**5550-S.E AMH BFS H2488.2 - NOT FOR FLOOR USE**

**ESSB 5550** - H COMM AMD

By Committee on Business & Financial Services

**NOT ADOPTED 4/15/2015**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  This act may be known and cited as the insurance for providers of commercial transportation services act.

NEW SECTION. **Sec.**  The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commercial transportation services" or "services" means all times the driver is logged in to a commercial transportation services provider's digital network or software application or until the passenger has left the personal vehicle, whichever is later.

(2) "Commercial transportation services provider" means a corporation, partnership, sole proprietorship, or other entity, operating in Washington, that uses a digital network or software application to connect passengers to drivers for the purpose of providing a prearranged ride.

(3) "Driver" means an individual who uses a personal vehicle to provide services for passengers matched through a commercial transportation services provider's digital network or software application. A driver need not be an employee of a commercial transportation services provider.

(4) "Passenger" means a passenger in a personal vehicle for whom transport is provided, including:

(a) An individual who uses a commercial transportation services provider's digital network or software application to connect with a driver to obtain services in the driver's vehicle for the individual and anyone in the individual's party; or

(b) Anyone for whom another individual uses a commercial transportation services provider's digital network or software application to connect with a driver to obtain services in the driver's vehicle.

(5) "Personal vehicle" means a vehicle that is used by a driver in connection with providing services for a commercial transportation services provider.

(6) "Prearranged ride" means a route of travel between points chosen by the passenger and arranged with a driver through the use of a commercial transportation services provider's digital network or software application. The ride begins when a driver accepts a requested ride through a digital network or software application, continues while the driver transports the passenger in a personal vehicle, and ends when the passenger departs from the personal vehicle.

NEW SECTION. **Sec.**  (1)(a) Before being used to provide commercial transportation services, every personal vehicle must be covered by a primary automobile insurance policy that specifically covers commercial transportation services. Except as provided in subsection (2) of this section, a commercial transportation services provider must secure this policy for every personal vehicle used to provide commercial transportation services. For purposes of this section, a "primary automobile insurance policy" is not a private passenger automobile insurance policy.

(b)(i) The primary automobile insurance policy required under this section must provide coverage, as specified in this subsection (1)(b), at all times the driver is logged in to a commercial transportation provider's digital network or software application and at all times a passenger is in the vehicle as part of a prearranged ride, as follows:

(A) Liability coverage, while providing commercial transportation services applicable during the period before a driver accepts a requested ride through a digital network or software application, in an amount no less than fifty thousand dollars per person for bodily injury, one hundred thousand dollars per accident for bodily injury of all persons, and thirty thousand dollars for damage to property;

(B) Uninsured motorist coverage and underinsured motorist coverage in the amount of no less than fifty thousand dollars per person for bodily injury and one hundred thousand dollars per accident for bodily injury of all persons;

(C) Personal injury protection coverage pursuant to RCW 48.22.095; and

(D) Comprehensive and collision coverage with a maximum deductible of five hundred dollars.

(ii) The primary automobile insurance policy required under this subsection must provide the following coverages, applicable during the period of a prearranged ride:

(A) Combined single limit liability coverage in the amount of one million dollars for death, personal injury, and property damage;

(B) Uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars;

(C) Personal injury protection coverage pursuant to RCW 48.22.095; and

(D) Comprehensive and collision coverage with a maximum deductible of five hundred dollars.

(2)(a) As an alternative to the provisions of subsection (1) of this section, if the office of the insurance commissioner approves the offering of an insurance policy that recognizes that a person is acting as a provider of commercial transportation services and using a personal vehicle to provide commercial transportation services, a driver may secure a primary automobile insurance policy covering a personal vehicle and providing the same coverage as required in subsection (1) of this section. The policy coverage may be in the form of a rider to, or endorsement of, the driver's private passenger automobile insurance policy only if approved as such by the office of the insurance commissioner.

(b) If the primary automobile insurance policy maintained by a driver to meet the obligation of this section does not provide coverage for any reason, including that the policy lapsed or did not exist, the commercial transportation services provider must provide the coverage required under this section beginning with the first dollar of a claim.

(c) The primary automobile insurance policy required under this subsection and subsection (1) of this section may be secured by any of the following:

(i) The commercial transportation services provider as provided in subsection (1) of this section;

(ii) The driver as provided under (a) of this subsection; or

(iii) A combination of both the commercial transportation services provider and the driver.

(3) The insurer or insurers providing coverage under subsections (1) and (2) of this section are the only insurers having the duty to defend any liability claim from an accident occurring while commercial transportation services are being provided.

(4) If a driver purchases a primary automobile insurance policy as allowed under subsection (2) of this section, the commercial transportation services provider must verify that the driver has done so.

