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## Transportation Committee

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### HB 2945

**Brief Description:** Concerning transportation network companies.

**Sponsors:** Representatives Fey, Chapman, Stonier and Riccelli.

#### Brief Summary of Bill

- Establishes regulations for Transportation Network Companies (TNCs) and TNC drivers, TNC vehicle certification, certain TNC passenger protections, mandatory TNC reporting and record retention requirements, civil infractions related to TNCs, a zero tolerance policy for Driving Under the Influence for TNCs, and a non-discrimination policy for TNCs.
- Establishes trip fees and surcharges per TNC ride, which consist of fees for the Department of Licensing's TNC permit and certification services, a 10 cent surcharge fee for state enforcement and regulation of TNC licensing, and a 10 cent surcharge to offset costs related to the improvement of transportation options for individuals with disabilities (applicable in jurisdictions of a certain size).
- Preempts local law in the areas of licensing and permits for TNCs and TNC drivers, but permits local ordinances enacted as of January 2017 to remain in effect for cities with populations over 500,000 and counties with populations over 1 million.

**Hearing Date:** 2/1/18

**Staff:** Jennifer Harris (786-7143).

#### **Background:**

#### Defined Terms.

"Commercial transportation services providers" are defined as businesses that use a digital network or software application to connect passengers to drivers for the purpose of providing a prearranged ride. A commercial transportation services provider is not a taxicab company;

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charter or excursion bus; auto transportation company; private, nonprofit transportation provider; limousine carrier; or commuter ride-sharing or flexible commuter ride-sharing arrangement.

"For-hire vehicles" are defined to include all vehicles used for the transportation of passengers for compensation, except for:

- auto stages;
- 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 purposes and their attendants;
- Vehicles used by auto transportation companies;
- 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 and excursion service carriers.

### Insurance and Liability.

Commercial transportation services providers, drivers if approved by the Office of the Insurance Commissioner, or a combination of a provider and a driver, must obtain a primary automobile insurance policy covering every personal vehicle used to provide commercial transportation services as follows:

- before a driver accepts a requested ride: \$50,000 per person; \$100,000 per accident; and \$30,000 for property damage; and
- after a driver accepts a requested ride: a combined single limit liability coverage of \$1,000,000; and underinsured motorist coverage of \$1,000,000.

Commercial transportation services insurance policies must offer personal injury protection coverage and underinsured motorist coverage, in line with existing motor vehicle insurance law that allows for the insured to reject the coverage options. After July 1, 2016, an insurance company may not deny a claim arising exclusively out of the personal use of a private vehicle solely on the basis that the insured, at other times, used the vehicle to provide commercial transportation services.

The commercial transportation services insurance coverage requirements are alternatively satisfied by having for-hire vehicle or limousine insurance coverage applicable to the vehicle being used for commercial transportation services. Commercial transportation services provider drivers, for-hire vehicle operators, limousine chauffeurs, and taxicab operators are exempt from workers' compensation requirements.

### Local Authority.

Cities, counties, and port districts may license, control, and regulate all for-hire vehicles operating within their respective jurisdictions, including:

1. regulating entry into the business;
2. requiring a license to be purchased to operate a for-hire vehicle;
3. holding the right to revoke, cancel, or refuse to reissue a license;
4. controlling the rates charged and the manner in which rates are calculated and collected;

5. regulating the routes and operations of for-hire vehicles;
6. establishing safety and equipment requirements; and
7. any other requirements adopted to ensure safe and reliable for-hire vehicle transportation service.

Cities, towns, counties, and port districts may license, control, and regulate privately operated taxicab transportation services operating within their respective jurisdictions to the same extent that they are permitted to regulate all for-hire vehicles operating within their respective jurisdictions.

### **Summary of Bill:**

#### Defined Terms.

A "transportation network company" (TNC) uses a digital network to connect passengers with TNC drivers. A TNC driver receives connections to potential passengers from a TNC via a digital network and uses a TNC company vehicle to offer or provide a prearranged ride to a passenger through a digital network controlled by a TNC in exchange for compensation. A "transportation network company vehicle" is a passenger vehicle that is owned, leased, or otherwise authorized for use by the TNC driver and is used to provide prearranged rides through the use of a digital network to a passenger for compensation.

#### Transportation Network Company Permits.

The Department of Licensing (DOL) must grant a permit to a TNC that submits a permit application in the proper form and obtains driver certifications for its drivers. The permit must be displayed in the principle place of business of the TNC.

