

ESSB 5550 - H COMM AMD

By Committee on Business & Financial Services

NOT ADOPTED 4/15/2015

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** This act may be known and cited as the
4 insurance for providers of commercial transportation services act.

5 NEW SECTION. **Sec. 2.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Commercial transportation services" or "services" means all
9 times the driver is logged in to a commercial transportation services
10 provider's digital network or software application or until the
11 passenger has left the personal vehicle, whichever is later.

12 (2) "Commercial transportation services provider" means a
13 corporation, partnership, sole proprietorship, or other entity,
14 operating in Washington, that uses a digital network or software
15 application to connect passengers to drivers for the purpose of
16 providing a prearranged ride.

17 (3) "Driver" means an individual who uses a personal vehicle to
18 provide services for passengers matched through a commercial
19 transportation services provider's digital network or software
20 application. A driver need not be an employee of a commercial
21 transportation services provider.

22 (4) "Passenger" means a passenger in a personal vehicle for whom
23 transport is provided, including:

24 (a) An individual who uses a commercial transportation services
25 provider's digital network or software application to connect with a
26 driver to obtain services in the driver's vehicle for the individual
27 and anyone in the individual's party; or

28 (b) Anyone for whom another individual uses a commercial
29 transportation services provider's digital network or software
30 application to connect with a driver to obtain services in the
31 driver's vehicle.

1 (5) "Personal vehicle" means a vehicle that is used by a driver
2 in connection with providing services for a commercial transportation
3 services provider.

4 (6) "Prearranged ride" means a route of travel between points
5 chosen by the passenger and arranged with a driver through the use of
6 a commercial transportation services provider's digital network or
7 software application. The ride begins when a driver accepts a
8 requested ride through a digital network or software application,
9 continues while the driver transports the passenger in a personal
10 vehicle, and ends when the passenger departs from the personal
11 vehicle.

12 NEW SECTION. **Sec. 3.** (1)(a) Before being used to provide
13 commercial transportation services, every personal vehicle must be
14 covered by a primary automobile insurance policy that specifically
15 covers commercial transportation services. Except as provided in
16 subsection (2) of this section, a commercial transportation services
17 provider must secure this policy for every personal vehicle used to
18 provide commercial transportation services. For purposes of this
19 section, a "primary automobile insurance policy" is not a private
20 passenger automobile insurance policy.

21 (b)(i) The primary automobile insurance policy required under
22 this section must provide coverage, as specified in this subsection
23 (1)(b), at all times the driver is logged in to a commercial
24 transportation provider's digital network or software application and
25 at all times a passenger is in the vehicle as part of a prearranged
26 ride, as follows:

27 (A) Liability coverage, while providing commercial transportation
28 services applicable during the period before a driver accepts a
29 requested ride through a digital network or software application, in
30 an amount no less than fifty thousand dollars per person for bodily
31 injury, one hundred thousand dollars per accident for bodily injury
32 of all persons, and thirty thousand dollars for damage to property;

33 (B) Uninsured motorist coverage and underinsured motorist
34 coverage in the amount of no less than fifty thousand dollars per
35 person for bodily injury and one hundred thousand dollars per
36 accident for bodily injury of all persons;

37 (C) Personal injury protection coverage pursuant to RCW
38 48.22.095; and

1 (D) Comprehensive and collision coverage with a maximum
2 deductible of five hundred dollars.

3 (ii) The primary automobile insurance policy required under this
4 subsection must provide the following coverages, applicable during
5 the period of a prearranged ride:

6 (A) Combined single limit liability coverage in the amount of one
7 million dollars for death, personal injury, and property damage;

8 (B) Uninsured motorist coverage and underinsured motorist
9 coverage in the amount of one million dollars;

10 (C) Personal injury protection coverage pursuant to RCW
11 48.22.095; and

12 (D) Comprehensive and collision coverage with a maximum
13 deductible of five hundred dollars.

14 (2)(a) As an alternative to the provisions of subsection (1) of
15 this section, if the office of the insurance commissioner approves
16 the offering of an insurance policy that recognizes that a person is
17 acting as a provider of commercial transportation services and using
18 a personal vehicle to provide commercial transportation services, a
19 driver may secure a primary automobile insurance policy covering a
20 personal vehicle and providing the same coverage as required in
21 subsection (1) of this section. The policy coverage may be in the
22 form of a rider to, or endorsement of, the driver's private passenger
23 automobile insurance policy only if approved as such by the office of
24 the insurance commissioner.