(5) A primary automobile insurance policy required under subsection (1) or (2) of this section may be placed with an insurer licensed under this title to provide insurance in the state of Washington or as an eligible surplus line insurance policy as described in RCW 48.15.040.

(6) The insurance coverage requirements described in subsections (1) and (2) of this section do not apply to drivers and entities that have coverage pursuant to chapter 46.72 or 46.72A RCW.

(7) This section does not require a private passenger automobile insurance policy to provide primary or excess coverage or a duty to defend for the period of time in which a driver is logged in to a commercial transportation services provider's digital network or software application or while a passenger is in the vehicle.

(8)(a) A commercial transportation services provider must make the following disclosures to a prospective driver in the prospective driver's terms of service:

WHILE OPERATING ON THE COMMERCIAL TRANSPORTATION SERVICES PROVIDER'S DIGITAL NETWORK OR SOFTWARE APPLICATION, YOUR PRIVATE PASSENGER AUTOMOBILE INSURANCE POLICY MIGHT NOT AFFORD LIABILITY, UNDERINSURED MOTORIST, PERSONAL INJURY PROTECTION, COMPREHENSIVE, OR COLLISION COVERAGE, DEPENDING ON THE TERMS OF THE POLICY.

IF THE VEHICLE THAT YOU PLAN TO USE TO PROVIDE COMMERCIAL TRANSPORTATION SERVICES HAS A LIEN AGAINST IT, YOU MUST NOTIFY THE LIENHOLDER THAT YOU WILL BE USING THE VEHICLE FOR COMMERCIAL TRANSPORTATION SERVICES THAT MAY VIOLATE THE TERMS OF YOUR CONTRACT WITH THE LIENHOLDER.

(b) The prospective driver must acknowledge the terms of service electronically or by signature.

(9) If more than one insurance policy provides valid and collectible coverage for a loss arising out of an occurrence involving a motor vehicle operated by a driver, the responsibility for the claim must be divided as follows:

(a) Except as provided otherwise under subsection (2)(c) of this section, if the driver has been matched with a passenger and is traveling to pick up the passenger, or the driver is providing services to a passenger, the commercial transportation services provider that matched the driver and passenger must provide insurance coverage; or

(b) If the driver is logged in to more than one commercial transportation services provider's digital network or software application but has not been matched with a passenger, the liability must be divided equally among all of the applicable insurance policies that specifically provide coverage for commercial transportation services.

(10) In an accident or claims coverage investigation, a commercial transportation services provider or its insurer must cooperate with a private passenger automobile insurance policy insurer and other insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of (a) dates and times at which an accident occurred that involved a participating driver and (b) within ten business days after receiving a request, a copy of the company's electronic record showing the precise times that the participating driver logged on and off the commercial transportation services provider's digital network or software application on the day the accident or other loss occurred. The commercial transportation services provider or its insurer must retain all data, communications, or documents related to insurance coverage or accident details for a period of not less than the applicable statutes of limitation, plus two years from the date of an accident to which those records pertain.

(11) This section does not modify or abrogate any otherwise applicable insurance requirement set forth in this title.

(12) After July 1, 2016, an insurance company regulated under this title may not deny an otherwise covered claim arising exclusively out of the personal use of the private passenger automobile solely on the basis that the insured, at other times, used the private passenger automobile covered by the policy to provide commercial transportation services.

**Sec.**  RCW 51.12.020 and 2013 c 141 s 3 are each amended to read as follows:

The following are the only employments which shall not be included within the mandatory coverage of this title:

(1) Any person employed as a domestic servant in a private home by an employer who has less than two employees regularly employed forty or more hours a week in such employment.

(2) Any person employed to do gardening, maintenance, or repair, in or about the private home of the employer. For the purposes of this subsection, "maintenance" means the work of keeping in proper condition, "repair" means to restore to sound condition after damage, and "private home" means a person's place of residence.

(3) A person whose employment is not in the course of the trade, business, or profession of his or her employer and is not in or about the private home of the employer.

(4) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.

(5) Sole proprietors or partners.

(6) Any child under eighteen years of age employed by his or her parent or parents in agricultural activities on the family farm.

(7) Jockeys while participating in or preparing horses for race meets licensed by the Washington horse racing commission pursuant to chapter 67.16 RCW.

(8)(a) Except as otherwise provided in (b) of this subsection, any bona fide officer of a corporation voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation, who at all times during the period involved is also a bona fide director, and who is also a shareholder of the corporation. Only such officers who exercise substantial control in the daily management of the corporation and whose primary responsibilities do not include the performance of manual labor are included within this subsection.