#### Transportation Network Company Drivers.

Transportation network companies must certify to the DOL that all TNC drivers have met all state certifying and operating requirements, and must provide a list of these drivers with identifying information on the drivers and the vehicles they are using to provide TNC services. Transportation network company drivers' names, dates of birth, and driver's license numbers provided are exempt from disclosure under the Public Records Act. To certify a driver, a TNC must confirm:

1. review of criminal and driver background checks;
2. valid primary automobile liability insurance for each vehicle used;
3. a valid driver's license;
4. a valid TNC driver business license number; and
5. if required by a local law enforcement officer, successful completion of safety and customer service driver training.

Once this information is received by the DOL, a driver is deemed permitted and becomes eligible to provide TNC services. Driver permits are valid for one year, and a TNC must apply for recertification one month prior to a permit's expiration. Local law enforcement officers may have access to this information.

Before being issued a for-hire operator permit by the DOL, an applicant to be a TNC driver must be fingerprinted for Washington State Patrol (WSP) and the Federal Bureau of Investigation (FBI) background checks and must submit to a multistate driving history search. A TNC may not allow an applicant to provide TNC driving services who:

1. in the past five years, has more than three moving violations or who has committed one of the following major moving violations: Attempting to Elude the Police, Reckless Driving, Driving on a Suspended or Revoked Driver's License, or Negligent Driving in the first degree;
2. in the past seven years, has been convicted of a class A or B felony, a violent or serious violent offense, a most serious offense, Driving under the Influence, a hit and run, Physical Control of a Vehicle Under the Influence, Driving under 21 Consuming Alcohol or Marijuana, Reckless Driving, or any sex offense, or is a match in a Department of Justice national sex offender public website;
3. does not possess a valid driver's license;
4. does not possess proof of automobile liability insurance at the levels required under state law for the vehicle(s) to be used to provide TNC services;
5. is not at least 20 years old with at least 12 months of driving history; or
6. has not annually self-certified that he or she is physically and mentally fit to be a TNC driver.

The DOL may require a TNC driver to be medically certified and examined by a state licensed physician if it appears the driver has become physically or mentally unfit to be a TNC driver. The DOL may deny a permit if, in the past five years, the individual has been convicted of a crime involving physical violence or a crime reasonably related to his or her honesty and integrity, including hit-and-run, fraud, larceny, burglary, or extortion. The DOL must immediately inform the applicant and the TNC of a permit denial and provide the applicant with an opportunity to request a hearing to respond to the notice. The applicant may continue to provide TNC services pending a final hearing decision by the DOL.

#### Transportation Network Company Vehicle Certification.

Transportation network companies must certify to the DOL that all affiliated TNC vehicles have met all state certifying and operating requirements, and must provide a list of certified vehicles on a daily basis with identifying vehicle information. Vehicles must have:

1. undergone an ASE (Automotive Service Excellence) safety inspection;
2. have a valid registration and license;
3. be properly equipped and in good condition; and
4. have valid primary automobile liability insurance and personal automobile liability insurance at the levels required by state law.

Once this information is received by the DOL, a vehicle is deemed certified and becomes eligible to be used to provide TNC services. Vehicle certification is valid for one year, and a TNC must apply for recertification one month prior to a vehicle certification's expiration. Local law enforcement officers may have access to this information.

A TNC must require a motor vehicle that is used to provide TNC services meet the following requirements:

1. is not more than 12 years old;
2. meets motor vehicle emission requirements; and

3. has received an annual safety inspection by a third party approved by the DOL that includes inspection of certain specified vehicle equipment.

Transportation network company vehicles in use must display trade dress visible to the passenger from outside the vehicle. A TNC company must inform TNC drivers of their responsibility to comply with all applicable safety recalls.

Transportation network company vehicle registration is not required to have the use class of "CAB" (taxi cab) or "F/H" (for-hire) recorded.

#### Transportation Network Company Passenger Protections.

A TNC company's digital network or website must display the name and photo of the TNC driver and the vehicle license plate number of the TNC vehicle before a passenger enters the vehicle. Within one hour of trip completion, a TNC must transmit an electronic receipt to the passenger that provides trip information, including driver and vehicle identification and the total fare paid, with all charges and fees itemized.

A TNC driver, TNC, TNC's agent, or any person acting on a TNC's behalf may not take adverse action, including revoking, denying, or otherwise limiting access to the digital network or TNC services, of a passenger or former passenger of a TNC if he or she:

1. has informed any other person or made a complaint that the driver or TNC engaged in conduct that he or she reasonably believes violates state TNC laws or regulations, or if a TNC driver or a TNC believes he or she has done so;
2. has sought information about passenger rights or informed others about their rights; or
3. has otherwise exercised rights protected under state TNC laws or regulations, or the TNC driver or a TNC believes he or she has done so.

