
Business & Financial Services Committee

ESSB 5550

Brief Description: Regulating providers of commercial transportation services.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators Habib and Fain).

Brief Summary of Engrossed Substitute Bill

- Creates a new regulatory structure for transportation network companies in a new chapter in Title 46 RCW.
- Exempts transportation network companies and for hire operators from mandatory industrial insurance coverage.
- Repeals statutes requiring mandatory industrial insurance coverage for commercial transportation vehicles.

Hearing Date: 3/31/15

Staff: Linda Merelle (786-7092).

Background:

Regulation of Commercial Vehicles.

The Department of Licensing regulates "for hire vehicles" which are defined under chapter 46.72 RCW as all vehicles used for the transportation of passengers for compensation. There are certain exceptions, and they include:

- 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 persons and their attendants;
- vehicles used to provide courtesy transportation at no charge to and from parking lots, hotels, and rental offices; and

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.

- vehicles used by charter party carriers of passengers.

A "for hire operator" is any person, concern, or entity engaged in the transportation of passengers for compensation in for-hire vehicles.

Automobile Insurance.

A consumer's personal automobile insurance covers his or her private passenger automobile, which is an individually owned motor vehicle that is not used as a public or livery conveyance for passengers and is not rented to others. A "livery" is a common design or paint scheme used by a company. Personal automobile insurance does not cover commercial use of a vehicle.

Industrial Insurance.

With limited exceptions, all workers in the state are covered by mandatory industrial insurance which pays claims for workers' compensation. Employers must either provide industrial insurance for workers through the state fund or qualify as a self-insurer. Certain entities are excluded from mandatory coverage but may elect coverage.

Summary of Bill:

A new regulatory structure for transportation network companies (TNCs) is created in a new chapter in Title 46 RCW. The Department of Licensing (Department) is the regulatory agency. The new chapter contains provisions that govern requirements regarding driver insurance, qualifications, criminal history, driving record, and conduct; and vehicle inspections and maximum work hours. Industrial insurance is not mandatory for drivers for TNCs or for hire companies.

Definitions.

"Personal vehicle" means a vehicle that is used by a TNC driver in connection with providing services for a TNC that meets the required vehicle criteria and that is authorized by the TNC. Personal vehicles are expressly excluded from the statutory definition of "for hire vehicle."

"Prearranged ride" means a route of travel between points chosen by the passenger and arranged with a driver through the use of a TNC'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.

"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 a prearranged ride. A TNC is not any of the following: a taxicab company, passenger charter carrier, an auto transportation company, a limousine, or a for hire operator. A TNC is not deemed to own, control, operate, or manage the personal vehicles used by the TNC drivers.

"Transportation network driver" means an individual who uses a personal vehicle to provide services for passengers matched through a TNC's digital network or software application. A driver is not a for hire operator.

"Transportation network company passenger" means a passenger in a personal vehicle for whom transport is provided.

"Transportation network company services" means all times the driver is logged in to a TNC's digital network or software application or until the passenger has left the personal vehicle, whichever is later.

Requirements for Providing TNC Services.

Services and Work Hours.

A driver may not solicit or accept the "on-demand" summoning of a ride. A driver may not provide rides for more than 12 hours in any 24 hour period, whether consecutive or not. However, a driver may finish a ride that began before the time restriction.

Fares.

The TNC must make available information regarding how fares are calculated or the applicable rates and must provide an option of receiving an estimated fare. A TNC must also make available on its digital network, software application, or website, a customer support telephone number.

Upon completion of a ride, a TNC must transmit to the passenger an electronic receipt, either by electronic mail or text message. The receipt must document the following regarding the passenger's trip:

- the points of origin and destination;
- the total duration and distance;
- the total fare paid, including the base fare and any additional charges incurred; and
- the driver's first name and license plate number.

Driver Requirements.

Before permitting a person to act as a driver on its digital network or software application, a TNC must confirm that the person:

- is at least 21 years old;
- possesses a valid driver's license, proof of private passenger automobile insurance; a valid Washington vehicle registration; and
- has certified pursuant to any rules of the Department, that he or she does not have a condition that interferes with the ability to safely provide services.

A TNC driver is not required to register the vehicle that he or she uses for TNC services as a commercial or for hire vehicle solely because the driver uses the vehicle to provide TNC services.

Vehicle Inspections and Records.

A personal vehicle must be no more than 10 years old, have at least four doors, and be designed to carry no more than eight persons, including the driver.

