
Transportation Committee

HB 2039

Brief Description: Concerning transportation network companies.

Sponsors: Representatives Springer, Barkis, Tarleton, Walsh, Walen, Stokesbary and Irwin.

Brief Summary of Bill

- Requires a Transportation Network Company (TNC) to have a valid TNC license issued by the Department of Licensing (DOL).
- Exempts TNCs with an operating license issued by a local jurisdiction from state requirements if the TNC only operates in that jurisdiction and has fewer than 500 TNC drivers or provides fewer than 100,000 trips per month.
- Requires a TNC to submit certain information to the DOL to qualify for a TNC license each year, including driver and vehicle lists.
- Preempts local laws that are inconsistent with, more restrictive than, or exceed the requirements of state TNC regulation.
- Establishes requirements for TNC drivers to qualify for and maintain a TNC driver permit, including initial and annual criminal background checks.
- Requires TNCs to certify to the DOL that TNC vehicles are properly equipped and meet state commercial and personal automobile liability insurance requirements.
- Authorizes the DOL to enter into a cooperative agreement with a county with a population greater than 1 million people to perform administrative duties related to TNC regulation.
- Requires TNCs to implement a nondiscrimination policy and a zero tolerance policy prohibiting the use of or impairment by drugs or alcohol while a TNC driver is offering or providing services.
- Establishes per-trip TNC fees to be assessed by the DOL to cover costs of administration and enforcement, and requires the DOL to distribute a portion of these fees to municipalities and counties in proportion to the trips that originated in each.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Authorizes a 10-cent-per-trip fee for TNC trips originating in larger cities and counties to offset costs associated with improving transportation options for people with disabilities.

Hearing Date:

Staff: Jennifer Harris (786-7143).

Background:

Defined Terms.

"Commercial transportation services providers" are defined as businesses that use a digital network or software application to connect passengers to drivers for the purpose of providing a prearranged ride. A commercial transportation services provider is not a taxicab company; charter or excursion bus; auto transportation company; private, nonprofit transportation provider; limousine carrier; or commuter ride-sharing or flexible commuter ride-sharing arrangement.

"For-hire vehicle" is defined to include all vehicles used for the transportation of passengers for compensation, except for:

- auto stages;
- school buses operating exclusively under a contract to a school district;
- ride-sharing vehicles;
- limousine carriers;
- vehicles used by nonprofit transportation providers for elderly or handicapped purposes and their attendants;
- vehicles used by auto transportation companies;
- vehicles used to provide courtesy transportation at no charge to and from parking lots, hotels, and rental offices; and
- vehicles used by charter party carriers of passengers and excursion service carriers.

"For-hire operator" is defined as and includes any person, concern, or entity engaged in the transportation of passengers for compensation in for-hire vehicles.

Insurance and Liability.

Commercial transportation services providers, drivers if approved by the Office of the Insurance Commissioner, or a combination of a provider and a driver, must obtain a primary automobile insurance policy covering every personal vehicle used to provide commercial transportation services as follows:

- before a driver accepts a requested ride: \$50,000 per person; \$100,000 per accident; and \$30,000 for property damage; and
- after a driver accepts a requested ride: a combined single-limit liability coverage of \$1,000,000; and underinsured motorist coverage of \$1,000,000.

Commercial transportation services insurance policies must offer personal injury protection coverage and underinsured motorist coverage, consistent with existing motor vehicle insurance

law. After July 1, 2016, an insurance company may not deny a claim arising exclusively out of the personal use of a private vehicle solely on the basis that the insured, at other times, used the vehicle to provide commercial transportation services.

The commercial transportation services insurance coverage requirements are alternatively satisfied by having for-hire vehicle or limousine insurance coverage applicable to the vehicle being used for commercial transportation services. Commercial transportation services provider drivers, for-hire vehicle operators, limousine chauffeurs, and taxicab operators are exempt from workers' compensation requirements.

Local Authority.

Cities, counties, and port districts may license, control, and regulate all for-hire vehicles operating within their respective jurisdictions, including:

1. regulating entry into the business;
2. requiring a license to be purchased to operate a for-hire vehicle;
3. holding the right to revoke, cancel, or refuse to reissue a license;
4. controlling the rates charged and the manner in which rates are calculated and collected;
5. regulating the routes and operations of for-hire vehicles;
6. establishing safety and equipment requirements; and
7. any other requirements adopted to ensure safe and reliable for-hire vehicle transportation service.

