

HOUSE BILL REPORT

HB 2076

As Reported by House Committee On:
Labor & Workplace Standards

Title: An act relating to rights and obligations of transportation network company drivers and transportation network companies.

Brief Description: Concerning rights and obligations of transportation network company drivers and transportation network companies.

Sponsors: Representatives Berry, Simmons, Kloba, Bergquist, Pollet, Kirby, Bronoske, Fitzgibbon, Ryu and Macri.

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/26/22, 2/2/22 [DPS].

Brief Summary of Substitute Bill

- Establishes minimum per mile and per minute rates for drivers of transportation network companies (TNCs) and provides drivers with paid sick leave, Paid Family Medical Leave, and workers' compensation coverage.
- Creates uniform statewide regulations of TNCs.
- Creates a fund for a Driver Resource Center to, among other things, support drivers in resolving disputes around deactivations.
- Establishes statewide preemption with exceptions for certain local ordinances.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass.

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

Signed by 4 members: Representatives Sells, Chair; Berry, Vice Chair; Bronoske and Ortiz-Self.

Minority Report: Do not pass. Signed by 2 members: Representatives Hoff, Ranking Minority Member; Harris.

Minority Report: Without recommendation. Signed by 1 member: Representative Mosbrucker, Assistant Ranking Minority Member.

Staff: Trudes Tango (786-7384).

Background:

Transportation Network Companies.

A "transportation network company" (TNC), is a company that uses a digital network or software to connect passengers to drivers for the purpose of providing a prearranged ride. State-wide regulations of TNCs generally only address liability insurance requirements. Drivers for TNCs must carry certain insurance and coverage amounts differ depending on whether the driver is transporting a passenger.

Local Authority.

Cities, counties, and port districts may license, control, and regulate for-hire vehicles operating within their respective jurisdictions, including, for example: (1) regulating entry into the business; (2) requiring a license to operate; (3) controlling the rates charged and the manner in which rates are calculated and collected; and (4) establishing safety and equipment requirements.

Employment Standards and Benefits.

Persons are generally entitled to receive certain employment-related benefits, and employers are obligated to pay the related taxes or premiums, if an employer-employee relationship exists rather than an independent contractor relationship. Under state-wide paid sick leave laws, employees are entitled to one hour of paid sick leave for every 40 hours worked. Under the Paid Family and Medical Leave (PFML) program, employees are eligible for partial wage replacement for specified leave, and premiums for the program are paid by employers and employees. Drivers of TNCs are explicitly exempt from workers' compensation requirements, but may elect coverage as a sole-proprietor.

Summary of Substitute Bill:

Employment Standards and Benefits.

For the purposes of the minimum wage statutes, paid sick leave, and the PFML, the definition of "driver" specifies that a driver is not an employee of a TNC if the following factors are met: (1) the TNC does not unilaterally prescribe specific dates, times of day, or

a minimum number of hours the driver must be logged into the TNC application; (2) the TNC may not terminate the driver's contract for not accepting a specific transportation service request; (3) the TNC does not prohibit the driver from performing services for other TNCs; and (4) the TNC does not contractually prohibit the driver from working in other occupations.

Minimum Compensation: A TNC must ensure that a driver's total compensation is not less than the following minimum standards:

- For all time and miles on trips originating in cities with a population of more than 600,000 and for time and miles on trips driven in cities with a population of more than 600,000, the greater of: (a) 59 cents per minute and \$1.38 per passenger platform mile; or (b) a minimum of \$5.17 per dispatched trip.
- For all other trips, the greater of: (a) 34 cents per minute and \$1.17 per passenger platform mile; or (b) a minimum of \$5 per dispatched trip.

The Department of Labor and Industries (L&I) must increase the per mile and per minute rates by the rate of increase of the state minimum wage.

