the board determines that the unfair work practice interfered with the TND's right to form or join a TND organization. If the member, agent, or agency determines that an unfair work practice has not been committed, they shall issue an order dismissing the complaint. An order issued pursuant to this subsection shall become final and binding unless, within ten days after notice thereof, any party requests review by the full board. A review may be made upon a written statement of the case by the member, agent, or agency agreed to by the parties, or upon written statements furnished by the parties, or, if any party or the board requests, upon a transcript of the testimony taken at the hearing, if any, together with such other testimony as the board may require.

If, upon the record before it, the board determines that an unfair practice has been committed it shall state its findings of fact and issue and cause to be served on the TNC or TND organization an order requiring such company or organization to cease and desist from such unfair work practice, and to take such further affirmative action as will effectuate the provisions of this chapter. If, upon the record before it, the board determines that an unfair work practice has not been committed, it shall state its findings of fact and shall issue an order dismissing this complaint.

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4. Until the record in a case shall have been filed in a court, as hereinafter provided, the board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

5. The board may institute appropriate proceedings in the appeals court for enforcement of its final orders.

6. Any party aggrieved by a final order of the board may institute proceedings for judicial review in the appeals court within thirty days after receipt of said order. The proceedings in the appeals court shall, insofar as applicable, be governed by the provisions of section fourteen of chapter thirty A.

7. Injunctive relief.

(a) A party filing an unfair work practice charge under this section may petition the board to obtain injunctive relief, pending a decision on the merits of said charge by the board, upon a showing that: (i) there is reasonable cause to believe an unfair work practice has occurred, and (ii) it appears that immediate and irreparable injury, loss or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating the maintenance of, or return to, the status quo to provide meaningful relief. Such immediate and irreparable harm may include the chilling of workers in the exercise of rights provided by this chapter.

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(b) Within ten days of the receipt by the board of such petition, if the board determines that a charging party has made a sufficient showing both that there is reasonable cause to believe an unfair work practice has occurred and it appears that immediate and irreparable injury, loss or damage will result therefrom, rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief, the board shall petition the superior court in any county where the unfair work practice occurred upon notice to all parties for the necessary injunctive relief or, if the board determines not to seek injunctive relief, the charging party may seek injunctive relief by petition to the superior court, in which case the board must be joined as a necessary party. The board or, where applicable, the charging party, shall not be required to give any undertakings or bond and shall not be liable for any damages or costs that may have been sustained by reason of any injunctive relief ordered. If the board fails to act within ten days as provided herein, the board, for purposes of review, shall be deemed to have made a final order determining not to seek injunctive relief. In the case of a TNC's failure to provide an accurate list of names and addresses of TNDs, immediate and irreparable injury, loss, or damage shall be presumed.

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(c) Injunctive relief may be granted by the court, after hearing all parties, if it determines that there is reasonable cause to believe an unfair work practice has occurred and that it appears that immediate and irreparable injury, loss, or damage will result thereby rendering a resulting judgment on the merits ineffectual necessitating maintenance of, or return to, the status quo to provide meaningful relief. Such relief shall expire on decision by the board finding no unfair work practice to have occurred, successful appeal of the grant of injunction relief, or motion by respondent to vacate or modify the injunction pursuant to the provisions of the rules of civil procedure. The board shall conclude the hearing process and issue a decision on the merits within one hundred eighty days after the imposition of such injunctive relief unless mutually agreed by the respondent and charging party.

(d) A decision on the merits of the unfair work practice charge by the board finding an unfair work practice to have occurred shall continue the injunctive relief until either: (i) the respondent implements the remedy, or (ii) the respondent successfully moves in court to set aside the board's order, pursuant to provisions of Chapter 30A of the General Laws.

(e) Any injunctive relief in effect pending a decision by the board (i) shall expire upon a decision by the board finding no unfair work practice to have

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occurred, of which the board shall notify the court within two business days, or
(ii) shall remain in effect only to the extent it implements any remedial order
issued by the board in its decision, of which the board shall notify the court within
two business days.

