

HOUSE BILL REPORT

ESHB 2076

As Amended by the Senate

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: House Committee on Labor & Workplace Standards (originally sponsored by 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].

Floor Activity:

Passed House: 2/23/22, 55-42.

Senate Amended.

Passed Senate: 3/4/22, 40-8.

Brief Summary of Engrossed Substitute Bill

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

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.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. 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. 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. Drivers of TNCs are explicitly exempt from workers' compensation requirements, but may elect coverage as a sole-proprietor.

Summary of Engrossed Substitute Bill:

Employment Standards and Benefits.

Except as otherwise provided, for the purposes of Title 49 (labor regulations), Title 50A (family medical leave), Title 50B (long term care), and Title 51 (workers' compensation), 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. The party asserting that the factors are not met bears the burden of proof.

Minimum Compensation. Beginning December 31, 2022, a TNC must ensure that a driver's total compensation is not less than the following minimum standards:

- For 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 \$3 per dispatched trip.

The Department of Labor and Industries (L&I) must increase the per trip, per mile and per minute rates annually 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 and the right to be protected from retaliation; (2) per trip receipts and weekly statements to drivers containing specific information about each trip; and (3) receipts to riders containing certain information.

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

Industrial Insurance. Beginning January 1, 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. For purposes of calculating premiums for drivers, the L&I must multiply the total number of hours spent by drivers in passenger platform time and dispatch platform time by the rates established for taxicab companies. The L&I may subsequently adjust premiums in accordance to the L&I rules. 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.

Unemployment Insurance and Paid Family Medical Leave. The Commissioner of the Employment Security Department must convene a work group of stakeholders to study the

appropriate application of unemployment insurance and paid family medical leave to TNC drivers. The Commissioner must submit a report to the Legislature and Governor by December 1, 2022, with suggested changes to state law to establish applicable rates and terms by which TNCs and drivers participate in the relevant programs.

Driver Resource Center and Appeals Process for Deactivations.

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 to drivers, provided by the Drivers Resource Center (Center). The L&I's administrative costs may not exceed 10 percent of the revenues to the Fund.

Beginning July 1, 2024, the TNCs must collect and remit 15 cents of every passenger fare to the Fund. Drivers may make voluntary per trip earnings deduction contributions to the Fund, if 100 or more drivers working for the TNC authorize such a deduction. Procedures are established regarding the TNC deducting voluntary contributions. The L&I must adjust the per trip fee annually by the rate of inflation using the consumer price index for urban wage earners and clerical workers.

The Center must be a nonprofit organization, selected by the L&I, 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 must enter into L&I-approved agreements with the Center to provide an appeals process for drivers whose accounts have been deactivated. Agreements must include: (1) opportunity for a driver representative to support drivers during the deactivation appeals process; (2) provisions regarding notices to drivers; (3) provisions for the TNC to provide information it relied on in making its deactivation decision; (4) a good faith, 30-day informal resolution process; (5) a formal process that includes a just cause standard; and (6) provisions to use the just cause standard in disputes adjudicated by private arbitration. The deactivation appeals process does not apply to deactivations based on allegations of discrimination, harassment, assault, fraud, impaired driving, or other conduct agreed to by the TNC and the Center.

If the TNC and the Center fail to reach an agreement within a certain time, they must follow specific procedures, which include mediation, and if necessary, binding arbitration.

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

Enforcement.

Enforcement provisions are created allowing the L&I to investigate complaints for

compensation, paid sick time, and retaliation violations, to impose civil penalties, and for parties to appeal.

Statewide Regulatory Requirements.

Uniform statewide regulations 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) require that vehicles not be more than 15 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 seven days of a state of emergency.

A TNC is not vicariously 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.

The requirement for underinsured motorist coverage of \$1 million applicable while a passenger is in the car is replaced with a requirement for \$100,000 per person and \$300,000 per accident.

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. The preemption does not apply to generally applicable business, sales, use, excise, or property taxes.

A local ordinance or regulation existing on or before January 1, 2022, that imposes a tax, fee, or surcharge on a TNC or driver remains in effect at the rate that exists on or before January 1, 2022. The county, city, town or other municipal corporation may continue to collect that tax, fee, or surcharge, but may not increase the amount.

Beginning January 1, 2023, any local ordinance or regulation existing on or before the effective date of the bill that imposed a per trip fee to fund a driver conflict resolution center, may continue to be in effect but must be reduced by 15 cents and may not be increased.

Any per ride fee imposed by a non-preempted local ordinance, the proceeds of which is used to offset expenses of enforcing the ordinance may be adjusted if: (1) the city or county demonstrate to the DOL that the revenues from existing per ride fee are insufficient to offset the cost of enforcement; (2) the total amount expected to be collected under the increase will not exceed the expected costs; and (3) the DOL has not authorized an increase in the per trip fee in the last two fiscal years.

Any local ordinance or regulation in a city with a population of more than 600,000 or a county with a population of more than two million, and that existed on or before January 1, 2022, that regulated licensing for TNCs and drivers, or processing of applications, examinations, and background checks, remains in effect as the requirements exist on the effective date of the bill. The county or city may continue to enforce its ordinance and may not amend it unless such amendments conform to the requirements of the statewide regulatory provisions.

As of January 1, 2023, local ordinances or regulations of a city with a population of more than 600,000, or a county of more than 2 million and that relate to compensation, deactivation, paid sick time, and workers' compensation are preempted.

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

EFFECT OF SENATE AMENDMENT(S):

The Senate striking amendment made the following changes: (1) adds additional protected classes to the antidiscrimination provisions related to TNCs' policies, drivers, and passengers (thereby aligning them with protected classes in the Washington Law Against Discrimination [WLAD]); (2) specifies that a driver has rights and remedies under the WLAD to enforce the prohibition against TNCs refusing to contract with a driver based on protected class; (3) removes the provision limiting a TNC's vicarious liability; (4) specifies that the exemption from preemption of local ordinances imposing taxes, fees, or charges applies only to cities and counties of a certain population (currently Seattle and King County); and (5) clarifies that the preemption section does not preempt any generally applicable taxes, fees, or other charges.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 2, 2022.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except for sections 8 through 13, related to industrial insurance, which take effect January 1, 2023, and sections 17 and 28, related to the department of licensing, which take effect March 1, 2023.

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.