



Testimony of Sally Dworak-Fisher National Employment Law Project

S.B. 747 — Transportation Network Companies—Deactivation Policy — SUPPORT

Hearing before the Senate Finance 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 low-wage workers. NELP works extensively at the federal, state and local levels to promote policies that expand worker protections and support a good jobs economy. 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 write in **SUPPORT** of S.B. 747 and urge a **FAVORABLE** report.

Arbitrary and Unfair Deactivations Inflict Serious Harm on Drivers.

As the authors of *Fired by An App* explain: “Drivers spend hours in their car and answer to an app that determines their next assignment, location, and pay.”¹ Despite the myth that these jobs are filled with people who work sporadically for just a few hours a week, research indicates that the majority of rides are provided by full-time workers.² These “full-time workers depend on their earnings from driving to provide the main economic support for themselves and their families.”³ Research in Washington state suggests that 87% of workers rely on their income from driving for basic needs.⁴ When drivers are suddenly, inexplicably suspended or terminated – what the corporations euphemistically call ‘deactivation’ – they struggle to make ends meet. The so-called ‘flexibility’ to log in for work at any time is a myth for workers who are barred from work.

Deactivations Disproportionately Hurt Workers of Color.

Black and Latinx workers are overrepresented by 45 percent in digital labor platform work such as driving for TNCs.⁵ In a survey of more than 800 drivers in California, 69% percent of drivers of color experienced deactivation of some kind, compared to 57% of drivers who identified as white.⁶ And research from University of Washington concluded that TNCs engage in “a racially biased practice of driver deactivation.”⁷ To the extent that deactivations are based on consumer ratings, such ratings can amplify bias and enable racially biased deactivations: researchers have found that “ratings systems have the potential to amplify existing bias from users . . . [and]

¹ *Fired by an App: the Toll of Secret Algorithms and Unchecked Discrimination on California Rideshare Drivers*, ASIAN AMERICANS ADVANCING JUSTICE, RIDESHARE DRIVERS UNITED (Feb. 2023), <https://www.drivers-united.org/fired-by-app>.

² Michael Reich, Pay, Passengers and Profits: Effects of Employee Status for California TNC Drivers, INST. FOR RESEARCH ON LAB. AND EMPL., (Oct. 5, 2020), <https://irle.berkeley.edu/wp-content/uploads/2020/10/Pay-Passengers-and-Profits-1.pdf>. While this report is based on California drivers, there is no reason to assume Maryland drivers are meaningfully different in this regard.

³ *Id*

⁴ Alexandra Yoon Hendricks, *UW study finds racial bias in rideshare driver deactivations*, THE SEATTLE TIMES, (Aug. 7, 2023), <https://www.seattletimes.com/seattle-news/uw-study-finds-racial-bias-in-rideshare-driver-deactivations/>.

⁵ See U.S. Bureau of Lab. Statistics, *Electronically Mediated Work*, *supra* n. 6 (noting over-representation of Black and Latinx workers).

⁶ *Fired by an App*, *supra* n. 1.

⁷ Lindsey Schwartz, Eva Maxfield Brown, and Nic Weber, *Deactivation with and without Representation: The Role of Dispute Arbitration for Seattle Rideshare Drivers*, (July 2023), available at https://osf.io/preprints/socarxiv/w6z8e_v1.

can channel that bias to customers who otherwise would not discriminate, leading to a disparity in ratings and earnings between [w]hite and non-[w]hite workers.”⁸

Drivers are Deactivated Without Explanation, Cause, or Meaningful Remedy.

Drivers’ “ability to earn a living is precariously dependent on secret algorithms and a customer complaint process that is inaccessible to them.”⁹ Drivers may be suddenly cut off from access to work, suffer devastating financial harm, yet have little idea why, much less access to a human being to challenge it. TNCs may:

deactivate a driver because of reasons as simple as a slight drop in the driver’s customer rating, although the threshold is not always clearly defined by the platforms. Drivers who are deactivated from the apps find themselves on their own with no meaningful way to challenge the deactivation and reestablish livelihoods that are critical to their survival.¹⁰

Poor reviews may be retaliatory or racially biased, and “there’s no transparency, and there’s no recourse for drivers who have had false accusation . . .”¹¹ Instead of an HR department or system for meaningful communication about the deactivation: “TNC driver support is largely handled via telephone or chat where specialists lack the authority to reverse a deactivation, or even disclose relevant information about the cause of deactivation.”¹² Meanwhile, corporations like Uber, Lyft, and DoorDash require their workers to waive access to courts and to class actions *as a condition of work*, meaning they must pursue costly, lengthy individual private arbitration for any legal claims they may have.

⁸ Seb Murray, *Ratings Systems Amplify Racial Bias on Gig-Economy Platforms*, YALE SCHOOL OF MGMT. (Aug. 14, 2023), <https://insights.som.yale.edu/insights/ratings-systems-amplify-racial-bias-on-gig-economy-platforms>.

⁹ *Fired by an App*, supra n. 1.

¹⁰ *Id.*

¹¹ *Chicago Rideshare Drivers Say They’re Being Deactivated Unfairly After Bad Reviews, Call For Hearings Before Deactivation*, CBS Chicago, (Jan. 20, 2022), available at <https://www.cbsnews.com/chicago/news/chicago-rideshare-drivers-call-deactivation-hearings/>.

¹² Schwartz, Brown, *Deactivation*, supra n. 7 at 6.

S.B. 747 is a Commonsense Response to a Serious Problem.

S.B. 747 is a sensible response to the lack of transparency or accountability around the TNC deactivations hurting Maryland drivers today. The bill mirrors in many respects a law enacted in Seattle, Washington that establishes common sense guardrails against unfair and arbitrary deactivations and that establishes a process enabling workers to

- a) understand the grounds on which they may be deactivated according to a clear and specific company policy;
- b) get notice of and an opportunity to respond prior to being locked out, suspended, or terminated; and
- c) appeal their deactivations.¹³

S.B. 747 also meaningfully protects companies' ability to take immediate action against any workers who may engage in egregious misconduct. Thus, if a driver's actions pose an immediate safety threat or will cause irreparable harm, the TNC may deactivate the driver prior to an investigation.

S.B. 747 is Good Policy.

S.B. 747 simply provides commonsense protections for a class of workers whose access to income is frequently dependent on the hidden algorithms used by the corporations they work for, and who are left without an notice, explanation or meaningful access to human beings who can explain or assist in correcting wrongful 'deactivations.' Accordingly, and for all of the foregoing reasons, NELP **supports S.B. 747** and urges a **favorable** report.

¹³ See City of Seattle Ordinance 126878, *App-Based Worker Deactivation Rights Ordinance, SMC 8.40* (August 2023), <https://www.seattle.gov/documents/Departments/LaborStandards/Signed%20Ordinance%20126878.pdf>.