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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

(UNLIMITED JURISDICTION)

HECTOR CASTELLANOS, JOSEPH DELGADO, SAORI OKAWA, MICHAEL ROBINSON, SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL, and SERVICE EMPLOYEES INTERNATIONAL UNION,

Petitioners,

vs.

STATE OF CALIFORNIA and KATIE HAGEN, in her official capacity as Director of the California Department of Industrial Relations

Respondents.

No.: _____

VERIFIED PETITION FOR WRIT OF MANDATE

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INTRODUCTION

Petitioners respectfully petition this Court for a writ of mandate holding that Proposition 22, which was adopted at the November 3, 2020 statewide election, violates the California Constitution and is therefore invalid and unenforceable.

Proposition 22 is a statutory initiative that designates drivers who work for app-based companies like Uber, Lyft, and DoorDash as independent contractors rather than employees if certain criteria are satisfied. Although titled the "Protect App-Based Drivers and Services Act," Proposition 22 actually withdraws minimum employment protections from hundreds of thousands of California workers. That result would be profoundly harmful to many workers, but not necessarily unconstitutional, if the measure had not overreached in several significant ways. The drafters of Proposition 22, however, improperly attempted to use a statutory initiative to usurp the constitutional authority of the Legislature under articles IV and XIV of the state Constitution, as well as the inherent authority of the courts to determine what is an initiative amendment within the meaning of article II, section 10.

Article XIV, section 4 of the California Constitution grants to the Legislature "plenary power, unlimited by any provision of this Constitution" to establish and enforce a complete system of workers' compensation. (Cal. Const., art. XIV, § 4.) The courts have held that section 4's grant of authority "unlimited by any provision of this Constitution" constitutes a pro tanto repeal of conflicting constitutional provisions, one that therefore precludes interference with the Legislature's authority through use of a statutory initiative like Proposition 22. By purporting to remove app-based drivers from California's workers' compensation system – and by purporting to limit the Legislature's authority to extend workers' compensation benefits to this group of workers in the future – Proposition 22 conflicts with article XIV, section 4. Under the express terms of Proposition 22 itself, this conflict requires that Proposition 22 be invalidated in toto.

Proposition 22 invades the authority of the judiciary as well. Article II, section 10 of the California Constitution prohibits the Legislature from amending an initiative statute without voter approval unless the initiative permits such amendment. It is the courts' role, as the final arbiter of the

Constitution, to determine whether a statute passed by the Legislature constitutes an "amendment" of an initiative statute within the meaning of section 10. Yet, in an obscure provision at the end of the measure, Proposition 22 purports to define as "amendments" any statutes concerning two areas of law not otherwise addressed in the measure's substance.

In particular, Proposition 22 defines as an "amendment" any statute that authorizes an entity or organization to represent app-based drivers, including a union that could bargain collectively for better wages and benefits, as well as any statute that regulates app-based drivers differently based on their classification status. No substantive provisions in Proposition 22 address either of these subjects. Under California Supreme Court precedent, legislation that addresses these subjects therefore would not "amend" Proposition 22 for purposes of the state Constitution. Yet the drafters of Proposition 22 claim the right to declare any legislation to address these subjects as "amendments" that can only be enacted by a nearly impossible seven-eighths supermajority vote. In doing so, the drafters have impermissibly usurped the courts' authority to "say what the law is" by determining what constitutes an "amendment" and have thereby impermissibly invaded the Legislature's broad authority to legislate in areas not substantively addressed by the initiative.

Finally, Proposition 22 violates the single-subject rule by burying these cryptic amendment provisions on subjects not substantively addressed in the measure, and in language that most voters would not understand. The measure grossly deceived the voters, who were not told they were voting to prevent the Legislature from granting the drivers collective bargaining rights, or to preclude the Legislature from providing incentives for companies to give app-based drivers more than the minimal wages and benefits provided by Proposition 22. If allowed to stand, the ploy will be repeated in other initiatives as an effective means to slip potentially unpopular provisions past the voters.

These fatal defects in Proposition 22 affect not only app-based drivers and the public they serve, but the initiative process itself. The courts have indicated that judicial review of the substantive constitutionality of initiative measures should take place only after the election. Now that the election is over, the court should hold that Proposition 22 is invalid and issue a peremptory writ restraining any future enforcement. A statutory initiative cannot limit legislative authority that the

Constitution provides is "unlimited" or alter the separation of powers provided by the state Constitution, and no initiative, statutory or constitutional, can deceive voters into limiting the powers of the Legislature or the judiciary.

NEED FOR URGENT RELIEF

1. This case involves pure legal issues of broad public importance that require speedy and final resolution. Proposition 22 will have profound and immediate effects on the lives of hundreds of thousands of app-based drivers and their families. Under Proposition 22, app-based drivers will be denied the minimum employment protections, including worker's compensation benefits, to which these workers otherwise would be entitled by law. The harm caused to individuals by the denial of such protections and benefits is ongoing and therefore requires prompt review and action by the courts.

2. Urgent relief is also necessary because many cases now pending before state and federal courts, including cases where statewide injunctive relief has been ordered, turn on whether app-based drivers are employees or independent contractors for purposes of California law, including Assembly Bill 5, which was enacted in 2020 and which Proposition 22 was designed to overturn. Tens of thousands of individual app-based drivers have also filed misclassification claims with arbitrators or been compelled to individual arbitrations. (*See, e.g., Postmates Inc. v. 10,356 Individuals,* 2020 WL 1908302 (C.D. Cal. Apr. 15, 2020).) Prompt resolution of the measure's constitutionality is therefore a necessary step in resolving the multiplicity of litigation around the status of these workers.

3. Unless the issues underlying Proposition 22 are addressed expeditiously, the Legislature will also be chilled or prevented from exercising its constitutional authority. Without a definitive answer about whether Proposition 22's essentially impossible seven-eighths threshold must be met, members of the Legislature will not commit the considerable time and resources necessary to develop legislation to help app-based drivers by authorizing collective representation or bargaining or by creating incentives for companies to treat them as employees or improve their conditions as independent contractors. The classification status of workers has been a major focus of the

Legislature's efforts over the past two years; Proposition 22 is likely to cause the Legislature to suspend all such efforts.

4. For these reasons, petitioners respectfully request that the Court schedule this matter for hearing at the earliest available date so that final relief can be granted expeditiously.

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to article VI, section 10 of the California Constitution and Code of Civil Procedure sections 1085 and 1086.

6. Petitioners are entitled to a writ of mandate because they do not have a "plain, speedy, and adequate remedy, in the ordinary course of law." (Code Civ. Proc., § 1086.) Petitioners are beneficially interested in the issuance of such a writ in this case because they will be affected by Proposition 22.

7. Venue is proper in this Court because respondents maintain offices in Alameda County and because at least one petitioner performs work in Alameda County as a driver for app-based companies.

PARTIES

8. Petitioner HECTOR CASTELLANOS is a California resident who has worked for about five years as a driver for app-based companies including Uber and Lyft. He would be directly affected by Proposition 22.

9. Petitioner JOSEPH DELGADO is a California resident and a regular consumer of the services of companies that use app-based drivers. He is also a California taxpayer.

10. Petitioner SAORI OKAWA is a California resident who has worked for approximately three years as a driver for app-based companies including Uber, Lyft, DoorDash, and Instacart. She stopped driving for Uber and Lyft due to the COVID pandemic. She currently drives for DoorDash and Instacart. She typically drives in Alameda County on two days each week. She would be directly affected by Proposition 22.

11. Petitioner MICHAEL ROBINSON is a California resident who worked for about five years as a driver for Lyft. Petitioner has temporarily stopped driving for app-based

companies because of the COVID pandemic, but intends to resume driving in the future. He would be directly affected by Proposition 22.

