
Labor & Workplace Standards Committee

ESSB 5620

Brief Description: Concerning transportation network companies.

Sponsors: Senate Committee on Transportation (originally sponsored by Senators King, Hobbs, Fain, Mullet and Palumbo).

Brief Summary of Engrossed Substitute Bill

- Establishes statewide regulations for transportation network companies, including requirements for annual permits, administered by the Department of Licensing.
- Requires a passenger surcharge fee to fund enforcement.
- Creates civil penalties for violations of regulatory provisions.

Hearing Date: 3/14/17

Staff: Trudes Tango (786-7384).

Background:

Certain private transportation providers, such as operators of airporters, limousines, for-hire vehicles, taxicabs, and charter and excursion buses, are regulated by state law. Generally, cities, counties, and port districts may license, control, and regulate for-hire vehicles within their respective jurisdictions. The regulation of cities, counties, and port districts may include regulating entry into the business of providing for-hire transportation services, requiring a license to be purchased, and regulating routes and operations of for-hire vehicles, including restricting access to airports.

Commercial transportation services providers are businesses that use a digital network or software application to connect passengers to drivers to provide prearranged rides. These providers are not taxicab companies, charterers or excursion service carriers, auto transportation companies, private nonprofit transportation providers, or limousine carriers. There are statutory

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requirements regarding liability insurance for personal vehicles being used for commercial transportation services. Insurance must be provided for all times that a driver is logged into a commercial transportation services provider's digital network or software application.

Commercial transportation services provider drivers, for-hire vehicle operators, limousine chauffeurs, and taxicab operators are exempt from workers' compensation requirements.

Summary of Bill:

The term "commercial transportation services provider" is replaced with "transportation network company" (TNC). Statewide regulations are created governing TNCs, TNC drivers, and TNC vehicles.

Requirements to operate a TNC.

To operate a TNC, a person must obtain an annual permit from the DOL. The permit fee is \$5,000 per year, which must be deposited into the newly created TNC Account (Account).

A TNC must:

- implement a zero alcohol and drug policy for TNC drivers while accessing the TNC digital network, suspend a TNC driver upon receipt of a complaint alleging a violation of the zero tolerance policy and conduct investigations of allegations;
- adopt a nondiscrimination policy regarding riders' on the basis of rider destination or race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity;
- disclose the fare or estimated fare for the prearranged ride to the TNC rider;
- display a photograph of the TNC driver;
- provide electronic receipts to the TNC receipts to TNC riders; and
- maintain certain records regarding TNC drivers and trips.

A TNC may not revoke or deny services to a rider who: makes a complaint about a TNC's conduct that the rider believes violates regulatory provisions; seeks information about a rider's rights under the provisions; or exercises his or her rights as a rider.

Requirements for TNC Drivers.

To become a TNC driver, a person must:

- be at least 20 years old;
- submit an application with specific information and certify that they are physically and mentally fit to be a TNC driver; and
- have undergone a criminal background check conducted by the TNC or a third party on behalf of a TNC.

A TNC may not permit a person to be a TNC driver if the person:

- has had more than three moving violations in the prior three years or a violation of attempting to elude police; reckless driving; or driving on a suspended or revoked license; or

- has been convicted in the previous seven years of: any class A or B felony; any violent offense, serious violent offense, or most serious offense; or driving under the influence, hit and run, or any other driving-related crime under the DUI and vehicular assault and vehicular homicide statutes;
- has been convicted of any sex offense; or
- does not possess a valid driver's license and proof of insurance.

A TNC driver may not:

- Solicit or accept trip requests that are not arranged through a TNC's digital network;
- Provide TNC services for more than 14 consecutive hours in a 24-hour period; or
- Allow another person to use the TNC driver's access to the TNC digital network.

Requirements of TNC vehicles.

A TNC must require that vehicles used for prearranged rides must:

- Not be more than 12 years old;
- Meet emission requirements; and
- Have received a safety inspection by a third party in the last year.

A TNC vehicle must display trade dress that is visible to riders.

Independent contractor status.

A TNC driver is an independent contractor and not an employee of the TNC if all of the following conditions are met:

- the TNC does not unilaterally prescribe specific hours during which a TNC driver must be logged into the digital network;
- the TNC imposes no restrictions on the driver's ability to utilize a digital network from another TNC;
- the TNC does not restrict a driver from engaging in another occupation or business; and
- the TNC and driver agree in writing that the driver is an independent contractor.