Cities, towns, counties, and port districts may license, control, and regulate privately operated taxicab transportation services operating within their respective jurisdictions to the same extent that they are permitted to regulate all for-hire vehicles operating within their respective jurisdictions.

Transportation Network Company Study.

In the 2018 Transportation Budget, a budget proviso tasked the Joint Transportation Committee (JTC) with conducting a study on the regulation of TNCs within the state. The study was required to include a review of the regulatory framework used by local jurisdictions within the state and in other states, an evaluation of the most effective public safety aspects of a regulatory framework, and an assessment of the most effective and efficient state and local regulatory structure for regulation of TNCs.

The JTC was required to consult with relevant representatives of the Department of Licensing (DOL), the Utilities and Transportation Commission, the Washington State Patrol, local governments involved in the regulation of transportation network companies, entities providing transportation network services, and other relevant stakeholders.

A report was provided to the House and Senate transportation committees in January 2019 that included a comprehensive overview of existing regulations of TNCs.

Summary of Bill:

Defined Terms.

A "transportation network company" uses a digital network to connect passengers with transportation network company (TNC) drivers to provide prearranged rides. A "transportation network company driver" is a natural person who receives connections to potential passengers from a TNC via a digital network and uses a TNC vehicle to offer or provide a prearranged ride to a passenger through a digital network controlled by a TNC in exchange for compensation. A "transportation network company vehicle" is a vehicle that is owned, leased, or otherwise authorized for use by a TNC driver.

Transportation company services do not include transportation services provided by:

- for-hire vehicles;
- vehicles operating as taxicabs, limousines, or motor carriers;
- shared expense carpools, vanpool arrangements, or ride sharing services;
- auto transportation companies;
- metropolitan transportation entities or services provided under contract with a metropolitan public transportation entity; or
- services provided directly by or under contract with a political subdivision.

Transportation network company vehicles are excluded from the definition of "for-hire vehicle." Transportation network companies and TNC drivers are excluded from the definition of "for-hire operator."

Transportation Network Company License.

It is unlawful for a TNC to operate in more than one county in the state without a valid TNC license issued by the DOL. To qualify for a TNC license, a TNC must provide certain specified information to the DOL, including evidence that insurance requirements under state law have been met, documentation of the company's fare structure, a request for approval of driver training and testing (where applicable), and any other information the DOL reasonably requires.

A TNC license is valid for one year. Transportation network companies and TNC drivers legally operating in the state before this licensing requirement takes effect may continue to operate in the state until the DOL creates a TNC license, TNC driver permit, and any processes and deadlines associated with these licenses and permits.

A valid license issued by a local jurisdiction that allows a TNC to operate exempts the TNC from state law requirements. Local jurisdiction licenses are valid for TNCs that only operate in the local jurisdiction that issued the license; and that either have fewer than 500 affiliated TNC drivers or provide fewer than 100,000 trips per month.

After obtaining a TNC license, a TNC must certify to the DOL that it has met all TNC requirements by providing a driver list on a form approved by the DOL, with certain specified information, including the anniversary of the driver's certification date.

Transportation Network Company Fares.

A TNC's fare structure must be transparent and visible to a passenger before he or she confirms a ride. A digital network fare must clearly display:

- the fare for the prearranged ride;
- the option to receive an estimated fare for the prearranged ride; or
- the basis and rate on which the fare is to be calculated and any additional fees or charges that may apply.

A TNC must annually demonstrate compliance with this requirement by either filing documentation with the DOL or providing a physical demonstration to the DOL.

Transportation network companies must implement a policy to cap fares at twice the fare that would otherwise be applied for TNC services in a geographic area during a Governor- or local jurisdiction-declared state of emergency or disaster applying to that geographical area.

Transportation Network Company Reporting.

