

HOUSE BILL REPORT

ESSB 5550

As Passed House - Amended:
April 15, 2015

Title: An act relating to providers of commercial transportation services.

Brief Description: Regulating providers of commercial transportation services.

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

Brief History:

Committee Activity:

Business & Financial Services: 3/31/15 [DPA].

Floor Activity:

Passed House - Amended: 4/15/15, 86-12.

**Brief Summary of Engrossed Substitute Bill
(As Amended by House)**

- Establishes automotive insurance requirements for drivers and entities that provide commercial transportation services.
- Exempts for hire, limousine and taxicab drivers, and drivers for commercial transportation services providers from mandatory industrial insurance coverage.
- Repeals statutes requiring mandatory industrial insurance coverage for commercial transportation drivers.
- Creates a new chapter in Title 48 RCW.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: Do pass as amended. Signed by 10 members: Representatives Kirby, Chair; Ryu, Vice Chair; Vick, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Blake, Hurst, Kochmar, McCabe, Santos and Stanford.

Staff: Linda Merelle (786-7092).

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.

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
- 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 the mandatory coverage requirement but may elect coverage.

Summary of Amended Bill:

Definitions.

A "commercial transportation service provider" means an 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. It is not: a taxicab company, a charter party or excursion service carrier, an auto transportation company, a private nonprofit transportation provider, or a limousine carrier. A commercial transportation service provider does not own, control, operate, or manage the personal vehicles.

A "driver" is an individual who uses a personal vehicle to provide services for passengers matched through a commercial transportation service provider's network or software application.

A "personal vehicle" means a vehicle that is used by a driver in connection with providing services for commercial transportation services provider.

A "prearranged ride" is 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.

A "passenger" is an individual who uses a commercial transportation service provider's digital network or software application to connect with a driver.

Insurance for Personal Vehicles.

Before being used for commercial transportation services, every personal vehicle must be covered by a primary automobile insurance policy (primary policy). The policy must provide coverage for all times that a driver is logged into a digital network or software application. A commercial transportation service provider 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.

The insurance requirements under this chapter do not apply to drivers and entities that have coverage pursuant to the statutory provisions that govern for hire and limousine drivers.

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. The policy must also provide personal injury protection.

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. Personal injury protection must also be provided.

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

If the driver's primary policy lapses or does not exist, the policy of the commercial transportation services provider must provide coverage that begins with the first dollar of a claim. If a driver purchases a primary policy, the provider 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. The provider must give proof to the driver that he or she is covered under the minimum requirements for a primary policy. Alternatively, if the driver obtains the required insurance, the provider must verify that he or she has done so. 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 services for a commercial transportation provider are being provided.

Private passenger insurers may exclude all coverage under a private passenger policy where a driver is logged into a digital network. If any coverage is excluded, the private passenger insurer has no duty to defend.

Required Disclosures.

A commercial transportation services provider 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 provider. This disclosure must be acknowledged by the driver electronically or by signature in the provider'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 commercial transportation services provider 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 into more than one digital network or software application but has not been matched with a passenger.

If there is a claims coverage investigation, the commercial transportation services provider must cooperate with a private passenger automobile 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 provider's electronic record showing the precise times the driver logged on and off of the network on the day of the accident or when another loss occurred. The provider 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 commercial transportation services provider.

Financial Responsibility.

The provisions of the chapter regarding the financial responsibility requirements for motor vehicles do not apply to any exclusions made by private passenger insurers.

Payments by Insurers.

If any insurer for a provider makes a payment for a claim covered by comprehensive or collision insurance, the payment must be made directly to the repair shop or jointly to the owner and lien holder.

Industrial Insurance.

For hire operators who own or lease their vehicles, chauffeurs who own or lease their limousines, operators of taxicabs who own or lease their taxicabs, and drivers for a commercial transportation services providers are exempt from mandatory coverage and may elect to have coverage by providing notice in writing to the Department of Labor and Industries on the required forms and making any required reports or payments.

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

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support of the striking amendment) One year ago, the Seattle City Council was dealing with these issues. The legislation that developed was an attempt to allow everyone to get some relief by providing a statewide regulatory framework for the entities who provide these services and to ensure that there was a good balance between consumer protection and these entities. It became increasingly difficult to get parties to maintain their positions, and it became very difficult for many legislators to vote for the bill as it came out of the Senate.

The striking amendment eliminates the more comprehensive provisions of the underlying bill. It would be ideal to figure out the issues addressed in the underlying bill, but it is necessary to figure out the insurance issues. There are hundreds of drivers who are operating without coverage. If there was an accident, there would be litigation, and it would be unlikely that there would be a payout for the claims. It is important to make sure that the

drivers have the proper insurance for this type of situation. When the transportation network companies began operating, they did so without insurance requirements. When an accident happens, the coverage should be the same for everyone. It is important to make sure that the drivers have the proper insurance for this type of situation.

The striking amendment has the elements that the Office of the Insurance Commissioner is looking for. It is important to secure that safety and protection. There must be a bright line that starts coverage when the digital application goes on. Uninsured and underinsured coverage must be addressed. Personal injury and comprehensive and collision coverage must also be addressed. These elements protect both the drivers and the public. This bill provides for driver and public safety without ambiguity. Financial institutions have really been focused on two aspects, that there should be a bright line that makes it clear when the insurance is in force, and that borrowers who chose to engage in this business must disclose their commercial use of the vehicle to lienholders. The bright line is addressed in the striking amendment, and there is national agreement emerging regarding coverage. While a national agreement may work for some, the laws governing these entities should reflect Washington laws. The underlying bill tried to level the playing field.

The striking amendment addresses insurance, which is always an issue. The most important thing is the public safety. Seattle and King County assess additional standards on top of the state requirement, which is the same standard for the police fleet, and others. Those additional requirements should not be permitted. There is a loophole in the insurance requirement that needs to be examined. Some drivers for transportation networks pick up passengers on the street without ever turning on the digital application. At that moment, the drivers do not have insurance. Currently, for hire drivers are the only independent contractors required to purchase industrial insurance. The ability to elect industrial insurance is appreciated.

(Opposed to the striking amendment) This bill puts drivers instantly out of business. Requiring a business rider to private passenger policies would be sufficient. The insurance requirements should be consistent with the national agreement reached with leading insurers and which was very well received by a meeting of the National Association of Insurance Commissioners.

Persons Testifying: (In support of the striking amendment) Senator Habib, prime sponsor; Lonnie Johns-Brown, Office of the Insurance Commissioner; Ronald Soukup; Chris Van Dyk, Q-Quality Transportation Management; Joseph Blondo, Independent Taxi Operators of Seattle; Sheila Stickel and Amin Shifow, Puget Sound Dispatch; Dawn Gearhart, Teamsters Local 117; Salal Mohamed, Taxi Teamsters; Samatar Guled, For Hire Association; Abebe Tesfy and Sadhu Singh, Yellow Cab; Paulos Ibedengle, UberX; Denny Eliason, Washington Bankers Association and United Financial Lobby; Michael Temple, Washington State Association for Justice; Amer Khan and Mike Judd, Western Washington Taxi Cab Operators Association; Brad Tower, East Side For Hire; Shannon Stewart, Clark County Cab and Vancouver Cab; and Dan McGrady, Pemco Insurance.

(Opposed to the striking amendment) Caitlin O'Neill, Zane Barnes, Brian Zuehlsdorff, and Melissa Lawson, Uber; and Jim Justin, Lyft.

Persons Signed In To Testify But Not Testifying: None.