12. Petitioner SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL ("SEIU California") is comprised of SEIU local unions representing over 700,000 California workers throughout the state economy. SEIU California's mission is to secure economic fairness for working people and create an equitable, just and prosperous California. SEIU California's affiliated local unions include SEIU Local 721, which represents over 95,000 workers in Southern California, and SEIU Local 1021, which represents nearly 60,000 workers in Northern California. SEIU Local 721 supports gig economy workers through its project Mobile Workers Alliance. Mobile Workers Alliance includes approximately 18,000 Southern California app-based drivers and provides drivers with resources to access and organize for better employment protections and benefits. Mobile Workers Alliance engages in organizing, service, advocacy, and educational activities on the local and state level. SEIU Local 1021 supports gig workers through its project We Drive Progress, a movement joined by over 6,500 app-based drivers that fights for better wages, benefits, and working conditions for drivers. SEIU California also supports other gig workers' advocacy projects that advocate for app-based drivers, including Gig Workers Rising.

13. Petitioner SERVICE EMPLOYEES INTERNATIONAL UNION ("SEIU") is a labor organization of about 2 million members that is dedicated to improving the lives of workers and their families and creating a more just and humane society. SEIU has affiliates throughout the United States, including SEIU California and SEIU Locals 721 and 1021.

14. Respondent STATE OF CALIFORNIA is the entity identified in section 1 of article III of the State Constitution in which all of the powers of government are vested pursuant to that article, including the power to enforce statutes enacted through the initiative process. The STATE OF CALIFORNIA may not enforce a statute enacted in violation of the State Constitution.

15. Respondent KATIE HAGEN is the Director of the California Department of Industrial Relations ("DIR"). DIR administers and enforces California's laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, and medical care and other benefits for

workers. KATIE HAGEN is sued in her official capacity only. On information and belief, unless the courts grant relief, KATIE HAGEN will follow state law requiring her to rely on Proposition 22, and so will refuse to perform her mandatory duty to enforce California's minimum labor standards law to protect app-based drivers, thereby depriving them of legal protections to which they otherwise would be entitled.

BACKGROUND

16. In *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* (2018) 4 Cal.5th 903 (*Dynamex*), the California Supreme Court resolved a dispute about one aspect of the proper test for employee status for purposes of the wage orders issued by the Industrial Welfare Commission. The Court concluded that a worker who is an employee under the "ABC" test is an employee, rather than an independent contractor, for purposes of the wage orders. (*Id.*)

17. The Legislature codified the *Dynamex* decision in Assembly Bill 5 (AB 5), which became effective January 1, 2020, and Assembly Bill 2257 (AB 2257), which became effective September 4, 2020. This legislation also adopted the "ABC" test for employment status for purposes of the Labor Code and Unemployment Insurance Code, including minimum wages, paid sick days, anti-retaliation protections, workers' compensation, and unemployment insurance purposes.

THE PROVISIONS OF PROPOSITION 22

18. Proposition 22 was written and funded primarily by a group of wealthy app-based companies that rely on drivers to provide services, including Uber, Lyft and DoorDash. The measure was approved by voters on November 3, 2020. A copy of the text of Proposition 22 appears as Exhibit A to this petition.

19. Proposition 22 provides that "app-based drivers," i.e., drivers who work for transportation and delivery network companies such as Uber, Lyft and DoorDash, are independent contractors rather than employees if certain criteria are satisfied. (New Bus. & Prof. Code § 7451.)[1] Because the measure expressly states that it applies notwithstanding existing law, it thereby excludes

[1] Hereinafter, unspecified statutory citations are to the Business and Professions Code.

these "app-based drivers" from the protections of the Industrial Welfare Commission's wage orders, the Labor Code, and the Unemployment Insurance Code.

20. Proposition 22 provides some alternative wage and healthcare standards for "app-based drivers" and requires companies to provide certain specific accident insurance and to adopt other measures. (New §§ 7452-7462.) The protections and benefits Proposition 22 affords app-based drivers are inferior to those guaranteed to all employees.

21. Proposition 22 expressly preempts local governments from regulating "app-based driver" employment status and benefits. (New § 7464.)

22. Proposition 22 also precludes the Legislature from making amendments to the initiative unless the statute is "consistent with, and furthers the purpose" of the initiative and is approved by a seven-eighths vote of both houses of the Legislature. (New § 7465.)

23. Proposition 22 specifies two areas of legislation that must be treated as "amendments." (New § 7465(c)(3) & (4).)

24. Paragraph (3) of subdivision (c) of new section 7465 states that "[a]ny statute that prohibits app-based drivers from performing a particular rideshare service or delivery service while allowing other individuals or entities to perform the same rideshare service or delivery service, or otherwise imposes unequal regulatory burdens upon app-based drivers based on their classification status, constitutes an amendment of this [initiative] and must be enacted in compliance with the procedures governing amendments . . ."

25. Paragraph (4) of subdivision (c) of new section 7465 states that "[a]ny statute that authorizes any entity or organization to represent the interests of app-based drivers in connection with drivers' contractual relationships with network companies, or drivers' compensation, benefits, or working conditions, constitutes an amendment of this [initiative] and must be enacted in compliance with the procedures governing amendments . . ."

26. New section 7467(a) contains a standard severability clause, but section 7467(b) provides that if any "portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application" of new section 7451 – the operative provision that makes app-based drivers independent contractors – is held invalid by any court of competent jurisdiction, "that decision shall apply to the

entirety of the remaining provisions of this chapter, and no provision of this chapter shall be deemed valid or given force of law."

PROPOSITION 22 VIOLATES THE CALIFORNIA CONSTITUTION

27. Article XIV of the California Constitution makes liberal provision for the protection of workers by providing that the Legislature has the authority to "provide for minimum wages and the general welfare of employees and for those purposes may confer on a commission legislative, executive, and judicial powers." (Cal. Const., art. XIV, § 1.)

28. Article XIV, section 4 further provides that "[t]he Legislature is hereby expressly vested with *plenary power, unlimited by any provision of this Constitution*, to create, and enforce a complete system of workers' compensation, by appropriate legislation . . . ." (Emphasis added.) Section 4 goes on to describe in great detail what a "complete system of workers' compensation" means, including "full provision" for the following: "securing safety in places of employment;" adequate medical care for injured workers; "adequate insurance coverage against liability to pay or furnish compensation;" "securing the payment of compensation" through establishment of an administrative body "with all the requisite governmental functions to determine any dispute or matter arising under such legislation," which, if the Legislature so chooses, can divest the superior courts of jurisdiction so long as review is available in the appellate courts. Section 4 states that "all of [these] matters are expressly declared to be the social public policy of this State, binding upon all departments of the state government."

29. Proposition 22 conflicts with article XIV, section 4, by purporting to entirely remove app-based drivers from the "complete system of worker's compensation" the Legislature has extended to them and to limit the authority of the Legislature to extend such worker's compensation benefits to app-based drivers in the future. Because the Legislature has "plenary power, unlimited by any provision of this Constitution" to address worker's compensation, including occupational safety, an initiative statute cannot limit the Legislature's authority in this area.

30. Because Proposition 22 provides that "the entirety" of Proposition 22 is invalid if "any . . . application" of new section 7451 "is for any reason held to be invalid" (new Bus. & Prof.

Code § 7467(b)), and new section 7451 is unconstitutional insofar as it purports to remove app-based drivers from the worker's compensation system and limit the Legislature's authority to address worker's compensation benefits for app-based drivers, the entirety of Proposition 22 must be invalidated.

