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**SENATE BILL 5550**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Habib and Fain

AN ACT Relating to providers of commercial transportation services; amending RCW 51.12.183; and adding a new chapter to Title 46 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

(1) "Department" means the department of licensing.

(2) "Personal vehicle" means a vehicle that is used by a transportation network company driver in connection with providing services for a transportation network company that meets the vehicle criteria in this chapter and that is authorized by the transportation network company.

(3) "Prearranged ride" means a route of travel that 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.

(4) "Transportation network company" 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 transportation. A transportation network company is neither a taxicab company, passenger charter carrier, or auto transportation company, as described in Title 81 RCW, nor a limousine or for hire vehicle, as defined in this title. A transportation network company is not deemed to own, control, operate, or manage the personal vehicles used by transportation network company drivers. A transportation network company does not include a political subdivision or other entity exempt from federal income tax under 26 U.S.C. Sec. 115 of the federal internal revenue code.

(5) "Transportation network company driver" or "driver" means an individual who uses a personal vehicle to provide services for passengers matched through a transportation network company's digital network or software application. A driver need not be an employee of a transportation network company. A driver is not a for hire operator as that term is used in this title and Title 51 RCW.

(6) "Transportation network company passenger" or "passenger" means a passenger in a personal vehicle for whom transport is provided, including:

(a) An individual who uses a transportation network company'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 transportation network company's digital network or software application to connect with a driver to obtain services in the driver's vehicle.

(7) "Transportation network company services" or "services" means the provision of transportation by a driver to a passenger with whom the driver is matched through a transportation network company or all times the driver is logged in to a transportation network company's digital network or software application. The term does not include services provided either directly or under contract with a political subdivision or other entity exempt from federal income tax under 26 U.S.C. Sec. 115 of the federal internal revenue code.

NEW SECTION. **Sec.**  (1)(a) A transportation network company must comply with the requirements of this chapter, including those relating to a driver's compliance with insurance, qualification, conduct, nondiscrimination, maximum work hours, criminal history, and driving record requirements. Any penalty for a violation of this chapter may be assessed only against the transportation network company, unless the transportation network company could not have reasonably known of the violation.

(b) This chapter does not relieve a driver from complying with the applicable requirements set out in this title, including those relating to drivers' licenses, vehicle registrations, minimum insurance, rules of the road, and the penalties associated with any violation.

(2) Except as provided in rules adopted by the department pursuant to this chapter, chapter 18.235 RCW governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter.

(3) A transportation network company must comply with the filing requirements of chapter 23B.02 RCW and the registered agent requirements of chapter 23B.05 RCW.

(4) Pursuant to rules adopted by the department, every transportation network company operating under this chapter must submit a quarterly report to the department, providing at a minimum the total number of drivers using its digital network or software application, the total number of prearranged rides, the total hours that drivers are logged in to its network, the total hours spent providing transportation network company services, and describing any accident in which a personal vehicle was involved while carrying a passenger.

(5)(a) A transportation network company may not, with respect to drivers using its digital network or software application, or drivers using the digital network or software application of another transportation network company, engage in anticompetitive behavior, including requiring drivers to agree to a noncompetition agreement.

(b) A transportation network company may not prohibit a driver from using a personal vehicle to provide transportation network company services using the digital network or software application of another transportation network company.

(c) A transportation network company may prohibit a driver's use of any brand or mark of the company in a way that is confusing to the public.

(6) Every transportation network company must, if achievable, make its digital network or software application accessible to persons with disabilities.

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

(b) The insurance policy required under this section must:

(i) Provide liability coverage, applicable during the period before a driver accepts a requested ride through a digital network or software application, in an amount no less than that required under RCW 46.72.050, provide comprehensive and collision coverage, and provide underinsured motorist and personal injury protection coverage of one hundred thousand dollars per person and three hundred thousand dollars per accident;

(ii) Provide liability coverage, applicable during the period after a driver accepts a requested ride through a digital network or software application, in an amount no less than one hundred thousand dollars per person and one million dollars per accident, provide comprehensive and collision coverage, and provide underinsured motorist and personal injury protection coverage of one hundred thousand dollars per person and one million dollars per accident; and

(iii) Provide coverage at all times the driver is logged in to a transportation network company's digital network or software application and at all times a passenger, as defined in this chapter, is in the vehicle.