A TNC must submit quarterly reports in an electronic format approved by the DOL to any city with a population of greater than 200,000 people, or a county with a population of greater than 1 million people, that requires reporting by ordinance. The reports must include the following information:

1. total number of rides provided;
2. percentage of the number of rides picked up in each zip code;
3. pick-up and drop-off zip codes and the city or unincorporated county of each ride;
4. percentage of rides by zip code that are requested but not provided;
5. vehicle collisions and specified information on the collisions;
6. number of requested rides for an accessible vehicle;
7. reported crimes against drivers and passengers;
8. passenger complaints; and
9. other information reasonably determined by the DOL as necessary.

A TNC is required to retain records in an electronic or other form related to this reporting for at least two years.

Transportation Network Company Drivers.

It is unlawful for an individual to operate as a TNC driver without a valid TNC driver permit. TNC driver requirements include the following:

1. a valid driver's license;
2. a valid business license number, if required at the state or local level;
3. consent to the results of a criminal background check and driving abstract being provided to the DOL and local law enforcement officers (where applicable);
4. successful completion of any driving testing and training, if applicable and approved by the DOL; and
5. proof of valid primary automobile liability insurance.

The TNC, or a third party acting on its behalf, that is either nationally accredited or approved by the DOL, must conduct an annual local and national criminal background check to include a review of:

- a multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation; and

- the United States Department of Justice (DOJ) national sex offender public website.

A consumer reporting agency may prepare a consumer report that contains records of arrest, indictment, or conviction that are otherwise prohibited from inclusion (based on the amount of time that has elapsed) if they relate to a conviction of an adult for a crime that is a sex offense as defined in state law.

The TNC, or a designated third party, must obtain and review a driving history report for the driver applicant.

A TNC may not allow an individual to act as a TNC driver who:

- within the past three years, has committed more than three traffic infractions that are moving violations;
- within the past five years, has been convicted of attempting to elude police, reckless driving, driving on a suspended or revoked driver's license, or negligent driving in the first degree;
- within the past seven years, has been convicted of a Class A or B felony, any violent offense or serious violent offense, any most serious offense, any criminal offense related to reckless driving, driving under the influence, vehicular homicide, vehicular assault, negligent driving, or any sex offense;
- is listed on the DOJ national sex offender public website;
- does not possess a valid driver's license;
- does not possess proof of valid primary automobile liability insurance;
- is not at least 20 years old with at least one year of driving history; or
- has not annually self-certified that he or she is physically and mentally fit to be a TNC driver.

On the anniversary of each TNC driver's certification date, the TNC must provide to the DOL a criminal background check and abstract of driving records and any additional information required by the DOL.

Within 60 days of receiving information on a TNC driver, the DOL may immediately cancel an initial permit, with notice to the TNC and the TNC driver. The notice must include the reason the permit was cancelled and must provide an opportunity to appeal the decision. A new driver whose initial temporary permit is cancelled is not permitted to drive during the appeal period.

Local law enforcement officers may access driver information if a request is submitted to the DOL for the purpose of enforcing state law related to the regulation of TNCs. The names, dates of birth, and driver's license numbers of TNC drivers are exempt from disclosure under the Public Records Act.

Transportation Network Company Vehicles.

It is unlawful for an individual to operate a TNC vehicle unless a TNC has certified that the vehicle meets all requirements under state law. Transportation network vehicles must be properly equipped and in good condition, and must:

1. be issued a certificate of safety after undergoing an annual safety inspection by a third party, approved by the DOL;

2. have a current vehicle license and registration;
3. meet primary automobile liability insurance requirements; and
4. meet personal automobile liability insurance requirements.

Transportation network companies must require that any motor vehicle that a TNC driver intends to use to provide prearranged rides:

1. is not more than 12 years old;
2. meets the state's vehicle emissions requirements; and
3. has received an annual safety inspection by a third party approved by the DOL that includes inspection of certain specified vehicle equipment.

A TNC must inform a TNC driver of the driver's responsibility to comply with all applicable safety recalls. A vehicle with an incomplete do not drive safety recall may not be certified or operated as a TNC vehicle.

When providing TNC services, each TNC vehicle must display trade dress in the windshield and rear window, visible from outside the vehicle.

A TNC must certify to the DOL that the TNC has implemented a process to ensure that TNC vehicles have met all certification and operating requirements by providing a vehicle list on a form approved by the DOL that contains certain specified information and any additional information determined by the DOL to be necessary. Certifications for TNC vehicles are valid for one year.