The Attorney General must maintain a toll-free number for complaints from TNC passengers and former passengers and a website to inform TNC passengers of their rights. TNCs must maintain data on passenger complaints and the disposition of them, and provide this data to the DOL, local law enforcement agencies, and the Attorney General on a quarterly basis.

#### Transportation Network Company Zero Tolerance and Non-Discrimination Policy.

A TNC must implement a zero tolerance policy that prohibits the use of drugs and alcohol while a TNC driver is providing prearranged rides or is logged into the TNC digital network. A TNC must also implement a non-discrimination policy that prohibits drivers from discriminating against passengers or potential passengers on the basis of the geographic endpoints of a ride, race, color, national origin, religious belief or affiliation, sex, disability, age, or sexual orientation/identity, and must comply with all applicable non-discrimination laws. Drivers must receive copies of each policy.

A TNC must provide notice of its zero tolerance and non-discrimination policies on its website, as well as procedures to report a complaint about a TNC driver whom a passenger reasonably suspects has violated either policy. Once a complaint has been received, a TNC must inform the DOL and local law enforcement officers, immediately suspend the ability of the TNC driver to accept trips, and investigate the reported incident. If the TNC determines that a violation occurred, it must, at a minimum, suspend the driver until the TNC determines that the driver is

compliant with the policies. Transportation network companies must maintain records relevant to the enforcement of these policies for at least two years.

Transportation network company drivers are subject to random alcohol and drug testing as ordered by the DOL. A TNC must comply with all applicable laws related to the transportation of service animals, and may not impose additional charges for providing services to passengers with disabilities.

#### Other Transportation Network Company and Transportation Network Company Driver Regulations.

A TNC driver may only solicit or accept a trip request arranged through a TNC's digital network, and may not provide TNC services or any other for-hire services for more than 14 hours in a 24-hour period. A TNC driver may not permit any other individuals to use that driver's access to the TNC digital network.

In response to a specific complaint alleging criminal conduct against a TNC driver or passenger, a TNC must provide information to a requesting law enforcement officer. If a TNC is notified by law enforcement or another government entity that a TNC driver has violated a law or rule related to providing TNC services, the TNC must suspend the driver's ability to accept trips and investigate the reported incident. If it is determined that the TNC driver violated a law or rule that would make him or her ineligible to be a TNC driver, the TNC must continue the suspension.

A TNC driver must report arrests, charges, convictions, and crashes to the TNC and the DOL within 24 hours, and may have his or her permit suspended or revoked if delay occurs absent good cause.

A TNC must maintain individual trip records for at least three years and individual driver records for at least three full calendar years following the driver's ceasing to provide TNC services for the TNC. The DOL or local law enforcement agencies for cities with populations greater than 500,000 or counties with populations greater than 1 million may review a sample of TNC records to verify TNC compliance with state law no more than on a quarterly basis per year. The sample of records may be chosen by the DOL or local law enforcement agency. The DOL or a local law enforcement agency may also inspect TNC records related to a complaint or incident, and may conduct a supplemental audit of records that it deems necessary and reasonable if the agency has a reasonable basis to conclude that the TNC is not in compliance with state law or regulation. Any record sample furnished to the DOL or a local law enforcement agency for audit purposes may exclude information that would identify specific passengers, unless it is needed for crimes against drivers. If a TNC does not comply, a TNC's permit may be suspended.

#### Enforcement.

A TNC driver may be cited for a civil infraction if he or she:

1. violates state permit or vehicle certification requirements;
2. allows another individual to use his or her TNC driver identity to provide TNC services, or misrepresents his or her identity to TNC passengers;
3. violates the zero tolerance or non-discrimination policy;

4. solicits or accepts TNC services in a prohibited manner;
5. provides TNC services in excess of service hour limitations; or
6. withholds driver identification, proof of registration or insurance, or status as a TNC driver from the DOL or local law enforcement.

Hearings to contest monetary penalties may be held by local administrative bodies. The DOL or local law enforcement must issue a monetary penalty in accordance with DOL rule. The DOL must adopt rules and establish a process for the administrative appeal of any penalty, denial, suspension, or revocation imposed by the DOL. Local law enforcement officers must report all violations committed by TNCs and TNC drivers to the DOL and recommend the suspension, revocation, condition, or limitation of TNCs and TNC drivers on a quarterly basis. The DOL must suspend, revoke, condition, or otherwise limit a TNC or for-hire operator permit as recommended unless it responds in writing to the local law enforcement officer who made the recommendation explaining why the DOL does not agree with it. In making its determination, the DOL must consider the number and severity of violations committed by the TNC.

