

SENATE BILL REPORT

ESSB 5620

As Passed Senate, March 7, 2017

Title: An act relating to transportation network companies.

Brief Description: Concerning transportation network companies.

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

Brief History:

Committee Activity: Transportation: 2/08/17, 2/21/17 [DPS, DNP].

Floor Activity:

Passed Senate: 3/07/17, 34-15.

Brief Summary of Engrossed First Substitute Bill

- Creates a statewide regulatory program for transportation network companies under the Department of Licensing.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: That Substitute Senate Bill No. 5620 be substituted therefor, and the substitute bill do pass.

Signed by Senators King, Chair; Sheldon, Vice Chair; Hobbs, Ranking Minority Member; Ericksen, Fortunato, Hawkins, O'Ban, Takko, Walsh and Wilson.

Minority Report: Do not pass.

Signed by Senators Cleveland, Saldaña and Van De Wege.

Staff: Kellee Keegan (786-7429)

Background: State law currently provides for the regulation of certain private transportation providers, such as operators of aeroporters, limousines, for-hire vehicles, taxicabs, and charter and excursion buses. Cities, counties, and port districts may license, control, and regulate all 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;

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- requiring a license to be purchased and the ability to revoke, cancel, or refuse to reissue a license for failure to comply with regulatory requirements;
- controlling the rates charged and the manner in which rates are calculated and collected;
- regulating the routes and operations of for-hire vehicles, including restricting access to airports;
- establishing safety and equipment requirements; and
- any other requirements adopted to ensure a safe and reliable for-hire vehicle.

The Department of Licensing (DOL) is the statewide agency that licenses and regulates drivers.

For-hire vehicles with drivers that are at all times logged in to a digital network or software application are defined in state law as commercial transportation services. A corporation, partnership, sole proprietorship, or other 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 is defined as a commercial transportation services provider. Every vehicle used for commercial transportation services in Washington State must be covered by an automobile insurance policy that specifically covers its services or that covers the vehicle being used. Before a commercial transportation services driver may accept a ride, the motor vehicle liability insurance policy must have limits of \$50,000 dollars per person for bodily injury, \$100,000 dollars per accident for bodily injury of all persons, and \$30,000 dollars for damage to property. To the extent of the law, underinsured liability coverage and personal injury coverage are required. After a driver accepts a requested ride the driver must have a combined single limit liability coverage of \$1,000,000, and underinsured motorist coverage of \$1,000,000. Commercial transportation services provider drivers, for-hire vehicle operators, limousine chauffeurs, and taxicab operators are exempt from workers' compensation requirements.

Summary of Engrossed First Substitute Bill: The definition of commercial transportation services provider is redefined as a transportation network company (TNC). All other instances of commercial transportation services is redefined accordingly.

TNCs. A TNC who wishes to operate in the state of Washington must obtain a permit from DOL annually. The permit fee for a TNC to operate in this state is \$5,000 per year. A TNC:

- must maintain an agent for service of process within the state;
- must disclose the fare or fare calculation method on its website and the estimated fare to the rider;
- must display a photograph of the TNC driver and the license plate of the TNC vehicle before the rider enters the vehicle;
- must inform a TNC driver of responsibility to comply with vehicle recalls;
- may not charge more than 2.5 times the base fare during a state of emergency declared by either the President or the Governor; and
- must transmit an electronic receipt to the rider on behalf of the driver that lists the trip's origin and total time and distance, and an itemization of total fare paid.

Any attempt to deceive or manipulate authorities by the TNC is in violation of the law and results in a six-month suspension of the TNC permit.

TNC Vehicles. A motor vehicle that is used for the TNC must:

- not be more than 12 years of age;
- meet the emissions requirements for motor vehicles;
- have received a safety inspection in the last year of certain vehicle components; and
- have a seating capacity of fewer than 8 people, excluding the driver.

Vehicles used for TNC services are not for-hire vehicles, ride-sharing vehicles, common carriers or motor carriers, limousines, and taxicabs. A TNC driver is not required to register their vehicle as a commercial vehicle or for-hire vehicle. Other than what it stipulated in contract, the TNC is not deemed to control, direct, or manage the TNC vehicles or drivers.

