Case Nos. A160701 & A160706

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

vs.

LYFT, INC.,

Defendant and Appellant.

Appeal from the Superior Court, County of San Francisco
Case No. CGC-20-584402
The Honorable Ethan P. Schulman

LYFT, INC.'S PETITION FOR REHEARING

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

PAGE(S)

STATE CASES

STATE STATUTES

TABLE OF AUTHORITIES (CONTINUED)

PAGE(S)

STATE RULES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

I. INTRODUCTION

Defendant Lyft, Inc. ("Lyft") hereby petitions the Court to grant rehearing to address a change in the law that moots the trial court's preliminary injunction and removes the legal basis for the Court's Opinion in this matter. (Cal. Rules of Court, rule 8.268.)

On November 3, 2020, Californians voted on Proposition 22, "App-Based Drivers as Contractors and Labor Policies Initiative (2020) ("Prop. 22")", a ballot initiative that directly addresses the issues in this case. California voters have now overwhelmingly approved Prop. 22, by a margin of 58.4% to 41.6%, according to the most recent vote count provided by the Secretary of State. (See State Ballot Measure, Statewide Results, available at <https://electionresults.sos.ca.gov/returns/ballot-measures>.) Accordingly, news organizations have projected that Prop. 22 has passed.[1]

Prop. 22 requires that, "[n]othwithstanding any other provision of law, including, but not limited to, the Labor Code," "app-based drivers" be classified as independent contractors if four conditions are met. Both the trial court's preliminary injunction and this Court's Opinion were based on the legal

[1] (See, e.g., Luna, *California Voters Approve Prop. 22, Allowing Uber and Lyft to Remain Independent Contractors*, Los Angeles Times (Nov. 4, 2020) at <https://www.latimes.com/california/story/2020-11-03/2020-california-election-tracking-prop-22>; O'Brien, *Prop 22 passes in California, exempting Uber and Lyft from classifying drivers as employees*, CNN (Nov. 4 2020) at <https://www.cnn.com/2020/11/04/tech/california-proposition-22/index.html>.

conclusion that the State was likely to prevail on its claims under Labor Code section 2750.3, i.e. AB5, that "app-based drivers," such as those who use the Lyft platform, are likely misclassified as independent contractors rather than employees. Prop. 22 eliminates that legal conclusion.

While the vote is not yet certified, the deadline for certification is December 11, 2020. Prop. 22 will thus become law no later than December 16, 2020, before the date the remittitur is currently slated to issue, December 22, 2020. This Court should not permit the Opinion to become final when the underlying dispute—which centers on *prospective injunctive relief*—will become moot before jurisdiction has even been returned to the trial court. Instead, the Court should grant rehearing and, upon Prop. 22 becoming law, reverse or vacate the injunction.

II. RELEVANT BACKGROUND

On May 5, 2020, the State filed a Complaint alleging that Lyft and Uber misclassify drivers who use their matchmaking platforms in violation of AB5 and the Unfair Competition Law. (1AA27.) On June 25, the State moved for a preliminary injunction, arguing that it was likely to prevail on its AB5 claim and that the balance of the harms tipped in its favor. (1AA54, 57.)

On August 10, 2020, the trial court "enjoined and restrained [Lyft and Uber] from classifying their Drivers as independent contractors in violation of Labor Code section 2750.3" and from "violating any provisions of" labor laws "with regard to their drivers." (10AA2916-2917.)

On August 20, 2020, this Court stayed the preliminary injunction conditional on each defendant submitting a sworn statement from its chief executive officers confirming that it has developed implementation plans under which it will be prepared to comply with the preliminary injunction, within 30 days of the issuance of remittitur, "if this court affirms the preliminary injunction and Proposition 22 on the November 2020 ballot fails to pass." (Order Granting Writ of Supersedeas (Aug. 20, 2020).)

After briefing and argument, this Court affirmed the trial court's injunction in an Opinion dated October 22, 2020. Absent a grant of rehearing, the Opinion will become final on November 21, (Cal. Rules of Court, rule 8.264(b)(1)), and remittitur will issue on December 22 (Cal. Rules of Court, rule 8.272(b)(1)(A)).