Any deceptive, manipulative, or coordinated practice used by a TNC to evade authorities or to deceive passengers or drivers is considered a violation of state law.

In cities with populations greater than 500,000 and in counties with populations greater than 1 million, discretion to suspend a TNC's operations rests with the DOL and the local law enforcement agency.

Violations of state TNC laws and regulations by TNCs are considered unfair or deceptive acts in trade or commerce and an unfair method of competition for the purpose of the application of state unfair business practice consumer protection laws.

#### Transportation Network Company Fees and Surcharges.

As permit fees for TNCs, drivers, and vehicles, a per ride surcharge is to be charged for every ride provided by a TNC driver for TNCs' application fees for for-hire permits, for-hire operator permits, vehicle certificates and certificate renewals, change of vehicle certificates, and duplicate vehicle certificates.

Each prearranged ride provided by a TNC driver while on the TNC's digital network must be assessed a 10 cent trip passenger surcharge fee to cover the costs of enforcement and regulation of state TNC licensing and to be distributed to municipalities and counties. The DOL and local law enforcement agencies may review the per trip surcharge fee annually or less frequently, and may increase the fee by rule to cover costs related to the continuing administration and enforcement by the DOL and local law enforcement agencies as permitted by state law.

As determined by the location of a trip's origin (city, town, or unincorporated county), the enforcement and regulation surcharge fee must be remitted by the TNC to each city with a population of more than 500,000 or a county with a population of more than 1 million, not including the amount needed to cover expenses borne by the DOL (unless these cities and counties reimburse the DOL for its share of regulatory and permitting expenses). For cities, towns, and counties with smaller populations, TNCs must submit these fees to the DOL to apply to cover its regulatory and administrative expenses; the DOL must then distribute the remaining

amounts proportionately based on trip origin to these cities, towns, and counties. A city, town, or county may impose an independent per ride fee for local law enforcement costs, but if it does so, it may not receive certain other TNC-related funds that would otherwise be allocated to it.

Each prearranged ride provided by a TNC driver that originates in a city with a population of 200,000 or more or in a county with a population of 1 million or more must be assessed an accessibility surcharge, which is a 10 cent surcharge fee to offset costs associated with improving transportation options for individuals with disabilities. The surcharge may be adjusted by a local law enforcement agency based on the consideration of certain specified factors. The surcharge fee may be used to offset the operational costs incurred by owners and operators of wheelchair accessible taxicabs or for-hire vehicles, or wheelchair accessible TNC vehicles. The surcharge fee may also be used by the DOL or local law enforcement agencies to cover costs for DOL-approved outreach and communication related to accessible for-hire transportation services. This amount must be remitted by TNCs directly to each qualifying city and county. A city, town, or county may impose an independent per ride fee for local accessibility reimbursement costs and distributing reimbursements, but if it does so, it may not receive certain other TNC-related funds that would otherwise be allocated to it.

The DOL must deposit its receipts from the above fees in the Transportation Network Company Account, which is non-appropriated.

#### Insurance and Liability.

If met by a TNC or TNC driver, TNC insurance coverage requirements may be used to satisfy surety bond requirements. If approved by the Office of the Insurance Commissioner, insurance requirements applicable to TNCs may also be used by other for-hire operators to satisfy state surety bond requirements.

No provision of TNC laws limits the right of an injured person to any private right of action against a for-hire operator.

#### Local Authority.

State law preempts local law in the following areas:

1. licensing and permits for TNCs and TNC drivers;
2. all requirements, applications, certifications, examinations, and background checks for TNC drivers, and the processing and adjudication of each (except that local jurisdictions may impose safety and customer service training); and
3. all entry requirements for TNCs within the boundaries of the state.

Cities with a population of more than 500,000 and counties with a population of more than 1 million, however, may enforce state laws and DOL regulations related to TNCs. These cities and counties may also continue to enforce, maintain, and amend any ordinance enacted prior to January 2017 that regulates TNCs, TNC drivers, or TNC vehicles.

A city or county is not precluded from regulating or enforcing ordinances related to traffic flow, traffic patterns, roadways, or the public right of way, or from imposing related fees including, but not limited to, impact fees, parking fees, and congestion or peak travel period fees. Neither is a city or county precluded by state TNC law from regulating highly autonomous vehicles.



**Appropriation:** None.

**Fiscal Note:** Available.

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