TNC Drivers. A TNC driver is not an employee of the TNC but an independent contractor. Employment, in terms of unemployment compensation, does not include TNC services. The TNC does not stipulate when a driver must drive, or restrict the driver's ability to engage in another occupation or business or access the network of another TNC. A TNC must adopt a policy or nondiscrimination with respect to riders and drivers. For a person to become a TNC driver they must submit an application to the TNC. A third party must review the TNC driver. The TNC may conduct the background check on potential TNC drivers or designate a third party if they are either nationally accredited or approved by the director of the DOL. The driving history research report of the individual must also be reviewed by the third party. A person must not become a TNC driver if the person:

- has had more than three moving violations within the previous three years;
- has attempted to elude police, had a reckless driving violation, or has driven on a suspended or revoked license;
- in the last seven years has been convicted of a Class A or B felony, a violent offense, a serious violent offense, a most serious offense as defined in law, a sex offense, or the person has been convicted of driving under the influence, had a hit-and-run, or any other driver-related crime;
- is a sex offender;
- does not possess a driver's license;
- does not possess proof of automobile liability insurance; or
- is not at least 20 years of age.

It is required that the TNC implement a zero tolerance policy that addresses the use of drugs and alcohol while accessing the TNC network. The TNC must post this policy on its website and the procedures for a rider to report suspicion that their driver was under the influence of drugs or alcohol. At a minimum the driver's ability to accept trip requests must be suspended while the TNC conducts an investigation.

A TNC driver:

- must not solicit or accept a trip other than a trip arranged through the TNC;
- may not provide TNC services for more than 14 consecutive hours in a 24-hour period; and
- must not allow other individuals to access the TNC network.

Both a TNC and a TNC driver must consent in writing for personal information to be disclosed. Convictions of sexual offenses as an adult is reportable under the fair credit reporting statutes.

TNC Riders. A TNC rider is protected from adverse actions against them by a TNC or TNC driver, or any of its agents because of a complaint. A toll-free number and website must be

maintained by the Attorney General to inform riders of their rights and to receive complaints by TNC riders and former riders.

Per Trip Surcharge. Each prearranged ride must be assessed a \$0.10 per trip passenger surcharge fee to cover the costs of enforcement and regulation by the state and local municipalities. The surcharge would be deposited into the TNC account created in the custody of the State Treasurer. Within 60 days of the end of each calendar quarter after distribution to DOL for expenses, the funds in the TNC account must be distributed to each municipality or county where the trip originated during the reporting period. Revenue received by local governments from this initial surcharge must be used for enforcement. The DOL is provided the authority to increase the surcharge if the amount of revenue coming in is not enough to cover the cost of both administering the program and local government enforcement. Within 30 days of the calendar quarter, the TNC must submit to the DOL the total amount of passenger surcharge fees collected and the percentage of trips that originated in each municipality or unincorporated county.

Local Governments. The following applies to local governments:

- cities with over 200,000 people and counties with over 1 million people must assess an additional \$0.10 per ride surcharge to offset costs associated with improving transportation options for people with disabilities;
- cities with over 500,000 people and counties with over 1 million may review TNCs no more than bi-annually for compliance;
- local governments are allowed to require a business license of TNC drivers;
- public entities that govern airport facilities are provided the authority to regulate TNC services; and
- local governmental entities' regulatory authority relating to traffic flow, patterns, and roadways are not affected.

Individual trip records must be kept by the TNC for at least three years and individual records of the TNC drivers must be kept three years after termination of the relationship between the driver and the TNC. The DOL may audit TNC records no more than annually and the TNC reserves the right to exclude personally-identifying information. All records are designated confidential and are not subject to disclosure to a third party without written consent by the TNC.

Civil Infractions. If the TNC, a TNC driver, or both, are found to violate certain statutory regulations a civil infraction may be imposed and a fee assessed by local or state law enforcement.

DOL. The DOL is provided rule-making authority regarding the regulation of TNCs. The agency may impose a monetary fine on TNCs or suspend or revoke a TNC permit if they are found to violate any of the rules set forth in law.