31. Proposition 22 also purports to limit the judiciary's power to determine whether particular legislation constitutes an amendment to a statutory initiative for purposes of article II, section 10 of the State Constitution, which prohibits the Legislature from amending an initiative statute unless the initiative itself provides for amendments. (Cal. Const., art. II, § 10(c).) In previous cases, the courts have confirmed that the Legislature is free to enact laws addressing the general subject matter of an initiative, or a "related but distinct area" of law, so long as the legislation addresses conduct that an initiative measure "*does not specifically authorize or prohibit*." (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025, citing *Cnty. of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 830 & *People v. Cooper* (2002) 27 Cal.4th 38, 47, emphasis added.)

32. Paragraphs (3) and (4) of new section 7465(c) purport to declare that any legislation that authorizes the organization or representation of app-based drivers or that imposes regulations based on the drivers' classification status constitutes an "amendment" under article II, section 10, such that it can only be enacted by seven-eighths vote of the Legislature and only if it furthers the purposes of Proposition 22. Under the Supreme Court's construction of article II, section 10(c), however, neither of the areas of legislation identified in paragraphs (3) or (4) of new section 7465(c) can be considered an "amendment" of Proposition 22, because legislation addressing the subjects would neither prohibit what the initiative authorizes, nor authorize what the initiative prohibits.

33. Although the voters have the power to set conditions for initiative amendments, they do not have the power to say whether legislation addressing a certain topic is in fact an amendment to the initiative. The courts have the final word in construing the state Constitution. (*People v. Jacinto* (2010) 49 Cal.4th 263, 269.)

34. Proposition 22 attempts to deprive the judiciary of its role under our constitutional system to determine what constitutes an "amendment" under article II, section 10. In

doing so, and by requiring approval of seven-eighths of the Legislature to legislate in these areas, Proposition 22 impermissibly restricts the authority of the Legislature to act by simple majority vote in areas not specifically addressed by the initiative.

35. Article II, section 8(d) of the state Constitution provides that "[a]n initiative measure embracing more than one subject may not be submitted to the electors or have any effect." The general rule is that all provisions of a proposed measure must be "'reasonably germane' to each other,' and to the general purpose or object of the initiative." (*Senate v. Jones* (1999) 21 Cal.4th 1142, 1157.)

36. The purpose of the single-subject rule is to avoid voter confusion and deception. (*Id.* at p. 1156.)

37. The amendment provision of Proposition 22 is a classic example of intentional voter deception. The provision is not mentioned anywhere in the ballot title and summary, analysis, or ballot arguments regarding the measure. Voters who read the measure will not understand how the amendment provision relates to the operational parts of the initiative nor what it means for a measure to define what constitutes an amendment. In short, the voters will have absolutely no understanding that a "yes" vote is a vote to severely limit the judiciary's oversight over the initiative and the Legislature's authority to permit collective representation of or bargaining for app-based and delivery drivers.

38. If initiatives are permitted to define areas of legislation as "amendments" without substantively addressing them, future initiative drafters will try to use this approach to prevent judicial oversight and/or disguise serious restrictions on the Legislature's law-making authority in areas undisclosed to the voters.

FIRST CAUSE OF ACTION

(Violation of Cal. Const., art. XIV)

39. Petitioners hereby reallege and incorporate paragraphs 1 through 38 above as if fully set forth herein.

40. Because Proposition 22 purports to designate app-based drivers as independent contractors, it deprives them of the protections enacted by the Legislature pursuant to its authority under article XIV of the State Constitution.

41. Although the power of initiative is generally coextensive with that of the Legislature, article XIV, section 4 grants the Legislature "plenary power, *unlimited by any provision of this Constitution*, to create and enforce a complete system of workers' compensation . . . ." Inherent in the Legislature's plenary authority is the power to pass statutes delineating which workers are employees covered by the complete system of workers' compensation. That authority cannot be limited by a statutory initiative.

42. The California Supreme Court has interpreted similar language in article XII, section 5 that gives the Legislature power to *enlarge* the jurisdiction of the Public Utilities Commission as permitting use of the initiative power to do the same. The Court stated, however, that it was *not* holding that a statutory initiative could be used to *restrict* the Legislature's authority, "unlimited by any provision of [the] Constitution," to grant jurisdiction to the Public Utilities Commission. Instead, the Court said that in the event of a conflict between the Legislature's power and a statutory initiative, the conflict should "be resolved through application of the relevant constitutional provision or provisions to the terms of the specific legislation at issue." (*Independent Energy Producers, Inc. v. McPherson* (2006) 38 Cal.4th 1020, 1044, fn. 9.) At a minimum, that means that a statutory initiative cannot countermand, or restrict the Legislature from adopting, legislation pursuant to a constitutional provision that grants the Legislature "plenary power, unlimited by any provision of [the] Constitution." If an initiative statute countermands or restricts the Legislature's authority to enact statutes as to that same subject, the constitutional provision conferring "unlimited" authority upon the Legislature must prevail.

43. Article XIV, section 4 unequivocally states that the provisions for the creation of a complete system of worker's compensation "are expressly declared to be the social public policy of this State, binding upon all departments of the state government." Because Proposition 22 purports to countermand or limit the Legislature's otherwise "unlimited" constitutional authority to include app-based drivers in a complete system of workers' compensation, Proposition 22 is unconstitutional.

44. The severability clause contained in new section 7467(b) of Proposition 22 provides that if any portion or application of new section 7451, which declares that app-based drivers are independent contractors, is held invalid, the entire measure falls. Because the application of new section 7451 to workers' compensation legislation is unconstitutional, the entirety of Proposition 22 is invalid. Moreover, even without that provision, standard severability analysis would require that the entire measure be invalidated.

45. Under Code of Civil Procedure sections 1085 and 1086, the Court should issue a writ of mandate invalidating new section 7451 and holding that because new section 7451 is not severable from the remainder of Proposition 22, the entire measure is invalid.

SECOND CAUSE OF ACTION

(Violation of Separation of Powers Principles Cal. Const., art. III, § 3)

46. Petitioners hereby reallege and incorporate paragraphs 1 through 45 above as if fully set forth herein.

47. Paragraphs (3) and (4) of subdivision (c) of new section 7465 of the Business and Professions Code, enacted by Proposition 22, are invalid because they purport to deprive the courts of their authority under article VI of the California Constitution to interpret the Constitution. Paragraphs (3) and (4) of subdivision (c) of new section 7465 purport to define certain legislative actions as "amendments" to Proposition 22 within the meaning of article II, section 10(c) of the Constitution, even though such legislative actions are not "amendments" under judicial precedents interpreting the Constitution. Proposition 22 therefore attempts to use a statutory initiative to restrict the authority of the courts to interpret the state Constitution in violation of the separation of powers principles of article III, section 3 of the Constitution.

48. Under Code of Civil Procedure sections 1085 and 1086, the Court should issue a writ of mandate invalidating paragraphs (3) and (4) of subdivision (c) of section 7465.

THIRD CAUSE OF ACTION

(Violation of the Legislature's Power to Set Its Own Rules and to Enact Legislation by Majority Vote Cal. Const., art. II, § 10(c) & art. IV, §§ 1, 7, 8)

49. Petitioners hereby reallege and incorporate paragraphs 1 through 48 above as if fully set forth herein.

50. Paragraphs (3) and (4) of subdivision (c) of new section 7465 of the Business and Professions Code, enacted by Proposition 22, impermissibly attempt to define certain areas of legislation on matters not substantively addressed in the measure as "amendments," and thereby to limit the Legislature's constitutional authority to pass bills by majority vote unless the Constitution or the Legislature's own rules adopted pursuant to article IV, section 7 require otherwise. Paragraphs (3) and (4) of subdivision (c) of new section 7465 also violate the majority vote provision in article IV, section 8(b)(3).