Prior to use in providing services, a TNC company must require of every personal vehicle a certification in writing by an approved mechanic that the vehicle has undergone a uniform vehicle safety inspection and that it is mechanically sound and fit for driving. The mechanic must also certify in writing that the required exterior markings are legible and properly displayed. An "approved mechanic" means a mechanic or technician certified with the National Institute for Automotive Service Excellence and who does not own, lease, or drive a taxicab, a for hire vehicle, or a TNC-endorsed vehicle.

The required uniform safety inspection of a personal vehicle must be conducted annually while the vehicle is being used to provide TNC services and must include inspection of items such as the brakes, steering mechanism, windshield, lights, the opening and closing of doors, speedometer, horn, tires, muffler and exhaust system, mirrors, and safety belts.

The TNC or a third party must retain inspection records for at least 14 months after an inspection was conducted for each personal vehicle used.

Intoxicating Substances.

The TNC must implement a policy that disallows any intoxication for the driver while providing services. The TNC must include a notice regarding this policy on its website and mobile device application software.

Passenger Privacy.

A TNC may not disclose to a third party any personally identifiable information concerning a person using the TNC's digital network or software application, unless:

- the TNC obtains the user's consent;
- the disclosure is necessary to comply with a legal obligation; or
- the disclosure is necessary to investigate violations of or to protect or defend the terms and conditions for use of the TNC service.

The limitation on disclosure does not apply to aggregated user data. The TNC may also share a passenger's first name or telephone number, or both, with the driver in order to facilitate identification of the passenger or communication between the driver and passenger.

The Department may revoke a TNC's permit upon a finding that the TNC knowingly or negligently violated the passenger privacy provisions.

Exterior Markings.

Each TNC must require that each personal vehicle providing services display a plainly visible exterior marking that identifies the personal vehicle as providing such services.

Criminal Records Check.

Before being permitted to act as a driver through the use of a TNC's digital network or software application, the person must undergo a criminal history record check for conviction records. This record check must be performed by the Washington State Patrol or an entity approved by the Department. While acting as a driver, the person must undergo a criminal history record check every year. The results must be retained by either the entity performing the background check or the TNC. The records must be retained for five years or until an updated background has been performed. The criminal history record check is confidential and is not subject to the Public Records Act, under Chapter 42.56.

Convictions that Prohibit Service as a Driver.

A person may not serve as a driver if he or she has been convicted of a sex offense or violent offense under Washington law or a comparable offense in another state.

A person may not serve as a driver if, within the five years prior to application as a driver, he or she has been convicted of any the following offenses in Washington, or a comparable offense in another state:

- Driving While Intoxicated;
- felony offense involving Fraud;
- Burglary, Trespass, or Vehicle Prowling; or
- felony Theft, Robbery, Extortion, or Possession of Stolen Property;

The TNC must obtain and review the individual's driving record. An individual with the following violations may not serve as a driver:

- more than three moving violations within the prior three years;
- Reckless or Negligent Driving;
- Vehicular Homicide or Assault; or
- Driving While License Suspended or Driving Without a Valid License.

A TNC or a third party must retain the driving record for each driver for at least three years.

Upon receipt of a complaint against a TNC by any person, the Department may inspect the TNC's records as reasonably necessary to investigate and resolve the complaint.

Nondiscriminatory Practices.

Except for trips exceeding a distance of 35 miles, TNCs must provide services to the public in a nondiscriminatory manner, regardless of geographic location of the departure point or the destination. Once a passenger is in the vehicle, the driver may not refuse a passenger's request to use a toll facility if it would result in a more efficient route of travel. An additional charge may be imposed to cover the toll.

A TNC 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. Once a passenger and driver have been matched, a driver may not refuse to transport a passenger, unless

the passenger is acting in an unlawful, disorderly, or endangering manner; or the passenger is unable to care for himself or herself and is not in the charge of a responsible companion.

Special Circumstances for Passengers.

A TNC driver must permit a service animal to accompany a passenger. If a passenger with physical or mental disabilities requires the use of mobility equipment, the driver must store such equipment in the vehicle if feasible. If not, the driver must refer the passenger to another driver or TNC able to accommodate the equipment. In such case, the driver may not charge a cancellation fee.

If a person is traveling with a child who requires the use of a child restraint system, a driver must allow the passenger to temporarily install the restraint system in the vehicle if it can be done in a reasonable manner. If not, the driver must refer the passenger to another driver or TNC and may not charge a cancellation fee.

Reporting of Complaints and Refusals.

The Department must report a complaint regarding a driver's alleged violation to a TNC within 10 days of receiving it.