25 (b) If the primary automobile insurance policy maintained by a
26 driver to meet the obligation of this section does not provide
27 coverage for any reason, including that the policy lapsed or did not
28 exist, the commercial transportation services provider must provide
29 the coverage required under this section beginning with the first
30 dollar of a claim.

31 (c) The primary automobile insurance policy required under this
32 subsection and subsection (1) of this section may be secured by any
33 of the following:

34 (i) The commercial transportation services provider as provided
35 in subsection (1) of this section;

36 (ii) The driver as provided under (a) of this subsection; or

37 (iii) A combination of both the commercial transportation
38 services provider and the driver.

39 (3) The insurer or insurers providing coverage under subsections
40 (1) and (2) of this section are the only insurers having the duty to

1 defend any liability claim from an accident occurring while
2 commercial transportation services are being provided.

3 (4) If a driver purchases a primary automobile insurance policy
4 as allowed under subsection (2) of this section, the commercial
5 transportation services provider must verify that the driver has done
6 so.

7 (5) A primary automobile insurance policy required under
8 subsection (1) or (2) of this section may be placed with an insurer
9 licensed under this title to provide insurance in the state of
10 Washington or as an eligible surplus line insurance policy as
11 described in RCW 48.15.040.

12 (6) The insurance coverage requirements described in subsections
13 (1) and (2) of this section do not apply to drivers and entities that
14 have coverage pursuant to chapter 46.72 or 46.72A RCW.

15 (7) This section does not require a private passenger automobile
16 insurance policy to provide primary or excess coverage or a duty to
17 defend for the period of time in which a driver is logged in to a
18 commercial transportation services provider's digital network or
19 software application or while a passenger is in the vehicle.

20 (8)(a) A commercial transportation services provider must make
21 the following disclosures to a prospective driver in the prospective
22 driver's terms of service:

23 WHILE OPERATING ON THE COMMERCIAL TRANSPORTATION SERVICES
24 PROVIDER'S DIGITAL NETWORK OR SOFTWARE APPLICATION, YOUR PRIVATE
25 PASSENGER AUTOMOBILE INSURANCE POLICY MIGHT NOT AFFORD LIABILITY,
26 UNDERINSURED MOTORIST, PERSONAL INJURY PROTECTION, COMPREHENSIVE, OR
27 COLLISION COVERAGE, DEPENDING ON THE TERMS OF THE POLICY.

28 IF THE VEHICLE THAT YOU PLAN TO USE TO PROVIDE COMMERCIAL
29 TRANSPORTATION SERVICES HAS A LIEN AGAINST IT, YOU MUST NOTIFY THE
30 LIENHOLDER THAT YOU WILL BE USING THE VEHICLE FOR COMMERCIAL
31 TRANSPORTATION SERVICES THAT MAY VIOLATE THE TERMS OF YOUR CONTRACT
32 WITH THE LIENHOLDER.

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

35 (9) If more than one insurance policy provides valid and
36 collectible coverage for a loss arising out of an occurrence
37 involving a motor vehicle operated by a driver, the responsibility
38 for the claim must be divided as follows:

1 (a) Except as provided otherwise under subsection (2)(c) of this
2 section, if the driver has been matched with a passenger and is
3 traveling to pick up the passenger, or the driver is providing
4 services to a passenger, the commercial transportation services
5 provider that matched the driver and passenger must provide insurance
6 coverage; or

7 (b) If the driver is logged in to more than one commercial
8 transportation services provider's digital network or software
9 application but has not been matched with a passenger, the liability
10 must be divided equally among all of the applicable insurance
11 policies that specifically provide coverage for commercial
12 transportation services.