51. Under Code of Civil Procedure sections 1085 and 1086, the Court should issue a writ of mandate invalidating paragraphs (3) and (4) of subdivision (c) of section 7465.

FOURTH CAUSE OF ACTION

(Violation of Single-Subject Rule Cal. Const., art. II, § 8(d))

52. Petitioners hereby reallege and incorporate paragraphs 1 through 51 above as if fully set forth herein.

53. Proposition 22 violates the single-subject requirement of article II, section 8 of the State Constitution because although it merely purports to designate app-based drivers as independent contractors entitled to certain benefits, it also attempts to impose other restrictions that are not substantively addressed in the measure. The latter provisions are not reasonably germane to the purpose of the initiative, which the measure describes solely in terms of protecting the rights of drivers to work as independent contractors with benefits designed to be minimums and for the protection of the public. (Pet. RJN, Exh. A at p. 1.) Worse, by burying these provisions at the end of the initiative and describing them as amendments that the Legislature may pass only by a seven-eighths vote, the

measure purposely and impermissibly deceived the voters into adopting restrictions they neither knew about nor understood.

54. Under Code of Civil Procedure sections 1085 and 1086, the Court should issue a writ of mandate invaliding Proposition 22 based on the violation of article II, section 8(d) of the State Constitution.

PRAYER

WHEREFORE, petitioners pray for judgment as follows:

1. That this Court issue a writ of mandate directing respondents to refrain from giving effect to Proposition 22;
2. That this Court grant petitioners their reasonable attorney's fees; and
3. That this Court grant such other, different, or further relief as the Court may deem just and proper.

Dated: February 11, 2021

Respectfully submitted,

OLSON REMCHO, LLP

ALTSHULER BERZON LLP

SERVICE EMPLOYEES INTERNATIONAL UNION

By: _____
Robin B. Johansen

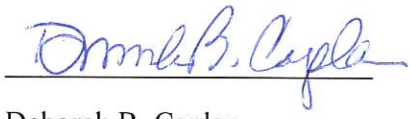
Attorneys for Petitioners
Hector Castellanos, Joseph Delgado, Saori Okawa, Michael Robinson, Service Employees International Union California State Council, and Service Employees International Union

VERIFICATION

I, Deborah B. Caplan, declare:

I am one of the attorneys for petitioners Hector Castellanos, Joseph Delgado Saori Okawa, Michael Robinson, Service Employees International Union California State Council and Service Employees International Union. I make this verification for the reason that petitioners are absent from the county where I have my office. I have read the foregoing Verified Petition for Writ of Mandate and believe that the matters therein are true and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct. Executed the 10th of February, 2021, at Sacramento, California.



Deborah B. Caplan

(00430931-2)

EXHIBIT A

statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this act. If this act receives a greater number of affirmative votes than another measure deemed to be in conflict with it, the provisions of this act shall prevail in their entirety, and the other measure or measures shall be null and void.

PROPOSITION 22

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Business and Professions Code and amends a section of the Revenue and Taxation Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Chapter 10.5 (commencing with Section 7448) is added to Division 3 of the Business and Professions Code, to read:

Chapter 10.5. App-Based Drivers and Services

Article 1. Title, Findings and Declarations, and Statement of Purpose

7448. Title. This chapter shall be known, and may be cited, as the Protect App-Based Drivers and Services Act.

7449. Findings and Declarations. The people of the State of California find and declare as follows:

(a) Hundreds of thousands of Californians are choosing to work as independent contractors in the modern economy using app-based rideshare and delivery platforms to transport passengers and deliver food, groceries, and other goods as a means of earning income while maintaining the flexibility to decide when, where, and how they work.

(b) These app-based rideshare and delivery drivers include parents who want to work flexible schedules while children are in school; students who want to earn money in between classes; retirees who rideshare or deliver a few hours a week to supplement fixed incomes and for social interaction; military spouses and partners who frequently relocate; and families struggling with California's high cost of living that need to earn extra income.

(c) Millions of California consumers and businesses, and our state's economy as a whole, also benefit from the services of people who work as independent contractors using app-based rideshare and delivery platforms. App-based rideshare and delivery drivers are providing convenient and affordable transportation for the public, reducing impaired and drunk driving, improving mobility for seniors and individuals with disabilities, providing new transportation options for families who cannot afford a vehicle, and providing new affordable and convenient delivery options for grocery stores, restaurants, retailers, and other local businesses and their patrons.

(d) However, recent legislation has threatened to take away the flexible work opportunities of hundreds of thousands of Californians, potentially forcing them into set shifts and mandatory hours, taking away their ability to make their own decisions about the jobs they take and the hours they work.

(e) Protecting the ability of Californians to work as independent contractors throughout the state using app-based rideshare and delivery platforms is necessary so people can continue to choose which jobs they take, to work as often or as little as they like, and to work with multiple platforms or companies, all the while preserving access to app-based rideshare and delivery services that are beneficial to consumers, small businesses, and the California economy.

(f) App-based rideshare and delivery drivers deserve economic security. This chapter is necessary to protect their freedom to work independently, while also providing these workers new benefits and protections not available under current law. These benefits and protections include a healthcare subsidy consistent with the average contributions required under the Affordable Care Act (ACA); a new minimum earnings guarantee tied to 120 percent of minimum wage with no maximum; compensation for vehicle expenses; occupational accident insurance to cover on-the-job injuries; and protection against discrimination and sexual harassment.

(g) California law and rideshare and delivery network companies should protect the safety of both drivers and consumers without affecting the right of app-based rideshare and delivery drivers to work as independent contractors. Such protections should, at a minimum, include criminal background checks of drivers; zero tolerance policies for drug- and alcohol-related offenses; and driver safety training.

7450. Statement of Purpose. The purposes of this chapter are as follows:

(a) To protect the basic legal right of Californians to choose to work as independent contractors with rideshare and delivery network companies throughout the state.

(b) To protect the individual right of every app-based rideshare and delivery driver to have the flexibility to set their own hours for when, where, and how they work.

(c) To require rideshare and delivery network companies to offer new protections and benefits for app-based rideshare and delivery drivers, including minimum compensation levels, insurance to cover on-the-job injuries, automobile accident insurance, health care subsidies for qualifying drivers, protection

against harassment and discrimination, and mandatory contractual rights and appeal processes.

(d) To improve public safety by requiring criminal background checks, driver safety training, and other safety provisions to help ensure app-based rideshare and delivery drivers do not pose a threat to customers or the public.

Article 2. App-Based Driver Independence

7451. Protecting Independence. Notwithstanding any other provision of law, including, but not limited to, the Labor Code, the Unemployment Insurance Code, and any orders, regulations, or opinions of the Department of Industrial Relations or any board, division, or commission within the Department of Industrial Relations, an app-based driver is an independent contractor and not an employee or agent with respect to the app-based driver's relationship with a network company if the following conditions are met:

(a) The network company does not unilaterally prescribe specific dates, times of day, or a minimum number of hours during which the app-based driver must be logged into the network company's online-enabled application or platform.

(b) The network company does not require the app-based driver to accept any specific rideshare service or delivery service request as a condition of maintaining access to the network company's online-enabled application or platform.

(c) The network company does not restrict the app-based driver from performing rideshare services or delivery services through other network companies except during engaged time.

(d) The network company does not restrict the app-based driver from working in any other lawful occupation or business.

7452. Contract and Termination Provisions. (a) A network company and an app-based driver shall enter into a written agreement prior to the driver receiving access to the network company's online-enabled application or platform.