(b) Alternatively, a corporation that is not a "public company" as defined in RCW 23B.01.400 may exempt eight or fewer bona fide officers, who are voluntarily elected or voluntarily appointed in accordance with the articles of incorporation or bylaws of the corporation and who exercise substantial control in the daily management of the corporation, from coverage under this title without regard to the officers' performance of manual labor if the exempted officer is a shareholder of the corporation, or may exempt any number of officers if all the exempted officers are related by blood within the third degree or marriage. If a corporation that is not a "public company" elects to be covered under subsection (8)(a) of this section, the corporation's election must be made on a form prescribed by the department and under such reasonable rules as the department may adopt.

(c) Determinations respecting the status of persons performing services for a corporation shall be made, in part, by reference to Title 23B RCW and to compliance by the corporation with its own articles of incorporation and bylaws. For the purpose of determining coverage under this title, substance shall control over form, and mandatory coverage under this title shall extend to all workers of this state, regardless of honorary titles conferred upon those actually serving as workers.

(d) A corporation may elect to cover officers who are exempted by this subsection in the manner provided by RCW 51.12.110.

(9) Services rendered by a musician or entertainer under a contract with a purchaser of the services, for a specific engagement or engagements when such musician or entertainer performs no other duties for the purchaser and is not regularly and continuously employed by the purchaser. A purchaser does not include the leader of a group or recognized entity who employs other than on a casual basis musicians or entertainers.

(10) Services performed by a newspaper vendor, carrier, or delivery person selling or distributing newspapers on the street, to offices, to businesses, or from house to house and any freelance news correspondent or "stringer" who, using his or her own equipment, chooses to submit material for publication for free or a fee when such material is published.

(11) Services performed by an insurance producer, as defined in RCW 48.17.010, or a surplus line broker licensed under chapter 48.15 RCW.

(12) Services performed by a booth renter. However, a person exempted under this subsection may elect coverage under RCW 51.32.030.

(13) Members of a limited liability company, if either:

(a) Management of the company is vested in its members, and the members for whom exemption is sought would qualify for exemption under subsection (5) of this section were the company a sole proprietorship or partnership; or

(b) Management of the company is vested in one or more managers, and the members for whom the exemption is sought are managers who would qualify for exemption under subsection (8) of this section were the company a corporation.

(14) A driver providing commercial transportation services as defined in section 2 of this act. The driver may elect coverage in the manner provided by RCW 51.32.030.

(15) For hire vehicle operators under chapter 46.72 RCW who own or lease the for hire vehicle, chauffeurs under chapter 46.72A RCW who own or lease the limousine, and operators of taxicabs under chapter 81.72 RCW who own or lease the taxicab. An owner or lessee may elect coverage in the manner provided by RCW 51.32.030.

**Sec.**  RCW 51.12.185 and 2011 c 190 s 4 are each amended to read as follows:

(1) ((~~In order to assist the department with controlling costs related to the self-monitoring of industrial insurance claims by independent owner-operated for hire vehicle, limousine, and taxicab businesses,~~)) The department may appoint a panel of individuals with for hire vehicle, limousine, or taxicab transportation industry experience and expertise to advise the department.

(2) The owner or lessee of any for hire, limousine, or taxicab vehicle ((~~subject to mandatory industrial insurance pursuant to RCW 51.12.183~~)) is eligible for inclusion in a retrospective rating program authorized and established pursuant to chapter 51.18 RCW.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1) RCW 46.72.073 (Certificate suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements) and 2011 c 190 s 5;

(2) RCW 46.72A.053 (Certificate suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements) and 2011 c 190 s 6;

(3) RCW 51.12.180 (For hire vehicle businesses and operators—Findings—Declaration) and 2011 c 190 s 1;

(4) RCW 51.12.183 (For hire vehicle businesses and operators—Mandatory coverage—Definitions) and 2011 c 190 s 2;

(5) RCW 51.16.240 (For hire vehicle businesses and operators—Basis for premiums—Rules) and 2011 c 190 s 3; and

(6) RCW 81.72.230 (License suspension or revocation—Failure to pay industrial insurance premiums—Rules—Cooperative agreements) and 2011 c 190 s 7.

NEW SECTION. **Sec.**  Sections 1 through 3 of this act constitute a new chapter in Title 48 RCW."

Correct the title.

EFFECT: (1) Removes all reference to "transportation network company" and "transportation network company services" in the definitions and throughout the bill and replaces them with references to term "commercial transportation services" and "commercial transportation services providers."

(2) Removes all provisions regarding the regulation of transportation network companies, and removes references and requirements of the Department of Licensing.

(3) Modifies the insurance provisions to require underinsured motorist coverage, personal injury protection coverage, and comprehensive and collision coverage.

(4) Removes all of the conditions required in order for a driver for a commercial transportation services provider to be eligible for exemption from mandatory worker's compensation coverage.