(f) The appeal of any order granting, denying, modifying, or vacating
injunctive relief ordered by the court pursuant to this subdivision shall be made in
accordance with the rules of appellate procedure.

(g) Except as provided in this section, judicial review of the orders of the
board shall be as provided for section 9, below.

Section 5. Representatives.

A. After receiving the information identified in Section 2(A) from each TNC at the
conclusion of each calendar quarter (March 31, June 30, September 30, December 31), the board
shall provide each TNC with the names of the active TNDs who have driven for that TNC, and
each TNC shall have 30 days to submit to the board, in an electronic format to be determined by
the board, the phone numbers, mailing addresses, and email addresses for each active TND.
These records shall not be subject to disclosure pursuant to Chapter 66 of the General Laws.

B. Bargaining unit. For purposes of this chapter, each TND shall be included in an
industry-wide bargaining unit of all TNDs.

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C. Showing of designation of representative. A TND organization may demonstrate that it has been designated as a bargaining representative by presenting to the board cards, petitions, or other evidence, which may be in electronic form, sufficient to show the TND has authorized the TND organization to act as the worker's exclusive bargaining representative. To be valid, such card, petition, or other evidence must have been executed by the worker within one year of the date the TND organization submits the evidence to the board. Execution may be electronic.

D. Representative status.

1. Upon the request of a TND organization, the board shall make a determination that such organization has been designated as bargaining representative by at least five percent of active TNDs in the bargaining unit.
2. Once the board determines that the TND organization has been designated as the bargaining representative of at least five percent of active TNDs in the bargaining unit, the board shall (a) require each TNC to send a notice, in a form determined by the board, that the TND organization is seeking to represent TNDs for the purpose of initiating a bargaining process in order to establish terms and conditions for the industry; and (b) provide the TND organization with a complete list of names, phone numbers, mailing address, and electronic mail address for all active TNDs in the bargaining unit. The board will provide the TND organization with an updated list each quarter for the next year. For six months from the date

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of the board's determination that a TND organization has met the five percent threshold in a bargaining unit, no other TND organization may be certified as the exclusive bargaining representative of those workers without an election.

3. Exclusive representative status. A TND organization that provides evidence to the board that it has been designated as bargaining representative by twenty-five percent of active TNDs in the bargaining unit shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit. In the alternative, a TND organization that has been designated as the bargaining representative of at least five percent of active TNDs in the bargaining unit may petition the board to conduct an election. The election shall be conducted as expeditiously as possible, and if the TND organization receives a majority of valid votes cast it shall be certified as the exclusive bargaining representative.
4. Determination of Exclusive Representative Status in the Event of a Dispute among TND organizations.

(a) If a TND organization seeking certification as the exclusive bargaining representative provides evidence that shows that less than a majority of active TNDs have designated the TND organization as their bargaining representative, the board shall wait seven days before certifying the TND organization as exclusive bargaining representative. If, during those seven

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days, another TND organization provides evidence that at least 25 percent of active TNDs in the bargaining unit have designated it as their bargaining representative, or a TND provides evidence that at least 25 percent of active TNDs in the bargaining unit do not wish to be represented by any TND organization, then the board shall hold an election among all active TNDs in the bargaining unit. Such election shall be conducted as expeditiously as possible. A TND organization receiving a majority of the valid votes cast shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit. When two or more TND organizations are on the ballot and none of the choices (the TND organizations or "no worker organization") receives a majority of the valid votes cast, there shall be a run-off election between the two choices receiving the largest and second largest number of votes. A TND organization receiving a majority of the valid votes cast in the run-off shall be certified as the exclusive bargaining representative of all TNDs in the bargaining unit, and it shall owe a duty to fairly represent all such workers. If a majority of the valid votes cast are for "no worker organization," then the board will not certify any worker organization as the exclusive bargaining representative. For purposes of this provision,

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the operative list of active TNDs shall be based on the most recent quarterly list provided by the TNCs in accordance with section 5(A).

(b) A TND organization certified as the exclusive bargaining representative shall have the exclusive authority to represent the TNDs in the bargaining unit, without challenge by another TND organization, for the greater of (i) one year following certification; or (ii) the length of time that a final determination rendered by the Secretary of Labor under section 6(F) is in effect, provided that such period shall not be longer than three years following the date of issuance of such final determination. During the times when an exclusive bargaining representative is subject to challenge, TNDs may file for a decertification election upon a showing that at least twenty-five percent of the active TNDs in the bargaining unit have demonstrated support for the decertification. The board will then schedule an election to determine whether the TND organization has retained its status as exclusive bargaining representative. The TND organization shall retain its status as exclusive bargaining representative if it receives a majority of valid votes cast by active TNDs in the bargaining unit.

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(c) If a TND organization has been designated the exclusive bargaining representative with respect to a bargaining unit, only that TND organization shall be entitled to (i) receive from the TNCs a list of all of their TNDs, together with phone numbers, mailing addresses, and electronic mail addresses; and (ii) shall be entitled to engage in bargaining with the TNCs for recommendations to the Secretary of Labor concerning wages, benefits and terms and conditions of work of the TNDs.

(d) Dues Deduction. A TND organization that has been designated as the exclusive bargaining representative with respect to the bargaining unit shall have a right to voluntary membership dues deduction upon presentation of dues deduction authorization cards signed by individual TNDs, which may be in electronic form. A TNC shall commence making such deductions as soon as practicable, but in no case later than thirty days after receiving proof of a signed dues deduction authorization card, and such dues shall be submitted to the TND organization within thirty days of the deduction. A TNC shall accept a signed authorization to deduct dues in any format permitted by Chapter 110G of the General Laws. The right to such membership dues deduction shall remain in full force and effect

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until an individual revokes membership in the TND organization in writing in accordance with the terms of the signed authorization.

Section 6. Bargaining, Impasse resolution procedures, and final determination by the Secretary of Labor.

A. Once the board determines that a TND organization is the exclusive bargaining representative for the bargaining unit, the board shall notify all TNCs, and all TNCs shall be required to bargain with the exclusive bargaining representative concerning wages, benefits, and terms and conditions of work. The terms and conditions to be bargained include, but are not limited to, the criteria for deactivating a TND and a dispute resolution procedure for resolving claims alleging unjust deactivation. To facilitate negotiations, the TNCs may form an industry association to negotiate on their behalf. If the TNCs choose not to form an association, any recommended agreement must be approved by (i) at least two industry member TNCs and (ii) member TNCs representing at least eighty percent of the market share of that industry in Massachusetts, with votes determined in proportion to the number of rides completed by TNDs contracting directly with the TNC in the two calendar quarters preceding the recognition of the certified representative.

B. Once the TND organization and the TNCs have reached a set of negotiated recommendations for the industry, the negotiated recommendations shall be submitted by the TND organization to a vote by all TNDs in the industry who have completed at least one

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hundred trips in the previous quarter. If approved by a majority of TNDs who vote, the negotiated recommendations shall be submitted to the Secretary of Labor for approval. If a majority of valid votes cast by the TNDs are not in favor of the negotiated recommendations, the transportation network worker organization and the TNCs will resume bargaining.

C. For purposes of this section, an impasse may be deemed to exist if the TNCs and exclusive bargaining representative fail to achieve agreement by the end of a one hundred eighty-day period from the date a TND organization has been designated as the exclusive bargaining representative or from the expiration date of a prior determination by the Secretary of Labor as provided for in paragraph F, below.

D. Upon impasse, any of the affected TNCs or the exclusive bargaining representative may request the board to render assistance as provided in this section.