(b) A network company shall not terminate a contract with an app-based driver unless based upon a ground specified in the contract.

(c) Network companies shall provide an appeals process for app-based drivers whose contracts are terminated by the network company.

7452.5. Independence Unaffected. Nothing in Article 3 (commencing with Section 7453) to Article 11 (commencing with Section 7467), inclusive, of this chapter shall be interpreted to in any way alter the relationship between a network company and an app-based driver for whom the conditions set forth in Section 7451 are satisfied.

Article 3. Compensation

7453. Earnings Guarantee. (a) A network company shall ensure that for each earnings period, an app-based 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 app-based drivers that cannot be reduced. In no way does the net earnings floor prohibit app-based drivers from earning a higher level of compensation.

(b) For each earnings period, a network company shall compare an app-based driver's net earnings against the net earnings floor for that app-based driver during the earnings period. In the event that the app-based 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 app-based driver's earnings no later than during the next earnings period.

(c) No network company or agent shall take, receive, or retain any gratuity or a part thereof that is paid, given to, or left for an app-based driver by a customer or deduct any amount from the earnings due to an app-based driver for a ride or delivery on account of a gratuity paid in connection with the ride or delivery. A network company that permits customers to pay gratuities by credit card shall pay the app-based driver the full amount of the gratuity that the customer indicated on the credit card receipt, without any deductions for any credit card payment processing fees or costs that may be charged to the network company by the credit card company.

(d) For purposes of this chapter, the following definitions apply:

(1) "Applicable minimum wage" means the state mandated minimum wage for all industries or, if a passenger or item is picked up within the boundaries of a local government that has a higher minimum wage that is generally applicable to all industries, the local minimum wage of that local government. The applicable minimum wage shall be determined at the location where a passenger or item is picked up and shall apply for all engaged time spent completing that rideshare request or delivery request.

(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, provided that the amount conforms to both of the following standards:

(A) The amount does not include gratuities, tolls, cleaning fees, airport fees, or other customer pass-throughs.

(B) The amount may include incentives or other bonuses.

(4) "Net earnings floor" means, for any earnings period, a total amount that is comprised of:

(A) For all engaged time, the sum of 120 percent of the applicable minimum wage for that engaged time.

(B) (i) The per-mile compensation for vehicle expenses set forth in this subparagraph multiplied by the total number of engaged miles.

(ii) After the effective date of this chapter and for the 2021 calendar year, the per-mile compensation for vehicle expenses shall be thirty cents ($0.30) per engaged mile. For calendar years after 2021, the amount per engaged mile shall be adjusted pursuant to clause (iii).

(iii) For calendar years following 2021, the per-mile compensation for vehicle expenses described in clause (ii) shall be adjusted annually to reflect any increase in inflation as measured by the Consumer Price Index for All Urban Consumers (CPI-U) published by the United States Bureau of Labor Statistics. The Treasurer's Office shall calculate and publish the adjustments required by this subparagraph.

(e) Nothing in this section shall be interpreted to require a network company to provide a particular amount of compensation to an app-based driver for any given rideshare or delivery request, as long as the app-based driver's net earnings for each earnings period equals or exceeds that app-based driver's net earnings floor for that earnings period as set forth in subdivision (b). For clarity, the net earnings floor in this section may be calculated on an average basis over the course of each earnings period.

Article 4. Benefits

7454. Healthcare Subsidy. (a) Consistent with the average contributions required under the Affordable Care Act (ACA), a network company shall provide a quarterly health care subsidy to qualifying app-based drivers as 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 calendar quarter shall receive the following subsidies from that network company:

(1) For an average of 25 hours or more per week of engaged time in the calendar quarter, a payment greater than or equal to 100 percent of the average ACA contribution for the applicable average monthly Covered California 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 calendar quarter, a payment greater than or equal to 50 percent of the average ACA contribution for the applicable average monthly Covered California 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 accrued on 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 accrued on the network company's online-enabled application or platform during the current calendar quarter up to that point.

(c) Covered California may adopt or amend regulations as it deems appropriate to permit app-based drivers receiving subsidies pursuant to this section to enroll in health plans through Covered California.

(d) (1) As a condition of providing the health care subsidy set forth in subdivision (a), a network company may require an app-based driver to submit proof of current enrollment in a qualifying health plan. 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 calendar quarter to provide proof of enrollment as set forth in paragraph (1).

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

(e) For purposes of this section, a calendar quarter refers to the following four periods of time:

(1) January 1 through March 31.

(2) April 1 through June 30.

(3) July 1 through September 30.

(4) October 1 through December 31.

(f) Nothing in this section shall be interpreted to prevent an app-based driver from receiving a health care subsidy from more than one network company for the same calendar quarter.

(g) On or before December 31, 2020, and on or before each September 1 thereafter, Covered California shall publish the average statewide monthly premium for an individual for the following calendar year for a Covered California bronze health insurance plan.

(h) This section shall become inoperative in the event the United States or the State of California implements a universal health care system or substantially similar system that expands coverage to the recipients of subsidies under this section.

7455. Loss and Liability Protection. No network company shall operate in California for more than 90 days unless the network company carries, provides, or otherwise makes available the following insurance coverage:

(a) For the benefit of app-based drivers, occupational accident insurance to 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 provide the following:

(1) Coverage for medical expenses incurred, up to at least one million dollars ($1,000,000).

(2) (A) Disability payments equal to 66 percent of the app-based driver's average weekly earnings from all network companies as of the date of injury, with minimum and maximum weekly payment rates to be determined in accordance with subdivision (a) of Section 4453 of the Labor Code for up to the first 104 weeks following the injury.

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

(b) For the benefit of spouses, children, or other dependents of app-based drivers, accidental death insurance for injuries suffered by an app-based driver while the app-based driver is online with the network company's online-enabled application or platform that result in death. For purposes of this subdivision, burial expenses and death benefits shall be determined in accordance with Section 4701 and Section 4702 of the Labor Code.

(c) For the purposes of this section, "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 rideshare services or delivery services from the network company, or during engaged time.

(d) Occupational accident insurance or accidental death insurance under subdivisions (a) and (b) shall not be required to cover an accident that occurs while online but outside of engaged time where the injured app-based driver is in engaged time on one or more other network company platforms or where the app-based driver is engaged in personal activities. If an accident is covered by occupational accident insurance or accidental death 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 subdivisions (a) and (b).

(e) Any benefits provided to an app-based driver under subdivision (a) or (b) of this section shall be considered amounts payable under a worker's compensation law or disability benefit for the purpose of determining amounts payable under any insurance provided under Article 2 (commencing with Section 11580) of Chapter 1 of Part 3 of Division 2 of the Insurance Code.

(f) (1) For the benefit of the public, a DNC as defined in Section 7463 shall maintain automobile liability insurance of at least one million dollars ($1,000,000) per occurrence to compensate third parties for injuries or losses proximately caused by the operation of an automobile by an app-based driver during engaged time in instances where the automobile is not otherwise covered by a policy that complies with subdivision (b) of Section 11580.1 of the Insurance Code.

(2) For the benefit of the public, a TNC as defined in Section 7463 shall maintain liability insurance policies as required by Article 7 (commencing with Section 5430) of Chapter 8 of Division 2 of the Public Utilities Code.

(3) For the benefit of the public, a TCP as defined in Section 7463 shall maintain liability insurance policies as required by Article 4 (commencing with Section 5391) of Chapter 8 of Division 2 of the Public Utilities Code.