Local law enforcement officers may access vehicle lists if a request is submitted to the DOL for the sole purpose of enforcing state law related to the regulation of TNCs.

Transportation Network Company Passengers.

A TNC must provide the following to a passenger before he or she enters a TNC vehicle for a prearranged ride:

1. the TNC driver's first name;
2. the make, model, and license plate number of the TNC vehicle;
3. the applicable fare; and
4. any additional information required by the DOL.

Within 24 hours of a trip's completion, a TNC must transmit an electronic receipt to the passenger that lists trip details and the total fair paid, with all charges and fees itemized.

Governmental Cooperative Agreements.

The DOL may enter into a cooperative agreement with a county with a population greater than 1 million to perform administrative duties related to TNC licenses, TNC driver permits, and TNC vehicle certificates. A municipality, county, or port district may enter into a cooperative agreement with any other municipality, county, or port district to perform authorized duties or to jointly enforce TNC regulations.

Transportation Network Company Zero Tolerance and Non-Discrimination Policy.

A TNC must implement a zero tolerance policy that prohibits the use of or impairment by drugs or alcohol while a TNC driver is providing prearranged rides or is logged in to the TNC's digital network. A copy of the zero tolerance policy must be provided to each TNC driver.

A TNC must implement a non-discrimination policy that prohibits TNC drivers from discriminating against passengers or potential passengers on the basis of geographic endpoints of a ride, race, color, national origin, religious belief or affiliation, sex, disability, age, or sexual orientation or gender identity. A TNC must provide notice of the zero tolerance and non-discrimination policies on its website, including procedures to report a complaint.

All TNCs and TNC drivers must comply with applicable non-discrimination laws and laws relating to the transportation of service animals. No additional charge may be imposed by TNCs or TNC drivers for providing services to people with disabilities.

The TNC is required to comply with certain procedures upon receipt of a complaint alleging a violation of the zero tolerance policy that involves criminal conduct. If the TNC determines that the TNC driver violated the zero tolerance policy, the TNC must take appropriate action against the driver, including certain specified minimum actions that include notification to the DOL. The DOL is required to develop and implement a process to provide notification to all licensed TNCs of information received related to zero tolerance policy violations.

Enforcement of Laws and Regulations.

The DOL may suspend, revoke, condition, or otherwise limit a TNC license on the DOL's own initiative or at the request of a local jurisdiction. The DOL may suspend a TNC's operations in a local jurisdiction for repeated violations of TNC regulations or for a single violation that poses a substantial risk to the public safety. The DOL or a local law enforcement officer may suspend, revoke, condition, or otherwise limit a TNC driver's permit for repeated violations of TNC regulations or for a single violation that poses a substantial risk to the public safety.

In addition to any applicable TNC regulations, the Uniform Regulation of Business and Professions Act applies to the regulation of TNCs for the purposes of unlicensed practices, issuance and denial of licenses, and discipline of licenses. In considering enforcement action, the DOL may consider any offense committed in one or more local jurisdictions.

In addition to the unprofessional conduct specified in the Uniform Regulation of Business and Professions Act, the following also constitutes unprofessional conduct for the purposes of TNC regulation:

1. A TNC failing to: (a) comply with TNC regulations; (b) remove a driver from the TNC's digital network after proper notice of a violation has been provided; or (c) provide certain specified information to the DOL or a local law enforcement officer investigating an alleged violation of TNC regulation and following the appropriate legal process.
2. A TNC driver failing to comply with TNC regulations, improperly soliciting or accepting a trip request, allowing another individual to use his or her TNC digital network access, withholding driver identification or additional documentation (including proof of insurance), failing to report information that would disqualify a driver from providing TNC services, providing TNC services or other for-hire services for more than 14 hours

in a 24-hour period, violating the non-discrimination or zero tolerance policy, or other specified acts.

Transportation Network Company Records.

A TNC must maintain individual trip records and individual TNC driver records for at least three years. To verify that a TNC is in compliance with TNC regulations, the DOL, a local law enforcement agency for a city with a population of greater than 200,000 people, or a local law enforcement agency for a county with a population of more than 1 million people may review a sample of records that the TNC is required to maintain no more frequently than biannually. The sample of records may be chosen by the DOL or the local law enforcement agency.