(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 transportation network company driver and using a personal vehicle to provide transportation network company 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.

(b) If a driver secures a primary automobile insurance policy covering a personal vehicle, the transportation network company must maintain an excess insurance policy covering that personal vehicle providing the same coverage as required in subsection (1) of this section.

(c) If the primary automobile insurance policy purchased by a driver pursuant to this section does not provide coverage for any reason, including that the policy lapsed or did not exist, the transportation network company's policy required under (b) of this subsection must provide the coverage required under this section beginning with the first dollar of a claim.

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

(4) In addition to the requirements in subsections (1) and (2) of this section, before allowing a person to provide transportation network company services, a transportation network company must verify that he or she is complying with the requirements of RCW 46.30.020.

(5)(a) If a transportation network company purchases a primary automobile insurance policy under subsection (1) of this section, it must provide proof of the policy to the department.

(b) Alternatively, if a driver purchases a primary automobile insurance policy as allowed under subsection (2) of this section, the transportation network company must verify that the driver has done so. Additionally, the transportation network company must provide proof to the department of the excess insurance policy required under subsection (2)(b) of this section.

(c) Upon request from the department, drivers and transportation network companies must provide copies of the policies required under this section to the department.

(6) A primary automobile insurance policy required under subsection (1) or (2) of this section may be placed with an insurer licensed under Title 48 RCW to provide insurance in the state of Washington or as an eligible surplus line insurance policy as described in RCW 48.15.040.

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

(8) 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) 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 transportation network company that matched the driver and passenger must provide insurance coverage; or

(b) If the driver is logged in to more than one transportation network company 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.

(9) In a claims coverage investigation, a transportation network company must cooperate with a private passenger automobile insurance policy insurer that also insures the driver's vehicle, including the provision of relevant dates and times during which an incident occurred that involved the driver while the driver was logged in to a transportation network company's digital network or software application.

(10) This section does not modify or abrogate any otherwise applicable insurance requirement set forth in Title 48 RCW.

(11) If a transportation network company's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the transportation network company must, to the extent possible, direct the insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle. The department may not assess any fines as a result of this subsection.

(12) After July 1, 2016, an insurance company regulated under Title 48 RCW 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 transportation network company services.

(13) The office of the insurance commissioner must track data regarding the levels of coverage provided in subsection (1) of this section. Beginning January 1, 2016, and annually thereafter, the office of the insurance commissioner must provide its findings to the transportation committees of the legislature.

(14) A city, county, political subdivision, or special purpose district may not:

(a) Adopt a law, rule, or ordinance that is in conflict with this chapter;

(b) Require a transportation network company to obtain any additional approval, such as a permit or license, before operating within the jurisdiction. However, this subsection (14)(b) does not apply to standard business licenses and the levying of business-related taxes at the local level; or

(c) Prohibit the provision of transportation network company services or the use of such services within the jurisdiction.

NEW SECTION. **Sec.**  (1) The following requirements apply to the provision of services:

(a) A driver may not provide services unless a transportation network company has matched the driver to a passenger through a digital network or software application. A driver may not solicit or accept the on-demand summoning of a ride.

(b) A transportation network company must make available to prospective passengers and drivers the method by which the transportation network company calculates fares or the applicable rates being charged and an option to receive an estimated fare.

(c) Upon completion of a prearranged ride, a transportation network company must transmit to the passenger an electronic receipt, either by electronic mail or by text message, which must document:

(i) The point of origin and destination of the passenger's trip;

(ii) The total duration and distance of the passenger's trip;

(iii) The total fare paid, including the base fare and any additional charges incurred or distance traveled or duration of the passenger's trip; and

(iv) The driver's first name and license plate number.