E. Upon receiving a timely request from an exclusive bargaining representative for commencement of an impasse proceeding, the board shall aid the parties as follows:

1. To assist the parties to effect a voluntary resolution of the dispute, the board shall appoint a mediator from a list of qualified persons maintained by the board; the parties shall be free to select a mediator satisfactory to them or to decline such selection.
2. If the mediator is unable to achieve agreement between the parties concerning an appropriate resolution within thirty days after the board has provided the parties

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the list of mediators, any party may petition the board to refer the dispute to an arbitrator.

3. Upon timely petition of either party, the board shall refer the dispute to an arbitrator as hereinafter provided.

(a) Prior to submitting the dispute to an arbitrator, the board shall conduct an election among all TNDs in the industry who have completed at least one hundred trips in the previous quarter. The TNDs will choose between submitting the dispute to the arbitrator or decertifying the exclusive bargaining representative. If the majority of eligible votes cast are for decertification the exclusive bargaining representative shall be decertified and any existing regulations shall remain in place until they expire as provided in paragraph F below.

(b). If a majority of TNDs who vote choose to have an arbitrator appointed, the exclusive bargaining representative shall notify the board of the need to appoint an arbitrator, and the board shall notify the TNCs of this request. Each of the two groups of affected parties (affected TNCs being one group, and the exclusive bargaining representative being the other group) shall have an equal say in the selection of the arbitrator and each of the two groups shall share equally the cost of the arbitrator. If the parties are unable to agree upon the arbitrator within seven days after the board notifies the TNCs of the need to appoint an arbitrator, the

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board shall submit to the parties a list of qualified, disinterested persons for the selection of an arbitrator. A representative of each of the two groups shall alternately strike from the list one of the names with the order of striking determined by lot, until the remaining one person shall be designated as the arbitrator. Each group shall select its representative for this purpose as it sees fit. A group's failure to agree upon the designation of its representative shall result in the failure of the striking procedure, but shall not impede the board's appointment of the arbitrator upon such failure. The striking process shall be completed within five days of receipt of the board's list. The representatives who undertake the striking shall notify the board of the designated arbitrator. In the event the parties are unable to select the arbitrator within five days following receipt of this list, the board shall appoint the arbitrator.

(c) The arbitrator shall hold hearings on all matters related to the dispute. The parties may be heard either in person, by counsel, or by other representatives, as they may respectively designate. The arbitrator shall determine the order of presentation by the parties, and shall have discretion and authority to decide all procedural issues that may be raised;

(d) The parties, including all TNCs engaging at least fifty TNDs in the bargaining unit and the exclusive bargaining representative affected, may present, either

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orally or in writing, or both, statements of fact, supporting witnesses and other evidence, and argument of their respective positions with respect to each case. The arbitrator shall have authority to require the production of such additional evidence, either oral or written as she or he may desire from the parties and shall provide at the request of either group of parties that a full and complete record be kept of any such hearings, the cost of such record to be borne by the requesting party. If such record is created, it shall be shared with all parties regardless of which party paid for it.

(e) Any TNC engaging less than fifty TNDs in the bargaining unit shall have the opportunity to make a written submission to the arbitrator.

(f) The arbitrator shall make a just and reasonable determination of the matters in dispute, and shall issue a determination that shall apply to all TNCs and the exclusive bargaining representative. In arriving at such determination, the arbitrator shall specify the basis for his or her findings, taking into consideration, in addition to any factors recommended by the parties that the arbitrator finds to be consistent with this chapter, including the following:

- i. whether the wages, benefits, hours, and conditions of work of the TNDs achieve the policy goals set forth subdivision A of Section 1. This amount must take into account the real cost of living, it may substantially

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exceed any statutory minimum wage, and should be a sufficient amount such that the TNDs do not need to rely upon any public benefits;

ii. whether the most efficient way to provide benefits is through a portable benefits fund, and if so, how to best assess each TNC a portion of the costs of providing those benefits;

iii. the financial ability of the affected TNCs to pay for the compensation and benefits in question and the impact on the delivery of services provided by the companies;

iv. the establishment of reasonable dispute resolution mechanisms that will allow TNDs a reasonable expectation of uninterrupted work and permit TNCs to alter or terminate their relationships with workers if there is just cause for such; and

v. comparison of peculiarities in regard to other trades or professions, including specifically, (a) hazards of work; (b) physical qualifications; (c) educational qualifications; (d) mental qualifications; and (e) job training and skills.