A driver must immediately report to the TNC any refusal to transport a passenger. The TNC must annually report all such refusals to the Department in a form and manner determined by the Department.

Insurance for Personal Vehicles.

Before being used for a TNC, every personal vehicle must be covered by a primary automobile insurance policy (primary policy). A TNC must secure this primary policy for every personal vehicle used to provide services for it. A primary policy is separate from a personal automobile insurance policy that covers private passenger automobiles.

Before Match with Passenger.

The primary policy must provide liability coverage, applicable during the period before a driver accepts a requested ride through a digital network or software application in an amount of at least \$50,000 per person and \$100,000 per accident for liability and underinsured motorists coverage, each. A minimum of \$30,000 in liability coverage for property damage is required.

After Match with Passenger.

The primary policy must also provide coverage during the period of a prearranged ride, from the time that the driver is matched with a passenger, while the passenger is in the vehicle, and until the passenger exits the vehicle. The required minimum is \$1 million combined single limit coverage for liability and underinsured motorist coverage, each.

A driver who provides services for a TNC and uses his or her personal vehicle may purchase a primary policy that provides the same insurance coverage required for a TNC. Such policy must

be approved by the Office of the Insurance Commissioner. The policy coverage may be in the form of a rider to, or an endorsement of, the driver's private passenger automobile insurance policy. The primary policy may also be purchased by both the TNC and the driver.

If the driver's primary policy lapses or does not exist, the TNC's policy must provide coverage that begins with the first dollar of a claim. If a driver purchases a primary policy, the TNC must verify that the driver has done so.

The primary policy required under the provisions of this bill may be obtained from an insurer licensed under Title 48 or an eligible surplus lines insurer. No private passenger automobile insurance policy is required to provide primary or excess coverage or have a duty to defend for the period of time when the driver is logged into the TNC's digital network or software application. Only the insurer or insurers providing coverage under a primary policy have a duty to defend any liability claim from an accident occurring while the TNC's company services are being provided.

A TNC must provide written proof to the driver that the TNC driver is covered by a primary automobile insurance policy that meets the mandatory coverage requirements. The TNC must also provide proof of the policy to the Department.

If a driver purchases a primary policy, the TNC must verify that the driver has done so and must provide proof to the Department. Upon request from the Department, drivers and TNCs must provide copies of the required policies.

Required Disclosures.

A TNC must disclose to a prospective driver that his or her private passenger automobile insurance may not provide the required coverage, depending on the terms of the policy. The disclosure must also inform the prospective driver that he or she must notify the lienholder on the personal vehicle that the driver may be using the vehicle for services for the TNC. This disclosure must be acknowledged by the driver electronically or by signature in the TNC's terms of service.

Assignment of Liability.

If one or more insurance policies provide valid coverage, the responsibility for the claim is as follows:

- on the TNC who matched the driver and passenger if the driver has been matched with a passenger and is traveling to pick up the passenger or the driver is providing services to the passenger; and
- equally among insurance policies where a driver is logged in to more than one TNC's digital network or software application but has not been matched with a passenger.

If there is a claims coverage investigation, the TNC must cooperate with a private passenger automobile insurance policy insurer or other insurer that also insures the driver's vehicle, including providing relevant dates and times during which an incident occurred and, within 10 business days after receiving a request, a copy of the TNC's electronic record showing the precise times the driver logged on and off of the TNC's network on the day of the accident or

when another loss occurred. The TNC 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 statute of limitations plus two years from the date of an accident.

Denial of Coverage.

After July 1, 2016, an insurance company may not deny an otherwise covered claim arising exclusively out of the personal use of a private passenger automobile solely on the basis that the insured, at other times, used the vehicle to provide services for a TNC.

Regulation of TNCs.

Permit Application and Fee by Department.

A TNC may not operate without first having obtained a permit from the Department, which must be renewed annually. The Department must determine the form and manner of the application for a TNC permit. The Department has authority to adopt all rules necessary to enforce this chapter. The Department must adopt rules requiring a TNC to file evidence of required insurance policies.

A TNC must comply with the requirement to maintain a registered agent, as provided in the statutes governing corporations and other entities.

The TNC must pay to the Department the required fees. The Department may adjust the annual permit fee by rule to recover the Department's direct and indirect costs associated with implementing the chapter.

At the time of its initial application for a permit, if it is before July 1, 2016, a TNC must pay a fee of \$100,000. After July 1, 2016, the fee is \$5,000. The renewal fee is determined by the number of drivers that a TNC has, based upon the most recent quarterly report submitted by the TNC:

- for 10 or fewer drivers, the fee is \$5,000;
- for 11 to 100 drivers, the fee is \$20,000;
- for 101 to 1,000 drivers, the fee is \$50,000; and
- for more than 1,000 drivers, the fee is \$100,000.