On November 3, 2020, Californians voted on Prop. 22. While the vote is not yet certified, it is clear that Prop. 22 has passed. The Secretary of State's official webpage shows that Prop. 22 has received more than 58% of votes, an overwhelming 16-point margin. (Ante, p. 5.)

The vote will be certified no later than December 11, 2020, if not sooner. (Alex Padilla, California Secretary of State, Press Release (Oct. 29, 2020) available at: <https://admin.cdn.sos.ca.gov/press-releases/2020/ap20-107.pdf>.) Prop. 22 will become effective five days after certification (Cal. Const., art. II, § 10), meaning no later than December 16.

Prop. 22 provides, in relevant part:

> 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.

(Prop. 22, Article 2, section 7451, italics added.)

III. ARGUMENT

A. Rehearing Is Required Because Prop. 22 Fundamentally Eliminates The Legal Basis For the Injunction and This Court's Opinion

The Court should grant rehearing immediately because Prop. 22 fundamentally changes the law applied by the trial court in issuing the injunction and by this Court in affirming it. Rehearing is warranted when the law materially changes after the opinion is rendered but before it becomes final. (*Oberlander v. Cnty. of Contra Costa* (1992) 11 Cal.App.4th 535, 538; *Bell v. Bd. of Supervisors* (1976) 55 Cal.App.3d 629, 635–636; *People v.*

Millan, (2018) 20 Cal.App.5th 450, 452–456; *People v. Zabala*, (2018) 19 Cal.App.5th 335, 338.) In these cases, the court granted rehearing to address, like here, statutory changes enacted after the appellate opinion was rendered but before the court lost jurisdiction. "The rationale of this rule is that it would be an idle act for this court to determine what [a party] must do in the future under the law as it used to be but no longer is." (*Oberlander*, *supra*, 11 Cal.App.4th at p. 538.)

Prop. 22 supersedes the legal framework applied by both the trial court and this Court. The entire premise of the government's request for preliminary injunctive relief, the entire premise of the trial court's issuance of that injunction, and the entire premise of this Court's Opinion affirming the injunction is that the State had shown "a reasonable probability" of establishing that AB5 requires app-based drivers to be classified as employees. (Op. 15.) In particular, the Opinion found "no abuse of discretion in the trial court's conclusion that the People have shown a probability of prevailing on the merits based on prong B" (*id.* at 31), reasoning that "whether or not drivers purchase a service from defendants, they perform services for them in the usual course of defendants' businesses" (*id.* at 36). Prop. 22 dismantles the foundation for the prospective relief granted by the preliminary injunction and affirmed by this Court.

The proposition explicitly addresses "app-based drivers," such as those who use the Lyft app. (Prop. 22, Article 2, section 7451.) It replaces AB5's ABC test for those drivers and instead declares that such a driver "*is* an independent contractor. . . .

[n]otwithstanding any provision of law." (*Ibid.*, italics added) Thus, the trial court's injunction is based, in its entirety, on a legal standard that no longer applies to "app-based drivers," and on a legal theory that has been nullified by Prop. 22: that app-based drivers are properly classified as employees by AB5.

The legal reasoning in the Court's Opinion is, similarly, no longer consistent with California law. The Opinion agreed with the trial court that the State had shown an "overwhelming likelihood" of "prevailing on the merits of their claim that Uber and Lyft were misclassifying their drivers as independent contractors in violation of AB5." (Op. 15.) This holding also informed the Court's balancing analysis, which concluded that the trial court "properly considered the harm shown by the record, in light … of its determination that the People showed a reasonably probability—indeed an 'overwhelming likelihood'—of prevailing at trial." (*Id.* at 62.)

Because this Court rendered its decision before the November 3 election, the Opinion's reasoning was grounded solely on AB5. But Prop. 22 explicitly addresses the merits question of whether "Uber and Lyft were misclassifying their drivers as independent contractors" (Op. 15), and it does so "[n]otwithstanding any provision of law," including AB5. Under Prop. 22, app-based drivers *must* be classified as independent contractors if four conditions are met. As explained below, the appellate record establishes that Lyft meets all four conditions. (*Post* at 15-16.) And even if there were any factual dispute in this

respect, that would be an issue for the trial court on remand, after vacatur of the injunction.

In light of the change in law, the State cannot show an "overwhelmingly likelihood" of success that would tip the balance of harms in its favor. What is more, the State can no longer claim irreparable harm on public interest grounds, when the people of the State of California have spoken at the ballot box and determined that app-based drivers should be treated as independent contractors, not employees. The presumption of irreparable harm that applies when the State "champions the public interest in an enforcement action" (Op. 54) no longer applies here. Indeed, Prop. 22 is express that "the People of the State of California" have found that "[m]illions of California consumers and businesses, and our state's economy as a whole, also benefit from the services of people who work at independent contractors using app-based rideshare" platforms and that "[p]rotecting the ability of Californians to work as independent contractors throughout the state using app-based rideshare … platforms is necessary…." (Prop. 22, Article 1, Section 7449, subds. (c), (e).) The controlling "public interest," as expressed in Prop. 22, weighs decisively *against* the injunction at issue here.

Courts of Appeal routinely grant rehearing where the law materially changes after the opinion has issued, but before it has become final. (See, e.g., *Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 378 ["We previously issued an opinion reversing the judgment. However, we granted rehearing when the People brought to the court's attention a change in the law."]; *Cnty. of*

San Bernardino v. Ranger Ins. Co. (1995) 34 Cal.App.4th 1140, 1143 ["We granted rehearing to consider the effect of the change in the law" that occurred "while the appeal was pending."]; cf., *Schulz v. Neovi Data Corp.* (2007) 152 Cal.App.4th 86, 91 ["After the appeal was filed and briefing was completed, on November 2, 2004, the voters passed Proposition 64, which amended several sections of the Unfair Competition Law. We asked the parties for letter briefs addressing whether the amendments applied to this case."].)

The same result should follow here: Prop. 22 fundamentally undermines the injunction itself, as well as the reasoning of this Court's Opinion. This Court already anticipated that the passing of Prop. 22 would have significant impact when, as a condition for staying the injunction, the Court required defendants to file sworn statements regarding plans for compliance "if … Proposition 22 … fails to pass." It makes no sense to permit the Opinion to become final when the underlying dispute, and the State's demand for prospective injunctive relief, will become moot before jurisdiction has even been returned to the trial court. Absent rehearing, the Court's Opinion and judgment will become final on November 21, 2020, and the remittitur will issue on December 22, 2020. (Cal. Rules of Court, rules 8.264(b)(1), 8.272(b)(1)(A).) Even if the election result is not certified until December 11, Prop. 22 will become the law of California before the remittitur issues. That means that, absent rehearing, the Opinion will reflect the wrong law the moment the case is remanded to the trial court.

This Court should not allow an Opinion that is now effectively advisory, and that will formally become advisory before remittitur issues, to stand. It is blackletter law that the "rendering of advisory opinions falls within neither the functions nor the jurisdiction of" the courts. (*People ex rel. Lynch v. Superior Court* (1970) 1 Cal.3d 910, 912; see also, e.g., *Bell*, *supra*, 55 Cal.App.3d at pp. 635–636 [granting rehearing after enactment, and before effective date, of new statute that changed the relevant law]; *Millan*, *supra*, 20 Cal.App.5th at pp. 452-456 [same]; *Zabala*, *supra*, 19 Cal.App.5th at p. 338 [same].) That result would not only thwart the will of California voters, but also spawn additional, and entirely needless, motion practice in the trial court and perhaps the Supreme Court.

B. On Rehearing, The Court Should Reverse or Vacate the Preliminary Injunction

Prop. 22 will become law five days after the Secretary of State certifies the vote, and no later than December 16. (Ante, p. 7.) After granting rehearing, the Court should reverse or vacate the preliminary injunction once Prop. 22 becomes law.

When the legal basis for an order on appeal collapses during the pendency of the appeal, the "preferable procedure" is to reverse the judgment. (*Callie v. Bd. of Supervisors* (1969) 1 Cal.App.3d 13, 19 [reversing trial court judgment with instructions to dismiss the action based on intervening change in law]; see also *Paul v. Milk Depots, Inc.* (1964) 62 Cal.2d 129, 135 [reversing because regulation was repealed while matter was on appeal].) That approach would "avoid ambiguity" that might

otherwise result from a dead-letter injunction order that is now at odds with existing law. (*Callie, supra,* at p. 19.)

City of Los Angeles v. County of Los Angeles (1983) 147 Cal.App.3d 952, is instructive. "At the time of trial, city's taxpayers paid *both* city and county taxes. The trial court found this to be a denial of equal protection because residents of unincorporated areas of the county paid only county property tax and received benefits allegedly not provided to residents of incorporated areas of the county. The benefits were funded, in part, by property taxes paid to the county by the residents of incorporated areas." (*Id.* at pp. 955–956.)

Shortly after trial, voters passed Proposition 13 and the Legislature subsequently passed "implementing legislation," with the result that "there [was] only a single local property tax rate" and "all city property taxpayers and all county property taxpayers" paid the same tax rate. (*Id.* at p. 957.) Thus, "the issue presented to the trial court was the constitutionality of a mechanism concerning property taxation and disbursements of revenue therefrom which has been dismantled by virtue of" Proposition 13. (*Id.* at p. 958.)

The Court of Appeal recognized that the "facts upon which the judgment was rendered no longer are operative," and the legal impact of Proposition 13 had not been briefed to the trial court and was "not in the record before" the appellate court. (*Id.* at p. 959.) The Court of Appeal therefore "reverse[d] the judgment with directions to the court to dismiss the proceeding

as moot" rather than "engage impermissibly in a purely academic exercise." (*Ibid.*)

This Court should take the same approach and reverse or vacate the preliminary injunction. As in *City of Los Angeles*, "the issue presented to the trial court"—the proper classification of app-based drivers under AB5—"has been dismantled by virtue of" Prop. 22. (147 Cal.App.3d at p. 958.) Because the injunction is premised on a legal theory that has been undone by Prop. 22, this Court should follow the "preferable procedure," and reverse or vacate the preliminary injunction. (*Callie, supra,* 1 Cal.App.3d at p. 19.)

This change in law is by itself sufficient to warrant vacatur. But even if the Court were to reach the question of how Prop. 22 applies here, it is clear that drivers who use the Lyft app must now be treated as independent contractors under Prop. 22. The record before the Court shows that Lyft meets Prop. 22's four conditions. First, Lyft "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." (Prop. 22, Article 2, section 7451, subd (a); see 7AA2053-2054 [¶28], 2062 [¶¶5, 6].) Second, Lyft "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." (Prop. 22, Article 2, section 7451, subd (b); see 7AA2053 [¶¶24-25], 2062 [¶6].) Third, Lyft does "not restrict the app-based driver from performing rideshare

services or delivery services through other network companies except during engaged time." (Prop. 22, Article 2, section 7451, subd (c); see 7AA2053 [¶27], 2061-2061 [¶¶5, 7].) Fourth, and finally, Lyft "does not restrict the app-based driver from working in any other lawful occupation or business." (Prop. 22, Article 2, section 7451, subd (c); see 7AA2053 [¶27].) Because Lyft meets all four conditions, a driver who uses the Lyft app "*is* an independent contractor" "[n]otwithstanding any other provision of law." (Prop. 22, Article 2, section 7451, italics added.)

The trial court's preliminary injunction can no longer stand.

IV. CONCLUSION

Prop. 22 fundamentally changes the law grounding both the injunction and the Court's Opinion affirming it. Neither the injunction nor the Opinion are consonant with the soon-to-be law of this state, or with the will of California voters, expressed at the ballot box on November 3. The Court should grant rehearing, and reverse or vacate the preliminary injunction.

DATED: November 6, 2020 MUNGER, TOLLES & OLSON LLP

By: */s/Rohit Singla*
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CERTIFICATE OF COMPLIANCE

Pursuant to rule 8.204(c) of the California Rules of Court, I hereby certify that this brief contains 2,946 words, not counting items excluded under rule 8.204(c)(3).

DATED: November 6, 2020 MUNGER, TOLLES & OLSON LLP

By: */s/ Rohit Singla*
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Attorneys for Defendant and
Appellant Lyft, Inc.

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:

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, 50th Floor, Los Angeles, California 90071.

On November 6, 2020, I served true copies of the following document(s) described as:

LYFT, INC.'S PETITION FOR REHEARING

on the interested parties in this action as follows:

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

Attorneys for People of the State of California	
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 6, 2020, at Los Angeles, California.

/s/ Cynthia S. Soden
Cynthia S. Soden