F. Any recommendations agreed upon between TNCs and a TND organization acting as exclusive bargaining representative of TNDs in the bargaining unit and/or any determination reached by an arbitrator under this chapter shall be subject to review and approval by the

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Secretary of Labor. In deciding whether to grant approval to the arbitrator's recommendations, the Secretary of Labor's decision shall be based on the factors specified in paragraph E(3)(f), above, and the policies set forth in section 1. In deciding whether to approve such agreement or determination, the Secretary of Labor shall afford the exclusive representative, all TNCs, and TNDs no more than thirty days to submit comments and arguments concerning whether approval is warranted. Within sixty days of the deadline for submitting comments, the Secretary of Labor shall approve or disapprove the agreement or determination. In the event of disapproval, the Secretary of Labor may make recommendations for amendments to the agreement or determination that would cause the Secretary of Labor to approve and afford the parties an opportunity to respond to those recommendations. The final determination by the Secretary of Labor shall include a date following which new terms may be set for the bargaining unit which date shall not be more than three years following the date of the issuance of the determination. If during the three year period (or any lesser period that the Secretary of Labor sets as a duration for the final determination), the Secretary of Labor determines that market conditions have changed, the Secretary of Labor shall give the exclusive bargaining representative, all TNCs, and TNDs the opportunity to submit comments and arguments concerning whether the final determination should be modified, and after receiving those comments, the Secretary of Labor may modify the final determination.

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Section 7. Minimum Labor Standards. No agreement or determination made pursuant to this chapter shall diminish or erode any minimum labor standard that would otherwise apply to a TND.

Section 8. Preemption. This law shall not preempt any commonwealth enactment which provides greater benefits or protection to a TND.

Section 9. Judicial Review.

A. Final orders of the board made pursuant to this chapter shall be conclusive against all parties to its proceedings and persons who have had an opportunity to be parties to its proceedings unless reversed or modified in proceedings for enforcement or judicial review as herein provided. Final orders of the board shall be subject to review as provided in section 6 of Chapter 150A of the General Laws, provided that a final order of the board under section 5 of this chapter concerning the scope of bargaining units or the designation of a TND organization as an exclusive bargaining representative or as entitled to the production of lists of TNDs shall be overturned only if it is found to be arbitrary and capricious.

B. Final orders of the Secretary of Labor pursuant to section 6(F) of this chapter shall be conclusive against all affected TND organizations and all TNCs in the industry unless reversed or modified in proceedings for enforcement or judicial review as herein provided. Such final orders shall be subject to review in accordance with the provisions of section fourteen of

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chapter 30A of the General Laws, provided, however, that the determination of the Secretary of Labor shall only be overturned if it is found to be arbitrary and capricious.

(C) Except in a proceeding brought to challenge a final order of the Secretary of Labor, the determination of an arbitrator shall not be subject to judicial review.

Section 10. Rules and Regulations.

The board shall make such rules and regulations as may be appropriate to effectuate the purposes and provisions of this chapter.

Section 11. Conflict of Laws.

In the event of any conflict with Chapter 150A of the General Laws, the provisions of this Chapter shall prevail.

Section 12. Severability.

The provisions of this act shall be severable and if any phrase, clause, sentence or provision of this article or the applicability thereof to any person, entity, or circumstance shall be held invalid, the remainder of this act and the application thereof shall not be affected.

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