Notices: The TNCs must, among other things, provide: (1) notices to drivers about their rights, including the right to a guaranteed per minute and per mile rate for compensation; (2) receipts to drivers containing specific information about each trip; (3) receipts to riders containing certain information; and (4) various records and information to the Department of Licensing (DOL) to show compliance.

Paid Sick Leave: Beginning in 2023, the TNCs must provide drivers paid sick leave of one hour for every 40 hours of passenger platform time worked. Drivers are eligible to: (1) accrue paid sick leave upon recording 90 hours of passenger platform time on the TNCs platform; (2) carry over up to 40 hours of unused paid sick leave to the next year; and (3) use sick leave in increments of four hours or more.

Paid Family Medical Leave: For benefits beginning January 1, 2024, drivers may elect PFML coverage and the TNC for which the driver provides services is responsible to pay the employee share of the premiums on behalf of the driver. The Employment Security Department may adopt rules for implementation. For purposes of PFML, a driver is not considered an "employee" and a TNC is not considered an "employer."

Industrial Insurance: Beginning in 2023, L&I must assess premiums for TNCs for workers' compensation coverage applicable to drivers while the driver is engaged in passenger platform time and dispatch platform time. Premiums must be based on hours worked. For 2023, the rate assessed must be equivalent to taxicab companies. The L&I must adjust premium rates by the rate of inflation. The application of the industrial insurance statutes is not indicative of, or considered a factor in determining, the existence of an employer-employee relationship between a TNC and a driver for purposes of any other right, benefit, or obligation under other state and local employment laws.

Driver Resource Center and Dispute Resolution.

The Driver Resource Center Fund (Fund), is created in the custody of the State Treasurer, to be administered by the L&I. Only the Director of the L&I may authorize expenditures and an appropriation is not required. Expenditures may be used for services, representation, and support to drivers, provided by the Drivers Resource Center (Center) under contract. The L&I's administrative costs may not exceed 10 percent of the revenues to the Fund.

The TNCs must remit 15 cents of every passenger fare to the Fund. Drivers may make voluntary per-trip earnings deduction contributions to the Fund, provided that 100 or more drivers working for the TNC authorize such a deduction. Procedures are established regarding the TNC deducting voluntary contributions. If the TNC fails to remit the required passenger surcharges, the L&I must notify the DOL.

The Center must be a nonprofit organization, selected by the Governor, that: (1) allows drivers the right to be members of the organization; (2) has demonstrated experience providing dispute resolution and deactivation representation services to gig economy drivers in the state; and (3) provides culturally competent driver representation services, outreach, and education.

The TNCs may enter into L&I-approved agreements with the Center for dispute resolution over driver deactivations. Agreements must include: (1) opportunity for a driver representative to support drivers during the deactivation process; (2) a just-cause standard for deactivations; (3) provisions for the TNC to provide evidence it relied on in making its deactivation decision; (4) a good faith, substantive 30-day informal resolution process; (5) a formal process for adjudication by a panel of peer drivers mutually selected by the TNC and the Center and administered by a neutral third-party moderator, when disputes are not resolved by the informal process; and (6) an ongoing process for drivers to have a voice in working conditions.

The L&I may gather evidence and conduct public hearings for the purposes of determining whether to approve agreements and may request revised agreements.

Statewide Regulatory Requirements.

Uniform statewide regulations of TNCs are created for TNCs to, among other things: (a) obtain an annual \$5,000 permit to operate from the Department of Licensing (DOL); (b) implement zero tolerance drug and alcohol policies; (c) implement nondiscrimination policies; (d) conduct local and national background checks on drivers; (e) prohibit drivers who have certain moving violations, certain criminal convictions, and who are under 20 years old; (f) regulate vehicle standards, including requiring vehicles to not be more than 12 years old; (g) maintain certain records and allow the DOL to randomly inspect records; and (h) not charge fares that exceed two and one-half times ordinary fares during the first 30 days of a state of emergency.

