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TO: Chair Barker
Vice-Chairs Bynum and Barreto
Members of the House Committee on Business and Labor

FR: Jess Giannettino Villatoro, Political Director, Oregon AFL-CIO

RE: Regulating Transportation Network Companies, Opposition to HB 3023

March 18, 2019

The Oregon AFL-CIO represents 300,000 workers across the state and is proud to be a voice for all workers in the legislative process. We've consistently engaged in the conversation about how to best regulate Transportation Network Companies. Since 2015, we've been organizing TNC drivers and have heard from them what their challenges are with this rapidly evolving industry. It's because of that work, that we're opposed to HB 3023. We do appreciate Representative Holvey's stakeholder workgroup, that met over the course of several months to develop a policy that reflected the conversations that occurred. We are neutral on HB 3379.

The concerns the drivers we've worked with have raised are vast. There are a couple of the drivers here today to share with you why they're opposed to HB 3023 and many more written testimonies on OLIS as well, so I won't highlight all of them. I will highlight the primary subject their concerns fit into; rates for compensation, unfair deactivations, lack of civil rights protections including against sexual harassment, and insurance challenges. Since Uber and Lyft both currently classify their drivers as independent contractors, these drivers have no protections against making less than minimum wage or overtime, no protections against retaliation, no protections against discrimination and harassment, and have to provide all of the insurance coverage and cover the high deductibles when they are in accidents and no ability to collectively bargain for better than what employees inherently receive. The last drivers we spoke to had to contend with a deductible of \$1000 from Uber and \$2500 from Lyft.

It's important to note that the Bureau of Labor and Industries issued an advisory opinion in late 2015, that found that the only TNC at the time, Uber had misclassified their workers. I've uploaded the opinion to OLIS, but the advisory opinion does make a few points worth highlighting:

- Degree of Control (First factor of the 5-part test):
 - "To be working under their own business the worker must control such a meaningful part of the business that it stands as a separate economic entity...Uber exercises a significant amount of control over the drivers actual work. Uber unilaterally dictates the fare to be charged a percentage of which is paid to the driver. Uber monitors the driver and disciplines and may terminate those who do not perform to the standards. Uber may restrict a driver's access to the smartphone platform..."

These findings aren't just reflective of the former Labor Commissioner's opinion though. The New York Unemployment Insurance Division found in July of last year similar findings, citing:

- Among other things, the Board found that “Uber also exercises control through its Driver App, which sets up the information that appears on the Driver App; sets the fares charged to Riders; sets the rate of pay to drivers and the occasional income guarantee; sets the various incentives and promotions; and sets the music, tipping, and deactivation policies. The ridesharing company assigns the work by dispatching trip requests to the closest individual driver who must accept the dispatch within the Uber’s 15-second mandate. The company also provides the requisite tools, such as built-in maps on the Driver App and Uber signage, conducts an occasional “ID check” on the Driver App, and sets the order of Riders’ drop-off for UberPOOL”

In the New York case, Uber recently withdrew its appeal and the Board’s decision is now final. In it, the Board indicates the New York State Department of Labor will be auditing and collecting premiums from Uber. I’ve uploaded BOLI’s advisory opinion, as well as the New York Unemployment Appeals Board finding for your review. They proceed to go through each facet of the current 5-part test and ultimately find that the drivers have been misclassified by the TNC industry. From Oregon to New York regulatory bodies have concluded the Transportation Network Companies’ founding structure is in violation of labor law.

The industry will likely highlight that HB 3023 does not have explicit definition of driver stating that they are independent contractors. Dissimilar to previous iterations of this policy conversations, but there are provisions throughout the bill that allude to an independent contractor relationship. For example, Section 5(1)b, where the driver is mandated to provide *proof of automobile liability insurance that covers the applicant’s transportation network company vehicle*. This policy choice assumes an independent contractor relationship, because it mandates the worker to pay for coverage. Unlike if you were an employee and it would be covered by the employer – or if this bill was actually neutral on the question about employee status it wouldn’t say anything.

In working with the TNC drivers and the Transportation Fairness Portland Campaign, we were able to pass a resolution to begin creating a driver and industry board, sometimes referred to as the “Wage Board” at the City of Portland. This work engaged hundreds of drivers to begin creating their only formal structure to address the concerns raised earlier. HB 3023 would undermine their ability to see their driver and industry board finalized and circumvent their only formal avenue to address their concerns, by preempting the local jurisdiction’s ability to regulate the TNC industry moving forward. HB 3023’s preemption also inhibits any other local jurisdiction from taking innovative approaches to entire regulatory framework that meets the needs of local drivers, consumers and the industry.

Ultimately, we believe that until the state acts on misclassification by updating the independent contractor test, there is no room to appropriately preempt the only regulatory body to date in the state that has taken steps to address the very real challenges workers face in this industry. Thank you for the opportunity to testify today, and we encourage a no vote on HB 3023.