TNC services performed by TNC drivers on or after January 1, 2011, are not considered "employment" for purposes of mandatory unemployment insurance.

Enforcement and civil penalties.

The DOL, or the local authority for a city with a population of more than 500,000 or a county with a population of more than one million, may review a randomly chosen sample of records that the TNC is required to maintain.

In addition to imposing civil penalties, the Department of Licensing (DOL) may suspend or revoke a TNC permit, after notice and a hearing, if a TNC violates the regulatory provisions. Any deceptive, manipulative, or coordinated practice used by a TNC to evade authorities results in a six month suspension of the TNC's permit to operate in the state. In determining the amount of monetary penalty, the DOL must consider the size of the TNC, the gravity of the violation, the degree of good faith exercised by the TNC, and other factors. The following civil penalties are established:

Penalties for failure to comply with provisions regarding TNC driver qualifications, safety inspections of vehicles, or liability insurance requirements:

- \$50 for drivers;
- \$500 for TNCs.

Driver's penalty for soliciting or accepting rides outside of the TNC digital network:

- \$500 1st offense;
- \$1,000 2nd and subsequent offense.

Driver's penalty for working more than 14 consecutive hours or failure to comply with trade dress requirement:

- \$100 1st offense;
- \$500 2nd offense;
- \$1,000 3rd and subsequent offense

Driver's penalty for allowing others to use the driver's access to the TNC digital network:

- \$500 1st offense;
- \$750 2nd offense;
- \$1,000 third and subsequent offense.

Driver's penalty for violating antidiscrimination policy:

- \$500 1st offense;
- \$750 2nd offense;
- \$1,000 3rd subsequent offense.

Driver's penalty for violating zero tolerance policy:

- \$500 1st offense;
- \$750 or \$1,000 2nd and subsequent offense.

Violations of the regulatory provisions are unfair or deceptive acts in trade or commerce for the purposes of applying the Consumer Protection Act. The Attorney General (AG) must maintain a toll-free number for complaints from TNC riders and maintain a website to inform riders of their rights. The TNC must also maintain data on TNC rider complaints and allow the AG and DOL access to that data.

Per trip surcharges.

A TNC must assess a 0.10 cent per trip surcharge fee to cover the costs of regulating TNCs. The Director of the DOL may review the surcharge annually, and increase the surcharge by rule to cover the costs related to administering the regulations by the DOL or local authorities.

Using geographic information system data, a TNC must determine whether each prearranged ride originated within the incorporated boundaries of a municipality or outside the incorporated boundaries of a municipality and within the boundaries of a county of this state.

The TNC must periodically submit the total amount of surcharge fees collected to the DOL, and submit a report listing the percentage of the total amount of fees from trips that originated in each municipality or unincorporated county during the reporting period.

The DOL must retain the amounts to cover its expenses of regulating TNCs. The DOL must distribute the remaining portions of the surcharge fees collected to each municipality or county where a trip originated during the reporting period. The distribution to municipalities and counties must be proportionate to the percentage of the yearly total amount of fees that originated in each municipality or county. Funds collected by municipalities and counties must be used to fund enforcement activities related to TNCs.

An additional 0.10 cent surcharge fee must be assessed for each prearranged ride provided to a TNC rider that originates in a city with a population of 100,000 or more or a county with a population of one million or more. The additional fee must offset costs associated with improving transportation options for persons with disabilities, including reimbursement for costs associated with converting vehicles and costs of other for-hire carriers to provide wheelchair-accessible vehicle rides to customers.

State preemption.

The state fully occupies and preempts: the entire field of regulation of TNCs regarding licensing and permits for TNCs and TNC drivers; all requirements, applications, certification, examinations, and background checks for TNC drivers; and all rates and operational requirements for TNCs. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the state law are preempted.

The preemption does not affect local authority to impose generally applicable requirements upon TNCs, such as obtaining a business license. Any public entity operating a commercial airport may fully regulate TNC activities related to TNC services at the airport facility, including requiring the TNC to enter into a contract regarding operating on airport facility property.

Other provisions.

Records submitted to the DOL from TNCs are exempt from public inspection and copying under the Public Records Act.

The TNC account is created in the custody of the state treasurer. Only the Director of the DOL or a designee may authorize expenditures from the account and an appropriation is not required for expenditures.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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