13 (10) In an accident or claims coverage investigation, a
14 commercial transportation services provider or its insurer must
15 cooperate with a private passenger automobile insurance policy
16 insurer and other insurers that are involved in the claims coverage
17 investigation to facilitate the exchange of information, including
18 the provision of (a) dates and times at which an accident occurred
19 that involved a participating driver and (b) within ten business days
20 after receiving a request, a copy of the company's electronic record
21 showing the precise times that the participating driver logged on and
22 off the commercial transportation services provider's digital network
23 or software application on the day the accident or other loss
24 occurred. The commercial transportation services provider or its
25 insurer must retain all data, communications, or documents related to
26 insurance coverage or accident details for a period of not less than
27 the applicable statutes of limitation, plus two years from the date
28 of an accident to which those records pertain.

29 (11) This section does not modify or abrogate any otherwise
30 applicable insurance requirement set forth in this title.

31 (12) After July 1, 2016, an insurance company regulated under
32 this title may not deny an otherwise covered claim arising
33 exclusively out of the personal use of the private passenger
34 automobile solely on the basis that the insured, at other times, used
35 the private passenger automobile covered by the policy to provide
36 commercial transportation services.

37 **Sec. 4.** RCW 51.12.020 and 2013 c 141 s 3 are each amended to
38 read as follows:

1 The following are the only employments which shall not be
2 included within the mandatory coverage of this title:

3 (1) Any person employed as a domestic servant in a private home
4 by an employer who has less than two employees regularly employed
5 forty or more hours a week in such employment.

6 (2) Any person employed to do gardening, maintenance, or repair,
7 in or about the private home of the employer. For the purposes of
8 this subsection, "maintenance" means the work of keeping in proper
9 condition, "repair" means to restore to sound condition after damage,
10 and "private home" means a person's place of residence.

11 (3) A person whose employment is not in the course of the trade,
12 business, or profession of his or her employer and is not in or about
13 the private home of the employer.

14 (4) Any person performing services in return for aid or
15 sustenance only, received from any religious or charitable
16 organization.

17 (5) Sole proprietors or partners.

18 (6) Any child under eighteen years of age employed by his or her
19 parent or parents in agricultural activities on the family farm.

20 (7) Jockeys while participating in or preparing horses for race
21 meets licensed by the Washington horse racing commission pursuant to
22 chapter 67.16 RCW.

23 (8)(a) Except as otherwise provided in (b) of this subsection,
24 any bona fide officer of a corporation voluntarily elected or
25 voluntarily appointed in accordance with the articles of
26 incorporation or bylaws of the corporation, who at all times during
27 the period involved is also a bona fide director, and who is also a
28 shareholder of the corporation. Only such officers who exercise
29 substantial control in the daily management of the corporation and
30 whose primary responsibilities do not include the performance of
31 manual labor are included within this subsection.

32 (b) Alternatively, a corporation that is not a "public company"
33 as defined in RCW 23B.01.400 may exempt eight or fewer bona fide
34 officers, who are voluntarily elected or voluntarily appointed in
35 accordance with the articles of incorporation or bylaws of the
36 corporation and who exercise substantial control in the daily
37 management of the corporation, from coverage under this title without
38 regard to the officers' performance of manual labor if the exempted
39 officer is a shareholder of the corporation, or may exempt any number
40 of officers if all the exempted officers are related by blood within

1 the third degree or marriage. If a corporation that is not a "public
2 company" elects to be covered under subsection (8)(a) of this
3 section, the corporation's election must be made on a form prescribed
4 by the department and under such reasonable rules as the department
5 may adopt.

6 (c) Determinations respecting the status of persons performing
7 services for a corporation shall be made, in part, by reference to
8 Title 23B RCW and to compliance by the corporation with its own
9 articles of incorporation and bylaws. For the purpose of determining
10 coverage under this title, substance shall control over form, and
11 mandatory coverage under this title shall extend to all workers of
12 this state, regardless of honorary titles conferred upon those
13 actually serving as workers.

14 (d) A corporation may elect to cover officers who are exempted by
15 this subsection in the manner provided by RCW 51.12.110.

16 (9) Services rendered by a musician or entertainer under a
17 contract with a purchaser of the services, for a specific engagement
18 or engagements when such musician or entertainer performs no other
19 duties for the purchaser and is not regularly and continuously
20 employed by the purchaser. A purchaser does not include the leader of
21 a group or recognized entity who employs other than on a casual basis
22 musicians or entertainers.