(d) Before permitting a person to act as a driver on its digital network or software application, a transportation network company must confirm that the person is at least twenty-one years of age and possesses:

(i) A valid driver's license;

(ii) Proof of private passenger automobile insurance;

(iii) Proof that the vehicle is registered in Washington; and

(iv) Within ninety days of the effective date of this section and pursuant to rules adopted by the department, proof that the person has certified that he or she does not experience any condition that interferes with his or her ability to safely provide services pursuant to this chapter.

(e) A driver may not provide transportation network company services for more than twelve consecutive hours or more than twelve hours in any twenty-four hour period, except that a driver may finish a prearranged ride that began before either time restriction.

(f) A transportation network company must implement an intoxicating substance policy for drivers that disallows any amount of intoxication of the driver while providing services. The transportation network company must include on its web site and mobile device application software a notice concerning the transportation network company's intoxicating substance policy.

(g)(i) Prior to providing transportation network company services, a transportation network company must require every personal vehicle to undergo a uniform vehicle safety inspection, approved by the department, and performed by an approved mechanic who must certify in writing that the vehicle is mechanically sound and fit for driving. The approved mechanic must also certify in writing that the plates, decals, and customer notices required under this chapter are legible and properly displayed.

(ii) The safety inspection required under this subsection (1)(g) must be conducted annually while the personal vehicle is being used to provide transportation network company services.

(h) A personal vehicle must have at least four doors and be designed to carry no more than eight passengers, including the driver.

(i)(i) A transportation network company must make the following disclosures to a prospective driver in the prospective driver's terms of service:

WHILE OPERATING ON THE TRANSPORTATION NETWORK COMPANY'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 TRANSPORTATION NETWORK COMPANY SERVICES FOR OUR TRANSPORTATION NETWORK COMPANY HAS A LIEN AGAINST IT, YOU MUST NOTIFY THE LIENHOLDER THAT YOU WILL BE USING THE VEHICLE FOR TRANSPORTATION NETWORK COMPANY SERVICES THAT MAY VIOLATE THE TERMS OF YOUR CONTRACT WITH THE LIENHOLDER.

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

(j) A transportation network company must make available to a passenger a customer support telephone number on its digital network, software application, or web site for passenger inquiries.

(k)(i) A transportation network company may not disclose to a third party any personally identifiable information concerning the user of the transportation network company's digital network or software application, unless:

(A) The transportation network company obtains the user's consent to disclose personally identifiable information;

(B) Disclosure is necessary to comply with a legal obligation; or

(C) Disclosure is necessary to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions.

(ii) The limitation on disclosure does not apply to the disclosure of aggregated user data.

(iii) The department may revoke a transportation network company's permit upon the department's finding that the company knowingly or negligently violated the passenger privacy provisions of this subsection (1)(k).

(2) Each transportation network company must require that each personal vehicle providing transportation network company services display a plainly visible exterior marking that identifies the personal vehicle as one providing such services.

(3) A transportation network company or a third party must retain inspection records for at least fourteen months after an inspection was conducted for each personal vehicle used by a driver.

(4)(a)(i) Before a person is permitted to act as a driver through use of a transportation network company's digital network or software application, the person must undergo a criminal history record check. A driver must undergo a criminal history record check every five years while serving as a driver.

(ii) The criminal history record checks required under this section may be administered by the driver, who must provide a copy to the transportation network company, or the record checks may be administered by the transportation network company.

(b) A person who has been convicted of driving under the influence of drugs or alcohol in the previous five years before applying to become a driver may not serve as a driver.