Quarterly Report.

TNCs operating under the new 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 into its network;
- the total hours spent providing TNC services; and
- descriptions of any accident in which a personal vehicle was involved while carrying a passenger.

Noncompetition Agreements.

A TNC may not require drivers using its network or the network of another TNC to enter into a noncompetition agreement or otherwise prohibit a driver from working with another TNC. A TNC may prohibit a driver's use of any brand or mark of the company in a way that is confusing to the public.

Persons with Disabilities.

Every TNC must, if achievable, make its digital network or software application accessible to persons with disabilities.

Revocation and Suspension of Permit.

The Department may cancel, revoke or suspend any permit issued under this chapter on any of the following grounds:

- the violation of any provision of the chapter;
- the violation of an order, decision, rule, or requirement established by the Department;
- failure of the TNC to timely pay a fee imposed on the company, including those by local jurisdictions; or
- failure of the TNC to maintain required insurance coverage.

The Department may deny an application or refuse to renew the permit of a TNC if it has been determined that the TNC has not satisfied a civil penalty arising out of an administrative or enforcement action brought by the Department.

Penalties.

Any penalty for violation of the provisions of the new chapter may be assessed only against the TNC unless the TNC could not have reasonably known of the violation or the TNC knew of the violation and expeditiously took action to the satisfaction of the Department to address it.

Local Government Regulation.

A city with a population of more than 150,000 persons and a county with a population of more than 400,000 may impose regulatory fees on a TNC to cover the costs of enforcement of this chapter. Such fees may not exceed the maximum permit fees required by the Department.

A port district that operates an airport may require a TNC to obtain additional approval to provide services, such as a permit or license, before operating within the port district. It may also impose regulatory or use fees related to the operation of TNCs within the port district. A port district may impose monetary penalties for the violation of any provision of this chapter or any supplemental rules adopted by the port district to ensure safe and reliable transportation that are not in conflict with this chapter. If a port district exercises any authority allowed under this chapter, it must provide quarterly reports to the Department regarding its regulatory activities.

A port district that operates an airport must consider all for hire operators, including taxicab companies, on an equal basis in the request for proposals process used to determine which entity or entities will provide on-demand commercial transportation services to and from the airport.

The port district may use its own criteria to determine which entity or entities will be contracted to provide commercial transportation services to and from the airport.

Transportation Network Company Account.

A Transportation Network Company Account (Account) is created in the custody of the Office of the State Treasurer (Treasurer). All moneys received by the Department pursuant to this chapter, and any interest earned on investments in the account, must be deposited in the Account. Expenditures from the Account may be used by the Department for any purpose related to the regulation of the TNCs consistent with this chapter. Only the Director of the Department of Licensing (Director) or the Director's designee may authorize expenditures from the Account. An appropriation is not required for expenditures.

The Account is included in the list of accounts that must receive their monthly proportionate share of earnings distributed by the Treasurer.

Public Disclosure.

All personally identifiable information collected under this chapter is exempt from disclosure under the Public Records Act.

Industrial Insurance.

Employments Excluded.

A TNC driver is excluded from mandatory industrial insurance coverage if the following criteria are met:

- the TNC does not prescribe specific hours during which a driver must be logged into the TNC's digital platform or establish a minimum number of prearranged rides accepted, hours worked or miles traveled;
- the TNC does not impose restrictions on the driver's ability to use the digital platforms of other TNCs;
- the TNC does not assign the driver to a particular territory in which to provide services; and
- the TNC does not restrict a driver from engaging in any other occupation or business.

The TNC and the driver elect to have industrial insurance coverage if they expressly agree in writing to such coverage.

For hire operators who own or lease their vehicles, chauffeurs who own or lease their limousines, and operators of taxicabs who own or lease their taxicabs are exempt from mandatory coverage by filing a notice in writing to the Department of Labor & Industries on the required forms and any required reports or payments have been made.

Provisions regarding mandatory industrial insurance coverage for taxicabs, for hire vehicles, and limousines are repealed.

Rates Set in Accordance with Costs.

By September 1, 2015, and at least every two years afterwards, any city, town, county or port district setting the rates charged for taxicab services or regulating lease rates must adjust rates to accommodate increases or decreases in the cost of industrial insurance. Any changes in lease rates take effect upon entry into a new lease.

Appropriation: None.

Fiscal Note: Available.

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