Article 5. Antidiscrimination and Public Safety

7456. Antidiscrimination. (a) It is an unlawful practice, unless based upon a bona fide occupational qualification or public or app-based driver safety need, for a network company to refuse to contract with, terminate the contract of, or deactivate from the network company's online-enabled application or platform, any app-based driver or prospective app-based driver based upon race, color, ancestry, national origin, religion, creed, age, physical or mental disability, sex, gender, sexual orientation, gender identity or expression, medical condition, genetic information, marital status, or military or veteran status.

(b) Claims brought pursuant to this section shall be brought solely under the procedures established by the Unruh Civil Rights Act (Section 51 of the Civil Code) and will be governed by its requirements and remedies.

7457. Sexual Harassment Prevention. (a) A network company shall develop a sexual harassment policy intended to protect app-based drivers and members of the public using rideshare services or delivery services. The policy shall be available on the network company's internet website. The policy shall, at a minimum, do all of the following:

(1) Identify behaviors that may constitute sexual harassment, including the following: unwanted sexual advances; leering, gestures, or displaying sexually suggestive objects, pictures, cartoons, or posters; derogatory comments, epithets, slurs, or jokes;

graphic comments, sexually degrading words, or suggestive or obscene messages or invitations; and physical touching or assault, as well as impeding or blocking movements.

(2) Indicate that the network company, and in many instances the law, prohibits app-based drivers and customers utilizing rideshare services or delivery services from committing prohibited harassment.

(3) Establish a process for app-based drivers, customers, and rideshare passengers to submit complaints that ensures confidentiality to the extent possible; an impartial and timely investigation; and remedial actions and resolutions based on the information collected during the investigation process.

(4) Provide an opportunity for app-based drivers and customers utilizing rideshare services or delivery services to submit complaints electronically so complaints can be resolved quickly.

(5) Indicate that when the network company receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation to reach reasonable conclusions based on the information collected.

(6) Make clear that neither app-based drivers nor customers utilizing rideshare services or delivery services shall be retaliated against as a result of making a good faith complaint or participating in an investigation against another app-based driver, customer, or rideshare passenger.

(b) Prior to providing rideshare services or delivery services through a network company's online-enabled application or platform, an app-based driver shall do both of the following:

(1) Review the network company's sexual harassment policy.

(2) Confirm to the network company, for which electronic confirmation shall suffice, that the app-based driver has reviewed the network company's sexual harassment policy.

(c) Claims brought pursuant to this section shall be brought solely under the procedures established by the Unruh Civil Rights Act (Section 51 of the Civil Code) and will be governed by its requirements and remedies.

7458. Criminal Background Checks. (a) A network company shall conduct, or have a third party conduct, an initial local and national criminal background check for each app-based driver who uses the network company's online-enabled application or platform to provide rideshare services or delivery services. The background check shall be consistent with the standards contained in subdivision (a) of Section 5445.2 of the Public Utilities Code. Notwithstanding any other provision of law to the contrary, after an app-based driver's consent is obtained by a network company for an initial background check, no additional consent shall be required for the continual monitoring of that app-based driver's criminal history if the network company elects to undertake such continual monitoring.

(b) A network company shall complete the initial criminal background check as required by subdivision (a) prior to permitting an app-based driver to utilize the network company's online-enabled application or platform. The network company shall provide physical or electronic copies or summaries of the initial criminal background check to the app-based driver.

(c) An app-based driver shall not be permitted to utilize a network company's online-enabled application or platform if one of the following applies:

(1) The driver has ever been convicted of any crime listed in subparagraph (B) of paragraph (2) of subdivision (a) of Section 5445.2 of the Public Utilities Code, any serious felony as defined by subdivision (c) of Section 1192.7 of the Penal Code, or any hate crime as defined by Section 422.55 of the Penal Code.

(2) The driver has been convicted within the last seven years of any crime listed in paragraph (3) of subdivision (a) of Section 5445.2 of the Public Utilities Code.

(d) (1) The ability of an app-based driver to utilize a network company's online-enabled application or platform may be suspended if the network company learns the driver has been arrested for any crime listed in either of the following:

(A) Subparagraph (B) of paragraph (2), or paragraph (3), of subdivision (a) of Section 5445.2 of the Public Utilities Code.

(B) Subdivision (c) of this section.

(2) The suspension described in paragraph (1) may be lifted upon the disposition of an arrest for any crime listed in subparagraph (B) of paragraph (2), or paragraph (3), of subdivision (a) of Section 5445.2 of the Public Utilities Code that does not result in a conviction. Such disposition includes a finding of factual innocence from any relevant charge, an acquittal at trial, an affidavit indicating the prosecuting attorney with jurisdiction over the alleged offense has declined to file a criminal complaint, or an affidavit indicating all relevant time periods described in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 of the Penal Code have expired.

(e) Nothing in this section shall be interpreted to prevent a network company from imposing additional standards relating to criminal history.

(f) Notwithstanding Section 1786.12 of the Civil Code, an investigative consumer reporting agency may furnish an investigative consumer report to a network company about a person seeking to become an app-based driver, regardless of whether the app-based

driver is to be an employee or an independent contractor of the network company.

7459. Safety Training. (a) A network company shall require an app-based driver to complete the training described in this section prior to allowing the app-based driver to utilize the network company's online-enabled application or platform.

(b) A network company shall provide each app-based driver safety training. The safety training required by this section shall include the following subjects:

(1) Collision avoidance and defensive driving techniques.

(2) Identification of collision-causing elements such as excessive speed, DUI, and distracted driving.

(3) Recognition and reporting of sexual assault and misconduct.

(4) For app-based drivers delivering prepared food or groceries, food safety information relevant to the delivery of food, including temperature control.

(c) The training may, at the discretion of the network company, be provided via online, video, or in-person training.

(d) Notwithstanding subdivision (a), any app-based driver that has entered into a contract with a network company prior to January 1, 2021, to provide rideshare services or delivery services shall have until July 1, 2021, to complete the safety training required by this section, and may continue to provide rideshare services or delivery services through the network company's online-enabled application or platform until that date. On and after July 1, 2021, app-based drivers described in this subdivision must complete the training required by this section in order to continue providing rideshare services and delivery services.

(e) Any safety product, feature, process, policy, standard, or other effort undertaken by a network company, or the provision of equipment by a network company, to further public safety is not an indicia of an employment or agency relationship with an app-based driver.

7460. Zero Tolerance Policies. (a) A network company shall institute a "zero tolerance policy" that mandates prompt suspension of an app-based driver's access to the network company's online-enabled application or platform in any instance in which the network company receives a report through its online-enabled application or platform, or by any other company-approved method, from any person who reasonably suspects the app-based driver is under the influence of drugs or alcohol while providing rideshare services or delivery services.

(b) Upon receiving a report described in subdivision (a), a network company shall promptly suspend the app-based driver from the company's online-enabled application or platform for further investigation.

(c) A network company may suspend access to the network company's online-enabled application or platform for any app-based driver or customer found to be reporting an alleged violation of a zero tolerance policy as described in subdivision (a) where that driver or customer knows the report to be unfounded or based the report on an intent to inappropriately deny a driver access to the online-enabled application or platform.

7460.5. A network company shall make continuously and exclusively available to law enforcement a mechanism to submit requests for information to aid in investigations related to emergency situations, exigent circumstances, and critical incidents.

7461. App-based Driver Rest. An app-based driver shall not be logged in and driving on a network company's online-enabled application or platform for more than a cumulative total of 12 hours in any 24-hour period, unless that driver has already logged off for an uninterrupted period of 6 hours. If an app-based driver has been logged on and driving for more than a cumulative total of 12 hours in any 24-hour period, without logging off for an uninterrupted period of 6 hours, the driver shall be prohibited from logging back into the network company's online-enabled application or platform for an uninterrupted period of at least 6 hours.

