



December 18, 2019

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative (A.G. File No. 19-0026, Amendment #1) related to app-based rideshare and delivery drivers.

BACKGROUND

App-Based Rideshare and Delivery

App-Based Rideshare and Delivery. Some companies now allow customers, using a smartphone application (“app”), to hire someone to provide a service. The most common work done this way is personal transportation (“ridesharing”) and food delivery. Companies set driver pay for each trip and drivers—as independent contractors—choose when and where to work but provide their own vehicle and cover their own expenses.

Large Majority of Drivers Drive Part-Time. Flexibility may be particularly important to part-time drivers. For example, some drivers drive part-time around their class schedule or the work schedule of their other job. Many drivers also only work for a short time. One company reported that two-thirds of new drivers are no longer active six months later.

Drivers and Driver Pay. Although estimating the number of drivers in California is complicated, our best estimate is that between 300,000 and 400,000 Californians provide rides or deliveries each month. Due to high driver turnover, the total number who drive each year is higher—likely between 800,000 and 950,000. Though hourly pay varies and is difficult to estimate, most drivers probably make between \$11 and \$16 per hour, on average, after covering vehicle expenses. Drivers may earn much more than this amount during some hours and much less than this amount during other hours.

Major Rideshare and Delivery Companies Headquartered in California. Five out of the six largest rideshare and delivery companies are headquartered in California. The total market value of these companies is about the same as the market value of Ford and General Motors. Thus, the

value of these companies has a concentrated effect on Californians' income and stock market earnings.

California Employment Laws

Employment Laws, Benefits, and Protections. State law requires that employers follow rules about employee wages, hours, and breaks. These rules set the state minimum hourly wage and when rest and meal breaks must be provided. Employers also must provide certain benefits, including having insurance to cover on-the-job injuries, reimbursing employees for job expenses, and contributing to unemployment insurance. Finally, employees have certain job protections—for example, taking time off due to illness, a short-term disability, or to bond with a new child. On top of wages, job benefits and protections typically add about 30 percent to a worker's total compensation.

Employment Laws, Benefits, and Protections Apply to Employees, Not Contractors. Employers must comply with laws, benefits, and job protections for their employees. They are not required to do so for those who do work for a company but are not employees—known as independent contractors. However, independent contractors may only perform certain types of work. State rules set the type of work independent contractors can do.

Drivers Work as Independent Contractors, Not Employees. App-based drivers are independent contractors, a setup where drivers choose when and where to work but must provide their own vehicle and pay their own expenses. Because drivers are not employees, app-based companies are not required to follow state employment laws.

Under New Rule, Drivers May Now Be Employees. The state recently enacted a new law that limits what types of work businesses can hire independent contractors to do. For all other types of work, businesses must hire employees. App-based drivers—independent contractors under the old standard—likely will be employees under the new standard. This means that companies will be required to comply with existing laws, benefits, and job protections for app-based drivers. Companies will also need to comply with any future benefits or protections enacted by the state.

Economic Effects of Classifying Drivers as Employees. The economic effects of treating app-based drivers as employees rather than independent contractors are uncertain. The effects depend on many factors, including how the rideshare and delivery companies, their customers, and their investors respond to these changes. Below, we discuss how each group might respond:

- ***Responses by Rideshare and Delivery Companies.*** Providing drivers legally required employee benefits and protections would increase costs for rideshare and delivery companies. To limit these new costs, rideshare and delivery companies might hire fewer drivers. These companies also would eventually increase fares and delivery charges to make up for their new costs.
- ***Responses by Consumers.*** In response to higher fares and delivery charges, customers would take fewer rides and place fewer orders. The size of these reductions is unknown but potentially large.

- **Responses by Investors.** Rideshare and delivery companies could soon face higher costs and therefore provide fewer rides and deliveries. This may decrease these companies' long-term profitability, which could reduce these companies' stock market values and stock prices.

PROPOSAL

Worker Classification. This measure would make app-based drivers independent contractors. As a result, recent state changes to the types of work that independent contractors may do would not affect these drivers. Future changes to legally required worker benefits or protections also would not apply.

Various Work-Related Benefits. In addition to making drivers independent contractors, the measure would require companies to provide certain new benefits, as detailed below:

- **Earnings Minimum.** The measure would require app-based companies to pay at least 120 percent of the minimum wage for each hour a driver spends driving—but not time spent waiting for requests.
- **Health Insurance Stipend.** The measure would require rideshare and delivery companies to provide a health insurance stipend of about \$400 per month to drivers who regularly work more than 25 hours per week (not including waiting time). Drivers who average 15 driving hours per week but less than 25 driving hours would receive half as much.
- **Medical Expenses and Disability Insurance.** The measure would require that companies buy insurance to cover driver medical expenses and provide disability pay when a driver is injured while driving.
- **Rest Policy.** The measure would prohibit drivers from working more than 12 hours in a 24 hour period for a single rideshare or delivery company.
- **Other.** The measure would require that rideshare and delivery companies have sexual harassment prevention policies and conduct criminal background checks and safety training for all drivers. It also would prohibit discrimination in hiring and firing.

May Limit Local Jurisdictions Ability to Set Different Rules. The measure seeks to limit the ability of local jurisdictions to place their own rules on rideshare and delivery companies. For example, local jurisdictions may not be able to set a higher minimum earnings guarantee.

FISCAL EFFECTS

Economic Effect of Making Drivers Employees Would Not Occur. The key element of the measure is to allow app-based drivers to continue working as independent contractors. In doing so, the economic effects of classifying drivers as employees, as discussed earlier, would not occur. This means more drivers would work for rideshare and delivery companies. Also, the stock prices of these companies would be higher. Other parts of the proposal would result in some new costs to rideshare and delivery companies but the economic effects of these costs likely will be minor.

Increase in State Income Tax Revenue. The measure likely would lead to an increase in personal income tax revenue for the state. The state collects personal income taxes on earnings, including earnings from selling stock. To the extent that stock prices for California-based rideshare and delivery companies increase as a result of the measure, Californians who own stock in these companies would earn additional taxable income. In addition, the measure likely would increase the number of people who earn income from driving. This is because companies would hire more drivers if drivers work as independent contractors. Some of these people likely would earn no income or less income if they did not have the option to work as app-based drivers. Because of this, the measure likely would increase aggregate taxable earnings of workers overall, though these drivers would receive fewer job benefits and protections.

Minimal Fiscal Effect on State Employment Benefit Programs. Under the measure, drivers would not be eligible for some employment benefits available to employees. These include unemployment insurance, workers' compensation, paid family leave, and disability insurance. Though this will affect the personal finances of individual drivers, these programs generally operate as insurance programs—that is, employees and employers pay into the programs. Thus, the impact to the General Fund likely is minimal, given that benefits are primarily self-funded.

Summary of Fiscal Effects

This measure would have the following major fiscal effect:

- Increase in state personal income tax revenue of an unknown amount.

Sincerely,

Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance