
**Labor & Workplace Standards
Committee**

HB 2076

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 Summary of Bill

- Establishes provisions to, among other things, provide drivers of transportation network companies (TNCs) paid sick leave, Paid Family Medical Leave, and industrial insurance.
- Creates uniform statewide regulations of TNCs.
- Creates a fund for a Driver Resource Center to support drivers in resolving disputes related to deactivations.

Hearing Date: 1/26/22

Staff: Trudes Tango (786-7384).

Background:

Transportation Network Companies.

A "commercial transportation service provider," often called 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. Although the service is similar to a for-hire taxi service, it is exempt from most requirements applicable to taxicabs and regulated separately.

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.

State-wide regulations of TNCs only address liability insurance requirements. Drivers for TNCs must carry certain insurance when using a personal vehicle, 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 (3) 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. For example, under the statewide paid sick leave statutes, employees are entitled to one hour of paid sick leave for every 40 hours worked as an employee. 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. Self-employed individuals may elect PFML coverage as well.

Drivers of TNCs are explicitly exempt from workers' compensation requirements, but may elect coverage as a sole-proprietor.

Summary of Bill:

Overview.

Provisions are created to, among other things: (1) provide drivers of transportation network companies (TNCs) with paid sick leave, access the Paid Family Medical Leave (PFML) program, and industrial insurance coverage; (2) create uniform statewide regulations of TNCs, including requirements related to permits to operate, background checks of drivers, vehicle specifications, insurance, and liability of TNCs; (3) require TNCs to provide certain notices to drivers about their rights, including the right to a per minute and per mile rate, and to provide receipts to drivers containing specific information about each trip; and (4) create a fund for a Driver Resource Center to, among other things, support drivers in resolving disputes around deactivations.

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.

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; (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: Beginning in 2024, drivers may elect to be covered under the PFML program. The TNCs must pay the self-employed premium on behalf of drivers. The Employment Security Department, for the purposes of determining hours worked for eligibility, must divide the driver's gross earnings during the qualifying period by the state minimum wage.

Industrial Insurance: Beginning in 2023, the Department of Labor and Industries (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 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 Department-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 that include requirements for TNCs to, among other things:

- obtain an annual \$5,000 permit to operate from the Department of Licensing (DOL);
- implement zero tolerance drug and alcohol policies;
- implement nondiscrimination policies;
- conduct local and national background checks on drivers;
- prohibit drivers who have certain moving violations, certain criminal convictions, and who are under 20 years old;
- regulate vehicle standards, including requiring vehicles to not be more than 12 years old;
- maintain certain records and allow the DOL to randomly inspect records; and
- 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.

Appropriation: None.

Fiscal Note: Requested on January 24, 2022.

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