7462. Impersonating an App-Based Driver. (a) Any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare or delivery services shall be guilty of a misdemeanor, and is punishable by imprisonment in a county jail for up to six months, or a fine of up to ten thousand dollars ($10,000), or both. Nothing in this subdivision precludes prosecution under any other law.

(b) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the commission or attempted commission of an offense described in Section 207, 209, 220, 261, 264.1, 286, 287, 288, or 289 of the Penal Code shall be sentenced to an additional term of five years.

(c) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the commission of a felony or attempted felony and in so doing personally inflicts great bodily injury to another person other than an accomplice shall be sentenced to an additional term of five years.

(d) In addition to any other penalty provided by law, any person who fraudulently impersonates an app-based driver while providing or attempting to provide rideshare services or delivery services in the

commission of a felony or attempted felony and in so doing causes the death of another person other than an accomplice shall be sentenced to an additional term of 10 years.

Article 6. Definitions

7463. For purposes of this chapter, the following definitions shall apply:

(a) "App-based driver" means an individual who is a DNC courier, TNC driver, or TCP driver or permit holder; and for whom the conditions set forth in subdivisions (a) to (d), inclusive, of Section 7451 are satisfied.

(b) "Average ACA contribution" means 82 percent of the dollar amount of the average monthly Covered California premium.

(c) "Average monthly Covered California premium" equals the dollar amount published pursuant to subdivision (g) of Section 7454.

(d) "Covered California" means the California Health Benefit Exchange, codified in Title 22 (commencing with Section 100500) of the Government Code.

(e) "Customer" means one or more natural persons or business entities.

(f) "Delivery network company" (DNC) means a business entity that maintains an online-enabled application or platform used to facilitate delivery services within the State of California on an on-demand basis, and maintains a record of the amount of engaged time and engaged miles accumulated by DNC couriers. Deliveries are facilitated on an on-demand basis if DNC couriers are provided with the option to accept or decline each delivery request and the DNC does not require the DNC courier to accept any specific delivery request as a condition of maintaining access to the DNC's online-enabled application or platform.

(g) "Delivery network company courier" (DNC courier) means an individual who provides delivery services through a DNC's online-enabled application or platform.

(h) "Delivery services" means the fulfillment of delivery requests, meaning the pickup from any location of any item or items and the delivery of the items using a passenger vehicle, bicycle, 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 one, but not more than 12, distinct orders placed by different customers. Delivery services may include the selection, collection, or purchase of items by a DNC courier provided that those tasks are done in connection with a delivery that the DNC courier has agreed to deliver. Delivery services do not include deliveries that are subject to Section 26090, as that section read on October 29, 2019.

(i) "Engaged miles" means all miles driven during engaged time in a passenger vehicle that is not owned, leased, or rented by the network company.

(j) (1) "Engaged time" means, subject to the conditions set forth in paragraph (2), the period of time, as recorded in a network company's online-enabled application or platform, from when an app-based driver accepts a rideshare request or delivery request to when the app-based driver completes that rideshare request or delivery request.

(2) (A) Engaged time shall not include the following:

(i) Any time spent performing a rideshare service or delivery service after the request has been cancelled by the customer.

(ii) Any time spent on a rideshare service or delivery service where the app-based driver abandons performance of the service prior to completion.

(B) 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.

(k) "Local government" means a city, county, city and county, charter city, or charter county.

(l) "Network company" means a business entity that is a DNC or a TNC.

(m) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(n) "Qualifying health plan" means a health insurance plan in which the app-based driver is the subscriber, that is not sponsored by an employer, and that is not a Medicare or Medicaid plan.

(o) "Rideshare service" means the transportation of one or more persons.

(p) "Transportation network company" (TNC) has the same meaning as the definition contained in subdivision (c) of Section 5431 of the Public Utilities Code.

(q) "Transportation network company driver" (TNC driver) has the same meaning as the definition of driver contained in subdivision (a) of Section 5431 of the Public Utilities Code.

(r) "Charter-party carrier of passengers" (TCP) shall have the same meaning as the definition contained in Section 5360 of the Public Utilities Code, provided the driver is providing rideshare services using a passenger vehicle through a network company's online-enabled application or platform.

Article 7. Uniform Work Standards

7464. (a) The performance of a single rideshare service or delivery service frequently requires an app-based driver to travel across the jurisdictional boundaries of multiple local governments. California has over 500 cities and counties, which can lead to

overlapping, inconsistent, and contradictory local regulations for cross-jurisdictional services.

(b) In light of the cross-jurisdictional nature of the rideshare services and delivery services, and in addition to the other requirements and standards established by this chapter, the state hereby occupies the field in the following areas:

(1) App-based driver compensation and gratuity, except as provided in Section 7453.

(2) App-based driver scheduling, leave, health care subsidies, and any other work-related stipends, subsidies, or benefits.

(3) App-based driver licensing and insurance requirements.

(4) App-based driver rights with respect to a network company's termination of an app-based driver's contract.

(c) Notwithstanding subdivision (b), nothing in this section shall limit a local government's ability to adopt local ordinances necessary to punish the commission of misdemeanor and felony crimes or to enforce local ordinances and regulations enacted prior to October 29, 2019.

Article 8. Income Reporting

7464.5 (a) A network company that is acting as a third-party settlement organization shall prepare an information return for each participating payee who is an app-based driver with a California address that has a gross amount of reportable payment transactions equal to or greater than six hundred dollars ($600) during a calendar year, irrespective of the number of transactions between the third-party settlement organization and the payee. A third-party settlement organization must report these amounts to the Franchise Tax Board and furnish a copy to the payee, even if it does not have a federal reporting obligation. The information return shall identify the following:

(1) The name, address, and tax identification number of the participating payee.

(2) The gross amount of the reportable payment transactions with respect to the participating payee.

(b) Within 30 days following the date such an information return would be due to the Internal Revenue Service, a network company shall file a copy of any information return required by subdivision (a) with the Franchise Tax Board and shall provide a copy to the participating payee.

(c) A network company may fulfill this requirement by submitting a copy of Internal Revenue Service Form 1099-K or by submitting a form provided by the Franchise Tax Board that includes the same information as that on Cal-1099-K.

(d) For purposes of this section:

(1) "Participating payee" has the same meaning as provided in Section 6050W(d)(1)(A)(ii) of Title 26 of the United States Code.

(2) "Reportable payment transaction" has the same meaning as provided in Section 6050W(c)(1) of Title 26 of the United States Code.

(3) "Third-party settlement organization" has the same meaning as provided in Section 6050W(b)(3) of Title 26 of the United States Code.

(e) This section shall not apply in instances where the gross amount of reportable payment transactions for a participating payee in a calendar year is less than six hundred dollars ($600) or where the participating payee is not an app-based driver.

(f) This section shall apply to reportable payment transactions occurring on or after January 1, 2021.

Article 9. Amendment

7465. (a) After the effective date of this chapter, the Legislature may amend this chapter by a statute passed in each house of the Legislature by rollcall vote entered into the journal, seven-eighths of the membership concurring, provided that the statute is consistent with, and furthers the purpose of, this chapter. No bill seeking to amend this chapter after the effective date of this chapter may be passed or ultimately become a statute unless the bill has been printed and distributed to members, and published on the internet, in its final form, for at least 12 business days prior to its passage in either house of the Legislature.

(b) No statute enacted after October 29, 2019, but prior to the effective date of this chapter, that would constitute an amendment of this chapter, shall be operative after the effective date of this chapter unless the statute was passed in accordance with the requirements of subdivision (a).

(c) (1) The purposes of this chapter are described in Article 1 (commencing with Section 7448).