A TNC is not vicariously, jointly, or severally liable for injuries resulting from or arising out of the use of a personal motor vehicle while the driver is logged on to the TNC driver platform if there is no negligence or criminal wrongdoing on the part of the TNC and the TNC has fulfilled all its obligations to the driver under the statewide regulatory statutes.

A violation of the statewide regulatory statutes constitute a violation of the Consumer Protection Act. The Attorney General must maintain a toll-free number for complaints from TNC riders and maintain a website to inform riders of their rights. The TNCs must maintain data regarding rider complaints.

The requirement for underinsured motorist coverage of \$1 million applicable while a passenger is in the car is removed.

Preemption.

With certain exceptions, the state preempts the field of regulating TNCs and drivers and no local government may impose any tax, fee, or other charge on TNCs or drivers.

An existing local ordinance that imposes a tax, fee, or surcharge remains in effect at the rate as it exists on the effective date of the bill, and no higher or new tax, fee, or surcharge may be imposed. An existing local ordinance that imposed a per trip tax, fee, or surcharge for the purposes of funding, in part, a driver conflict resolution center, must reduce that tax, fee, or surcharge by 15 cents. An existing local ordinance that regulated licensing and permitting of TNCs and drivers, or the requirements for and processing of applications, certifications, examinations, and background checks, remain in effect as they exist on the effective date of the bill. Any amendments to those local ordinances must be in conformance with the statewide regulatory standards.

A TNC with an L&I-approved agreement with the Driver Resource Center is deemed to satisfy all obligations under any local ordinance related to compensation and deactivation requirements established in the bill. Local ordinances related to wages and working conditions that are not already preempted, do not apply to a TNC as long as the agreement is in effect.

The preemption provisions do not prevent an airport operator from requiring TNCs from entering into contracts related to TNCs operating on airport property.

Substitute Bill Compared to Original Bill:

The substitute bill added per minute and per mile rates, preemption provisions, and makes clarifying changes to the PFML provision.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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

Staff Summary of Public Testimony:

(In support) There is more work to be done on the bill, but the parties are making progress and working together. Drivers need certainty around wages and a state safety net and a fair dispute resolution process for deactivations. Seattle's ordinance balanced the scales and should be adopted statewide. Paid sick leave should be expanded to all drivers in the state. Driving outside of Seattle is not sustainable and drivers rush to get back to Seattle to make better wages. Drivers in Seattle are not more valuable than drivers in other cities. Drivers rely on this work to make a living and they used to make more when the TNCs first started. Drivers now can end up making less than minimum wages.

(Opposed) The current local regulations create confusion and lead to higher costs and inefficiencies. The driver resource center does not reflect the concerns of all the representatives of drivers.

(Other) Drivers want to remain independent contractors with flexibility and also get benefits. Without flexibility, many drivers would not choose to work for a TNC. Protecting independent contractor status while providing minimum earnings and benefits is the goal. There needs to be statewide consistency and uniformity to replace the patchwork of local policies. The current draft does not reflect agreements and needs additional work. There will be a significant impact on the Department of Labor Industries because of the amount of work needed to implement the bill.

Persons Testifying: (In support) Representative Liz Berry, prime sponsor; Jake Lindsay; Zaed Sharba; Bright Nkrumah; Don Creery; Francis Kamau; Robert Gulbranson; Ahmed Mohamed; Vasil Denev; Brenda Wiest, Teamsters Local 117; Patrice Tisdalel, Peter Kuel, Ahmed Farah, Jennifer Heinlein, and Walter Ellis, Drivers Union; and Joe Kendo, Washington State Labor Council, American Federaton of Labor and Congress of Industrial Organizations.

(Opposed) Michael Wolfe, Drive Forward.

(Other) Kosasih Winoto; Abubacar Kanteh; Chris Thomas and George Nzenge, Lyft; Jesse Mitzel; Craig Werner; Allison Ford, Uber; Hayley Puhn; Molly Jones, Washington Technology Industry Association; Tammy Fellin, Department of Labor and Industries; and Mike Ennis, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.