(c)(i) If the criminal history record check reveals that the person has ever been convicted of the following felony offenses, the person may not serve as a driver:

(A) An offense involving fraud, as described in chapters 9.45 and 9A.60 RCW;

(B) A sex offense, as described in chapters 9.68A and 9A.44 RCW;

(C) Burglary, trespass, or vehicle prowling, as described in chapter 9A.52 RCW;

(D) Theft, robbery, extortion, or possession of stolen property, as described in chapter 9A.56 RCW;

(E) A violent offense, as defined in RCW 9.94A.030.

(ii) A person who has been convicted of a comparable offense to the offenses listed in (c)(i) of this subsection in another state may not serve as a driver.

(iii) A transportation network company or a third party must retain the results of a criminal history record check for each driver that provides services for the transportation network company until five years after the criminal history record check was conducted, or until the acquisition of an updated background check, whichever comes earlier.

(5)(a) Before permitting an individual to act as a driver on its digital network or software application, a transportation network company must obtain and review the individual's driving record.

(b) An individual with the following violations may not serve as a driver:

(i) More than three moving violations within the three-year period preceding the individual's application to serve as a driver; or

(ii) A violation for reckless driving under RCW 46.61.500; vehicular homicide under RCW 46.61.520; vehicular assault under RCW 46.61.522; negligent driving in the first or second degree under RCW 46.61.5249, 46.61.525, or 46.61.526; driving without a license under RCW 46.20.005; or driving with a revoked license under RCW 46.20.342 or 46.20.345.

(c) A transportation network company or a third party must retain the driving record for each driver that provides services for the transportation network company for at least three years.

(6) If any person files a complaint with the department against a transportation network company or driver, the department may inspect the transportation network company's records as reasonably necessary to investigate and resolve the complaint.

(7) Vehicle safety inspections and criminal history record checks required under this section and retained by a transportation network company are not subject to inspection by the department, including as part of any quarterly report required under section 2(4) of this act, except pursuant to departmental audit.

(8)(a) Except for a trip whose destination is more than forty miles from where the passenger is picked up, a transportation network company and transportation network company drivers must provide services to the public in a nondiscriminatory manner, regardless of geographic location of the departure point or destination. A transportation network company or transportation network company driver may not refuse service or impose additional charges or conditions based on a passenger's race, religion, ethnicity, gender, sexual orientation, gender identity, or disability that could prevent customers from accessing transportation. A driver may not refuse to transport a passenger, unless:

(i) The passenger is acting in an unlawful, disorderly, or endangering manner; or

(ii) The passenger is unable to care for himself or herself and is not in the charge of a responsible companion.

(b) A driver must permit a service animal to accompany a passenger on a prearranged ride.

(c)(i) If a passenger with physical or mental disabilities requires the use of mobility equipment, a driver must store such equipment in the vehicle during a prearranged ride, if the vehicle is reasonably capable of doing so. If the driver is unable to store a passenger's mobility equipment in the driver's vehicle, the driver must refer the passenger to another driver or transportation service with a vehicle that is equipped to accommodate such equipment, and may not charge the passenger a cancellation fee.

(ii) If a passenger is traveling with a child who requires the use of a child restraint system under RCW 46.61.687, a driver must allow the passenger to temporarily install the restraint system in the personal vehicle, if the vehicle is reasonably capable of accepting it. If the child restraint system is unable to be temporarily installed in the vehicle, the driver must refer the passenger to another driver or transportation service with a vehicle that is equipped to accommodate such a system, and may not charge the passenger a cancellation fee.

(9) Within ten days of receiving a complaint about a driver's alleged violation of subsection (8) of this section, the department must report the complaint to the transportation network company for which the driver provides services.

(10) A driver must immediately report to the transportation network company any refusal to transport a passenger pursuant to subsection (8)(a) of this section, and the transportation network company must annually report all such refusals to the department in a form and manner determined by the department.

NEW SECTION. **Sec.**  (1) A transportation network company may not operate without first having obtained a permit from the department. The department must require this permit to be renewed annually.