In response to a complaint or incident involving allegations of criminal conduct, the DOL or a local law enforcement agency may inspect any of a TNC's records related to the complaint or incident upon request and appropriate legal process. If the DOL or a local law enforcement agency has a reasonable basis to conclude that the TNC is not in compliance with TNC regulations, it may conduct a supplemental audit of records.

Transportation Network Company Fees and Surcharges.

Each prearranged ride provided by a TNC driver must be assessed a per trip fee by the DOL. The fee is to be set by the DOL to cover the DOL's costs of TNC regulation administration and enforcement and local jurisdictions' costs of TNC enforcement. The DOL may annually adjust this per trip fee to support expenses. A TNC must submit certain specified information relating to these per trip fees on a quarterly basis.

The DOL must retain the amount in TNC-provided fees necessary to cover its expenses, and must distribute the remaining amount to each municipality or county where a trip originated proportionately to the number of trips that originated in each jurisdiction. If the DOL enters into a cooperative agreement with a county with a population greater than 1 million people to perform certain TNC regulatory duties, the DOL may require a portion of the fee assessed, determined in consultation with the county, to be paid directly to the county by TNCs.

The DOL is required to deposit fees submitted to it by the TNCs in the newly created Transportation Network Company Account, a non-appropriated account. Expenditures from the Transportation Network Company Account may be used to carry out licensing, permitting, and regulatory activities related to TNC regulation. Local jurisdictions must use the TNC fees provided to them to fund TNC regulation enforcement activities.

Each prearranged ride provided by a TNC driver that originates in a city with a population of 200,000 people or more or a county with a population of 1 million people or more may be assessed an additional 10-cent fee to offset costs associated with improving transportation options for individuals with disabilities. (The assessment for a trip originating both in a city with a population of 500,000 people or more and in a county with a population of 1 million people or more may not exceed 10 cents and must be remitted by a TNC to the city.)

The primary purpose of the accessibility per trip fee is to incentivize TNCs and TNC drivers to improve access to on-demand wheelchair accessible transportation options. The per-trip fee

must be distributed by a city or county to provide funding for these transportation options. Expenses eligible for funding from this fee include the costs to TNC drivers of converting or purchasing a vehicle to be wheelchair accessible, and the costs to TNCs of enabling or providing wheelchair accessible rides via the TNC's digital network. The costs of converting or purchasing a vehicle to be used as a taxicab that is wheelchair accessible are eligible for funding with remaining funds.

The DOL may require that TNC drivers of wheelchair accessible vehicles undergo DOL-approved training.

Transportation Network Company Passenger Protections.

A TNC, TNC driver, agent of a TNC, or any person acting on behalf of a TNC may not take adverse action against a passenger for:

- filing a complaint against a TNC or TNC driver with the TNC, the DOL, or the Washington State Office of the Attorney General (Attorney General's Office);
- seeking information about the passenger's rights or informing others of their rights as passengers; or
- exercising rights protected by TNC regulations.

Adverse action includes revoking, denying, or otherwise limiting access to the digital network or TNC services.

The Attorney General's Office and the DOL must each maintain a toll-free number for complaints from passengers or former passengers of TNCs and a website to inform TNC passengers of their rights. Transportation network companies must maintain data on passenger complaints and their disposition for at least two years.

Local Authority and State Preemption.

The state preempts the regulation of transportation network services by local jurisdictions, disallowing all laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements explicitly set forth in state law. The state preempts local jurisdictions in all areas of TNC regulation that are governed by state law, including licensing and permitting; application review and processing; rate, entry, and operational requirements (unless a TNC only operates in one county); and fees, auditing, and reporting.

Local jurisdictions retain the authority to:

- regulate the routes and operations of TNC vehicles, including by restricting access to airports, stadiums, and large public events;
- impose requirements that are generally applicable to all businesses on TNCs, TNC drivers, and TNC vehicles within a jurisdiction; and
- enact and enforce ordinances related to traffic flow, traffic patterns, roadways, and public rights-of-way.

Any public entity operating a commercial airport facility may fully regulate TNC activities at the airport facility or on airport facility property.

Intent Section.

The purpose of the bill is to provide statewide uniform regulations relating to certain TNC operating requirements within the state, to encourage technological innovation, and to preserve and enhance access to important transportation options.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.