Preemption. The entire field of regulation of TNCs is fully occupied and preempted by the state. Local regulations applicable to transportation network companies are limited under the Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This would bring TNCs to all of Washington. TNCs make transportation easier and they complement existing transportation systems. Statewide legislation is a path to offering TNCs a clean uniform framework for providing safe and reliable rides everywhere. TNCs allow people to make money in a way that works for them. The patchwork system currently in existence limits the ability of drivers and riders to take advantage of TNC systems. Local governments will benefit by preempting their own regulations. This is a work in progress. Washington is a technology leader and they are behind in implementing a state-wide regulation. The \$0.10 per trip surcharge enables new companies to operate and encourages competition. The flexibility of Lyft allows the option to leave Washington for work in Alaska and come back and work for Lyft in other seasons. There is a vetting process in King County and it is necessary to pay all the applicable fees. It would be much more efficient to have the state regulate this when driving to other cities. This is a way to serve people and help get them where they need to go. There needs to be a unified statewide system. The process today is not functioning. Uber and Lyft provide transportation options to people who drink and, therefore, make the roads safer. Riders rate their drivers and there is an opportunity every time for them to report their experience. To drive a TNC, a driver must file for a business license in Seattle. If not licensed in another city, the system shuts down. The problem is that different cities have different requirements and fees. The regulations are not clear. It is very cumbersome on drivers.

CON: In section 21 of this bill, local laws and ordinances that are more restrictive are repealed. There is inequity in the for-hire vehicle universe. The annual fee is only \$5,000 for a multi-billion dollar company. A taxi owner pays more than \$1,600 per year in taxes and fees. There is gross inequity in this market. It was at the TNCs motivation to charge the \$0.10 surcharge. Drivers are a big part of the formula that make TNCs a success. Before, taxi cab drivers have been a part of the discussion. This bill broadly preempts local governments and there is a concern about local bargaining. Uber and Lyft are currently suing Seattle regarding collective bargaining. The background checks are not annual in this bill. There is no parity for taxicab operators. Regulatory work has been accomplished in King County and Seattle and this should be copied in state law. There is a major concern in that this bill creates another level where the Legislature determines what is required for safety. There should be a medical qualifier for driving a TNC. The requirements at the beginning of this bill are only reactive regarding a passenger and need to be proactive. It is about the quality of the driver and safety. The standard should be the same for TNCs as with other for-hire vehicles. There is a huge cost for implementing these standards in other regulated for hire markets.

OTHER: The City of Seattle is having productive conversations with TNCs. This bill is the start of an evolution for for-hire vehicles and King County is favorable to some of it. Conceptually, this is needed and is important but there are things regarding driver standards

and annual vehicle checks that is concerning. This bill focuses on TNCs but there are a variety of business models out there with much different licensing and regulations. There needs to be uniformity. There should be a third background check by Washington State Patrol's Watch system. The Watch system has the ability to find sex offenders that may not be found in other systems. There is no limitation on how much the state may retain out of the \$0.10 cent fee for administration and there should be. The bill falls short of its goals. The Utility and Transportation Commission regulates for hire vehicles and these statutes date back to 1921. The situation is very different today from what it was and, as a result, the state has a patchwork of regulatory structures that deals with it. This piece meal approach creates an uneven playing field and confusion. This bill retroactively eliminates unemployment insurance coverage and needs to be dealt with.

Persons Testifying: PRO: Senator Curtis King, Prime Sponsor; Laura Bisesto, Lyft/Government Relations Manager; Caleb Weaver, Uber, Public Affairs; Bryce Bennett, Uber, General Manager; Zachary Skezas, Lyft; Jon Pettit, Lyft; Shavonna Rivers, Uber/Lyft; Mike Ennis, Association of Washington Business; Joanie Deutsch, TechNet.

CON: Cindi Laws, Evergreen State Taxi Association; Brenda Wiest, Teamsters 117/App Based Driver Association; Paul Kajanoff, Shuttle Express; James Fricke, Capital Aeroporter.

OTHER: Lyset Cadena, City of Seattle; Sean Bouffio, King County; Briahna Murray, City of Tacoma; Neil Gorrell, Unemployment Insurance Director, Employment Security Department; Lauren McCloy, Utilities and Transportation Commission; Trent House, Port of Seattle; Tony Sermonti, Department of Licensing.

Persons Signed In To Testify But Not Testifying: No one.