(2) The department must issue a permit to each transportation network company that meets the requirements of this chapter and pays to the department the fees required under subsection (3) of this section. The department may adjust the annual permit fee by rule to recover the department's direct and indirect costs associated with implementing this chapter, as well as the costs of implementing this chapter borne by the office of the insurance commissioner.

(3)(a) A transportation network company must pay the following fee to the department at the time of its initial application for a permit:

(i) Until July 1, 2016, the fee is one hundred thousand dollars; and

(ii) After July 1, 2016, the fee is five thousand dollars.

(b) Upon the annual renewal of a permit issued pursuant to this section, a transportation network company must pay the following applicable renewal fee, depending on the number of drivers shown in the transportation network company's most recent quarterly report sent to the department pursuant to section 2(4) of this act:

(i) For transportation network companies with ten or fewer drivers, the annual renewal fee is five thousand dollars;

(ii) For transportation network companies with more than ten but fewer than one hundred drivers, the annual renewal fee is twenty thousand dollars;

(iii) For transportation network companies with more than one hundred but fewer than one thousand drivers, the annual renewal fee is fifty thousand dollars; and

(iv) For transportation network companies with more than one thousand drivers, the annual renewal fee is one hundred thousand dollars.

(4) The department must determine the form and manner of the application for a transportation network company permit.

(5) Consistent with section 2(1)(a) of this act, the department may cancel, revoke, or suspend any permit issued under this chapter on any of the following grounds:

(a) The violation of any of the provisions of this chapter;

(b) The violation of an order, decision, rule, or requirement established by the department under this chapter;

(c) Failure of the transportation network company to pay a fee imposed on the company within the time required under law; or

(d) Failure of the transportation network company to maintain insurance coverage, if required under this chapter.

(6) The department may deny an application under this chapter, or refuse to renew the permit of a transportation network company, based on a determination that the transportation network company has not satisfied a civil penalty arising out of an administrative or enforcement action brought by the department.

NEW SECTION. **Sec.**  The transportation network company account is created in the custody of the state treasurer. All moneys received by the department pursuant to this chapter, and any interest earned on investments in the account, must be deposited into the account. Expenditures from the account may be used by the department for any purpose related to the regulation of transportation network companies that is consistent with this chapter, including, at a minimum, disbursements to (1) local governments to cover enforcement costs and (2) the office of the insurance commissioner to cover its costs incurred under section 3(13) of this act. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

NEW SECTION. **Sec.**  (1) The department may adopt rules to implement this chapter, including rules concerning administration, fees, fines and penalties, safety requirements, and the disbursement of funds for local enforcement as described in section 6(1) of this act.

(2) The department must adopt rules requiring a transportation network company to file with the department evidence of the transportation network company's insurance policies required under this chapter and proof of continued validity of these policies.

NEW SECTION. **Sec.**  All personally identifiable information collected under this chapter is exempt from disclosure under chapter 42.56 RCW.

**Sec.**  RCW 51.12.183 and 2011 c 190 s 2 are each amended to read as follows:

(1) Any business that owns and operates a for hire vehicle licensed under chapter 46.72 RCW, a limousine under chapter 46.72A RCW, or a taxicab under chapter 81.72 RCW and the for hire operator or chauffeur of such vehicle is within the mandatory coverage of this title.

(2) Any business that as owner or agent leases a for hire vehicle licensed under chapter 46.72 RCW, a limousine under chapter 46.72A RCW, or a taxicab under chapter 81.72 RCW to a for hire operator or a chauffeur and the for hire operator or chauffeur of such vehicle is within the mandatory coverage of this title.

(3) For the purposes of this section, the following definitions apply unless the context clearly requires otherwise:

(a) "Chauffeur" has the same meaning as provided in RCW 46.04.115; and

(b) "For hire operator" means a person who is operating a vehicle for the purpose of carrying persons for compensation.

(4) This section does not apply to transportation network companies or drivers providing transportation network company services.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec.**  Sections 1 through 8 of this act constitute a new chapter in Title 46 RCW.

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