23 (10) Services performed by a newspaper vendor, carrier, or
24 delivery person selling or distributing newspapers on the street, to
25 offices, to businesses, or from house to house and any freelance news
26 correspondent or "stringer" who, using his or her own equipment,
27 chooses to submit material for publication for free or a fee when
28 such material is published.

29 (11) Services performed by an insurance producer, as defined in
30 RCW 48.17.010, or a surplus line broker licensed under chapter 48.15
31 RCW.

32 (12) Services performed by a booth renter. However, a person
33 exempted under this subsection may elect coverage under RCW
34 51.32.030.

35 (13) Members of a limited liability company, if either:

36 (a) Management of the company is vested in its members, and the
37 members for whom exemption is sought would qualify for exemption
38 under subsection (5) of this section were the company a sole
39 proprietorship or partnership; or

1 (b) Management of the company is vested in one or more managers,
2 and the members for whom the exemption is sought are managers who
3 would qualify for exemption under subsection (8) of this section were
4 the company a corporation.

5 (14) A driver providing commercial transportation services as
6 defined in section 2 of this act. The driver may elect coverage in
7 the manner provided by RCW 51.32.030.

8 (15) For hire vehicle operators under chapter 46.72 RCW who own
9 or lease the for hire vehicle, chauffeurs under chapter 46.72A RCW
10 who own or lease the limousine, and operators of taxicabs under
11 chapter 81.72 RCW who own or lease the taxicab. An owner or lessee
12 may elect coverage in the manner provided by RCW 51.32.030.

13 **Sec. 5.** RCW 51.12.185 and 2011 c 190 s 4 are each amended to
14 read as follows:

15 ~~(1) ((In order to assist the department with controlling costs~~
16 ~~related to the self-monitoring of industrial insurance claims by~~
17 ~~independent owner-operated for hire vehicle, limousine, and taxicab~~
18 ~~businesses,))~~ The department may appoint a panel of individuals with
19 for hire vehicle, limousine, or taxicab transportation industry
20 experience and expertise to advise the department.

21 (2) The owner or lessee of any for hire, limousine, or taxicab
22 vehicle (~~subject to mandatory industrial insurance pursuant to RCW~~
23 ~~51.12.183)) is eligible for inclusion in a retrospective rating
24 program authorized and established pursuant to chapter 51.18 RCW.~~

25 NEW SECTION. **Sec. 6.** The following acts or parts of acts are
26 each repealed:

27 (1) RCW 46.72.073 (Certificate suspension or revocation—Failure
28 to pay industrial insurance premiums—Rules—Cooperative agreements)
29 and 2011 c 190 s 5;

30 (2) RCW 46.72A.053 (Certificate suspension or revocation—Failure
31 to pay industrial insurance premiums—Rules—Cooperative agreements)
32 and 2011 c 190 s 6;

33 (3) RCW 51.12.180 (For hire vehicle businesses and operators—
34 Findings—Declaration) and 2011 c 190 s 1;

35 (4) RCW 51.12.183 (For hire vehicle businesses and operators—
36 Mandatory coverage—Definitions) and 2011 c 190 s 2;

1 (5) RCW 51.16.240 (For hire vehicle businesses and operators—
2 Basis for premiums—Rules) and 2011 c 190 s 3; and

3 (6) RCW 81.72.230 (License suspension or revocation—Failure to
4 pay industrial insurance premiums—Rules—Cooperative agreements) and
5 2011 c 190 s 7.

6 NEW SECTION. **Sec. 7.** Sections 1 through 3 of this act
7 constitute a new chapter in Title 48 RCW."

8 Correct the title.

EFFECT: (1) Removes all reference to "transportation network
company" and "transportation network company services" in the
definitions and throughout the bill and replaces them with references
to term "commercial transportation services" and "commercial
transportation services providers."

(2) Removes all provisions regarding the regulation of
transportation network companies, and removes references and
requirements of the Department of Licensing.

(3) Modifies the insurance provisions to require underinsured
motorist coverage, personal injury protection coverage, and
comprehensive and collision coverage.

(4) Removes all of the conditions required in order for a driver
for a commercial transportation services provider to be eligible for
exemption from mandatory worker's compensation coverage.

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