(2) Any statute that amends Section 7451 does not further the purposes of this chapter.

(3) Any statute that prohibits app-based drivers from performing a particular rideshare service or delivery service while allowing other individuals or entities to perform the same rideshare service or delivery service, or otherwise imposes unequal regulatory burdens upon app-based drivers based on their classification status, constitutes an amendment of this chapter and must be enacted in compliance with the procedures governing amendments consistent with the purposes of this chapter as set forth in subdivisions (a) and (b).

(4) Any statute that authorizes any entity or organization to represent the interests of app-based drivers in connection with drivers' contractual relationships with network companies, or drivers' compensation, benefits, or working conditions, constitutes an amendment of this chapter and must

be enacted in compliance with the procedures governing amendments consistent with the purposes of this chapter as set forth in subdivisions (a) and (b).

(d) Any statute that imposes additional misdemeanor or felony penalties in order to provide greater protection against criminal activity for app-based drivers and individuals using rideshare services or delivery services may be enacted by the Legislature by rollcall vote entered into the journal, a majority of the membership of each house concurring, without complying with subdivisions (a) and (b).

Article 10. Regulations

7466. (a) Emergency regulations may be adopted by Covered California in order to implement and administer subdivisions (c) and (g) of Section 7454.

(b) Any emergency regulation adopted pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding any other provision of law, the emergency regulations adopted by Covered California may remain in effect for two years from the date of adoption.

Article 11. Severability

7467. (a) Subject to subdivision (b), the provisions of this chapter are severable. If any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of this chapter is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this chapter. The people of the State of California hereby declare that they would have adopted this chapter and each and every portion, section, subdivision, paragraph, clause, sentence, phrase, word, and application not declared invalid or unconstitutional without regard to whether any other portion of this chapter or application thereof would be subsequently declared invalid.

(b) Notwithstanding subdivision (a), if any portion, section, subdivision, paragraph, clause, sentence, phrase, word, or application of Section 7451 of Article 2 (commencing with Section 7451), as added by the voters, is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision shall apply to the entirety of the remaining provisions of this chapter, and no provision of this chapter shall be deemed valid or given force of law.

SEC. 2. Section 17037 of the Revenue and Taxation Code is amended to read:

17037. Provisions in other codes or general law statutes which are related to this part include all of the following:

(a) Chapter 20.6 (commencing with Section 9891) of Division 3 of the Business and Professions Code, relating to tax preparers.

(b) Part 10.2 (commencing with Section 18401), relating to the administration of franchise and income tax laws.

(c) Part 10.5 (commencing with Section 20501), relating to the Property Tax Assistance and Postponement Law.

(d) Part 10.7 (commencing with Section 21001), relating to the Taxpayers' Bill of Rights.

(e) Part 11 (commencing with Section 23001), relating to the Corporation Tax Law.

(f) Sections 15700 to 15702.1, inclusive, of the Government Code, relating to the Franchise Tax Board.

(g) Article 8 (commencing with Section 7464.5) of Chapter 10.5 of Division 3 of the Business and Professions Code.

SEC. 3. Conflicting Measures.

(a) In the event that this initiative measure and another ballot measure or measures dealing, either directly or indirectly, with the worker classification, compensation, or benefits of app-based drivers shall appear on the same statewide election ballot, the other ballot measure or measures shall be deemed to be in conflict with this measure. In the event that this initiative measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other ballot measure or measures shall be null and void.

(b) If this initiative measure is approved by the voters but superseded in whole or in part by any other conflicting ballot measure approved by the voters at the same election, and such conflicting measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 4. Legal Defense.

The purpose of this section is to ensure that the people's precious right of initiative cannot be improperly annulled by state politicians who refuse to defend the will of the voters. Therefore, if this act is approved by the voters of the State of California and thereafter subjected to a legal challenge which attempts to limit the scope or application of this act in any way, or alleges this act violates any local, state, or federal law in whole or in part, and both the Governor and Attorney General refuse to defend this act, then the following actions shall be taken:

(a) Notwithstanding anything to the contrary contained in Chapter 6 (commencing with Section 12500) of Part 2 of Division 3 of Title 2 of the Government Code or any other law, the Attorney

General shall appoint independent counsel to faithfully and vigorously defend this act on behalf of the State of California.

(b) Before appointing or thereafter substituting independent counsel, the Attorney General shall exercise due diligence in determining the qualifications of independent counsel and shall obtain written affirmation from independent counsel that independent counsel will faithfully and vigorously defend this act. The written affirmation shall be made publicly available upon request.

(c) In order to support the defense of this act in instances where the Governor and Attorney General fail to do so despite the will of the voters, a continuous appropriation is hereby made from the General Fund to the Controller, without regard to fiscal years, in an amount necessary to cover the costs of retaining independent counsel to faithfully and vigorously defend this act on behalf of the State of California.

SEC. 5. Liberal Construction.

This act shall be liberally construed in order to effectuate its purposes.

PROPOSITION 23

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Name.

This act shall be known as the "Protect the Lives of Dialysis Patients Act."

SEC. 2. Findings and Purposes.

This act, adopted by the people of the State of California, makes the following findings and has the following purposes:

(a) The people make the following findings:

(1) Kidney dialysis is a life-saving process in which blood is removed from a person's body, cleaned of toxins, and then returned to the patient. It must be done at least three times a week for several hours a session, and the patient must continue treatment for the rest of their life or until they can obtain a kidney transplant.

(2) In California, at least 70,000 people undergo dialysis treatment.

(3) Just two multinational, for-profit corporations operate or manage nearly three-quarters of dialysis clinics in California and treat more than 75 percent of dialysis patients in the state. These two multinational corporations annually earn billions of dollars from their dialysis operations, including more than $350 million a year in California alone.

(4) The dialysis procedure and side effects from the treatments present several dangers to patients, and many dialysis clinics in California have been cited for failure to maintain proper standards of care. Failure to maintain proper standards can lead to patient harm, hospitalizations, and even death.

(5) Dialysis clinics are currently not required to maintain a doctor on site to oversee quality, ensure the patient plan of care is appropriately followed, and monitor safety protocols. Patients should have access to a physician on site whenever dialysis treatment is being provided.

(6) Dialysis treatments involve direct access to the bloodstream, which puts patients at heightened risk of getting dangerous infections. Proper reporting and transparency of infection rates encourages clinics to improve quality and helps patients make the best choice for their care.

(7) When health care facilities like hospitals and nursing homes close, California regulators are able to take steps to protect patients from harm. Likewise, strong protections should be provided to vulnerable patients when dialysis clinics close.

(8) Dialysis corporations have lobbied against efforts to enact protections for kidney dialysis patients in California, spending over $100 million in 2018 and 2019 to influence California voters and the Legislature.

(b) Purposes:

(1) It is the purpose of this act to ensure that outpatient kidney dialysis clinics provide quality and affordable patient care to people suffering from end-stage renal disease.

(2) This act is intended to be budget neutral for the state to implement and administer.

SEC. 3. Section 1226.7 is added to the Health and Safety Code, to read:

1226.7. (a) Chronic dialysis clinics shall provide the same quality of care to their patients without discrimination on the basis of who is responsible for paying for a patient's treatment. Further, chronic dialysis clinics shall not refuse to offer or to provide care on the basis of who is responsible for paying for a patient's treatment. Such prohibited discrimination includes, but is not limited to, discrimination on the basis that a payer is an individual patient, private entity, insurer, Medi-Cal, Medicaid, or Medicare. This section shall also apply to a chronic dialysis clinic's governing entity, which shall ensure that no discrimination prohibited by this section occurs at or among clinics owned or operated by the governing entity.

(b) Definitions: