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H.B. 861––Transportation Network Companies - Itemized Receipts and Operator Data Reporting––SUPPORT WITH AMENDMENTS

Hearing before the House Economic Matters Committee of the Maryland General Assembly

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The National Employment Law Project (NELP) is a nonprofit organization with more than fifty years of experience advocating for the labor and employment rights of underpaid workers. NELP works extensively at the federal, state and local levels to promote policies that expand worker protections and support a good-jobs economy—an economy where every job is a good job, everyone who wants a job can get one, and everyone has economic security between jobs. We work closely with workers in the on-demand and 'gig' economy who are organizing for fair pay and healthy and safe working conditions.

We **SUPPORT H.B. 861** with amendments as described below.

Transportation Network Companies (TNCs) Use Opaque Algorithmic Decision-making Tools that Leave Drivers and Riders in the Dark.

Corporations like Uber and Lyft manage their workers through opaque automated decision systems. They amass extensive data, which is then used as inputs for hidden algorithms that determine which workers will be assigned or offered rides, how much they will be paid, what the rider will be charged, and whether or when a driver will be suspended or terminated (euphemistically called 'deactivation'). This means "[d]rivers are in the dark about why they're offered certain promotions, how fares are calculated, where they're actually going, or even how they're assigned specific rides."[1]

Not only do Uber and Lyft set pay based on hidden algorithms, "there is reason to think they use intimate data to determine precisely how little an individual worker may be willing to accept to perform a job."[2]

Similarly, consumers who engage TNCs for their transportation needs lack information on why the TNC charges them a particular amount, why the fare may change suddenly, or why a friend may be charged a different amount for a similar ride.

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[1] Varun Nagaraj Rao, *Building on Colorado's Success: All States Need Mandatory Rideshare Transparency Reporting*, CTR. FOR INFO. TECH. POL'Y, (Jun. 19, 2024), https://blog.citp.princeton.edu/2024/06/19/building-on-colorados-success-all-states-need-mandatory-rideshare-transparency-reporting/.

[2] AI Institute, American Economic Liberties Project, Coworker, et. al, *Prohibiting Surveillance Prices and Wages*, 5 (Feb. 2025), https://towardsjustice.org/wp-content/uploads/2025/02/Real-Surveillance-Prices-and-Wages-Report.pdf. *See also* Veena Dubal, *On Algorithmic Wage Discrimination*, 123 COLUMBIA L. REV. 1929 (Nov. 2023), https://www.columbialawreview.org/wp-content/uploads/2023/11/Dubal-On_Algorithmic_Wage_discrimination.pdf; Zephyr Teachout, *Algorithmic Personalized Wages*, 51 POL. & SOC'Y 436, 437, 442–44 (2023); Ben Wray, *Uber Boss Makes Shocking Admission Over Algorithmic Wage Discrimination*, (Feb. 14, 2024), https://novaramedia.com/2024/02/13/uber-boss-makes-shocking-admission-over-algorithmic-wage-discrimination/.

Lack of Transparency Exacerbates Precarity and Unpredictability.

The use of hidden algorithms to control access to work, which assignments or tasks are offered, and worker pay undermines the much-touted 'flexibility' of working for a TNC. Opaque automated decision-making tools "often manipulate[] worker behavior through gamification and make[] it nearly impossible for them to plan their work or establish stable routines."[3] Indeed, drivers for Uber have seen their pay plummet in the aftermath of Uber's "Upfront" fares:

> [T]wo years ago, Uber switched to a new pay model — Upfront Fares + Destination (UFD), giving Uber complete discretionary control over how its opaque algorithms determine driver pay. At about the same time, Uber also introduced "Trip Radar," an online auction scheme, in which multiple drivers vie in a race to the bottom to accept low pay offers. Uber's former practice of guaranteeing minimum driver pay for every trip was thus replaced by a policy where Uber now only has to pay the minimum *any* driver will accept for each trip.[4]

TNC drivers chase hidden metrics in real time, without time or power to negotiate (much less set) their pay. The outcome is poor work quality, with drivers working more but earning less.[5]

Amendments to H.B. 861 Would Increase Its Effectiveness.

H.B. 861 would provide much-needed basic transparency to workers and consumers alike and would enable Maryland regulators at the Commission to begin to receive basic data; NELP supports these first steps toward increased transparency.

Nonetheless, NELP believes that amendments to H.B. 861 are needed to ensure that the transparency is meaningful. In particular, NELP recommends amendments to bring the bill in line with provisions of the recently enacted Colorado Transportation Network Transparency Law.[6] The Colorado law mandates several types of detailed disclosures with definitions of various terms, including but not limited to the take rate and take amount (before tips) for each assignment as well as weekly information on: driver pay before expenses, estimated expenses, driver tips before expenses, hourly net pay, and more.[7] Critically, the Colorado law also provides mechanisms to enforce violations.

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[3] *Rao*, *Building on Colorado's Success*, supra n. 1.

[4] Len Sherman*, The Inconvenient Truths Uber's CEO Doesn't Want You To Know*, MEDIUM, (Aug. 12, 2024), https://len-sherman.medium.com/the-inconvenient-truths-ubers-ceo-doesn-t-want-you-to-know-2fc0cd742b24.

[5] Alex Bitter, *Gig Workers Worked More but Earned Less in 2024, a New Study* Shows, BUSINESS INSIDER, (Feb. 2025), https://www.msn.com/en-ie/money/companies/gig-workers-worked-more-but-earned-less-in-2024-a-new-study-shows/ar-AA1zhJAG?ocid=finance-verthp-feeds.

[6] Colorado SB-75, https://leg.colorado.gov/sites/default/files/2024a_075_signed.pdf.

[7] *See id.*

Finally, experts have noted that meaningful transparency is also necessary for state regulators. Requiring regular disclosures by TNCs "is both feasible and necessary to ensure governments and the public have adequate information to protect consumer and worker rights and well-being."[8] NELP further recommends amending H.B. 861 to include the data disclosure requirements as well as the use and accessibility recommendations of the Workers' Algorithm Observatory.[9] Those recommendations include requiring app-based companies to release public reports covering data on "ride statistics, driver statistics, algorithmic management, and platform policies."[10] Companies should also be required to release data in an accessible format that can be easily accessed by researchers.[11]

Accordingly, and for all of the foregoing reasons, NELP **supports H.B. 861 with amendments**.

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[8] Varun Nagaraj Rao, Samantha Dalal, Dana Calacci, *et. al*, *Call for Transparency in Rideshare Platform Operations*, CITP PRINCETON (June 2024), https://citpsite.s3.amazonaws.com/wp-content/uploads/2024/WAO_Rideshare_Trasparency_Memo+(2).pdf.

[9] *Id.*
[10] *Id.*
[11] *Id.*