

SENATE BILL REPORT

ESHB 2076

As Reported by Senate Committee On:
Transportation, February 28, 2022

Title: An act relating to rights and obligations of transportation network company drivers and transportation network companies.

Brief Description: Concerning rights and obligations of transportation network company drivers and transportation network companies.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Berry, Simmons, Kloba, Bergquist, Pollet, Kirby, Bronoske, Fitzgibbon, Ryu and Macri).

Brief History: Passed House: 2/23/22, 55-42.

Committee Activity: Transportation: 2/26/22, 2/28/22 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Establishes minimum per mile and per minute rates for drivers of transportation network companies (TNCs) and provides drivers with paid sick leave and workers' compensation coverage.
- Creates uniform statewide regulations of TNCs.
- Creates a fund for a Driver Resource Center to, among other things, support drivers in resolving disputes around deactivations.
- Establishes statewide preemption with exceptions for certain local ordinances.

SENATE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass as amended.

Signed by Senators Lias, Chair; Saldaña, Vice Chair; King, Ranking Member;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Cleveland, Das, Holy, Lovelett, Lovick, Nguyen, Nobles, Randall, Sheldon and Wilson, C.

Minority Report: Do not pass.
Signed by Senator Padden.

Minority Report: That it be referred without recommendation.
Signed by Senators Fortunato and Wilson, J.

Staff: Kelly Simpson (786-7403)

Background: Transportation Network Companies. A transportation network company (TNC), is a company that uses a digital network or software to connect passengers to drivers for providing a prearranged ride. State-wide regulations of TNCs generally only address liability insurance requirements. Drivers for TNCs must carry certain insurance. Coverage amounts differ depending on whether the driver is transporting a passenger.

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

- regulating entry into the business;
- requiring a license to operate;
- controlling the rates charged and the manner in which rates are calculated and collected; and
- establishing safety and equipment requirements.

Employment Standards and Benefits. Persons are generally entitled to receive certain employment-related benefits, and employers are obligated to pay the related taxes or premiums, if an employer-employee relationship exists rather than an independent contractor relationship. Under state-wide paid sick leave laws, employees are entitled to one hour of paid sick leave for every 40 hours worked. Drivers of TNCs are explicitly exempt from workers' compensation requirements, but may elect coverage as a sole-proprietor.

Summary of Amended Bill: Employment Standards and Benefits. Except as otherwise provided, for the purposes of Title 48—insurance, Title 49—labor regulations, Title 50A—family medical leave, Title 50B—long term care, and Title 51—workers' compensation, a driver is not an employee or agent of a TNC if the following factors are met:

- the TNC does not unilaterally prescribe specific dates, times of day, or a minimum number of hours the driver must be logged into the TNC application;
- the TNC may not terminate the driver's contract for not accepting a specific transportation service request;
- the TNC does not prohibit the driver from performing services for other TNCs; and
- the TNC does not contractually prohibit the driver from working in other occupations.

The party asserting that the factors are not met bears the burden of proof.

Minimum Compensation. Beginning December 31, 2022, a TNC must ensure that a driver's total compensation is not less than the following minimum standards:

- for trips originating in cities with a population of more than 600,000, and for time and miles on trips driven in cities with a population of more than 600,000, the greater of:
 - 59 cents per minute and \$1.38 per passenger platform mile; or
 - a minimum of \$5.17 per dispatched trip.
- for all other trips, the greater of:
 - 34 cents per minute and \$1.17 per passenger platform mile; or
 - a minimum of \$3.00 per dispatched trip.

The Department of Labor and Industries (L&I) must increase the per trip, per mile, and per minute rates by the rate of increase of the state minimum wage.

Notices. The TNCs must, among other things, provide notices to drivers about their rights, including the right to a guaranteed per minute and per mile rate for compensation and the right to be protected from retaliation; per trip receipts and weekly statements to drivers containing specific information about each trip; and receipts to riders containing certain information.

Paid Sick Time. Beginning January 1, 2023, the TNCs must provide drivers paid sick time of one hour for every 40 hours of passenger platform time worked. Drivers are eligible to accrue paid sick time upon recording 90 hours of passenger platform time on the TNCs platform; carry over up to 40 hours of unused paid sick time to the next year; and use sick time in increments of four hours or more.

Unemployment insurance, Paid Family Medical Leave, and Long-Term Care. The commissioner of the Employment Security Department (Commissioner) must convene a work group of stakeholders to study the appropriate application of unemployment insurance, paid family medical leave, and long-term care laws to TNC and drivers. The Commissioner must submit a report to the Legislature and Governor by December 1, 2022, with findings and suggested changes to state law to establish applicable rates and terms by which TNCs and drivers participate in the relevant programs.

Industrial Insurance. The exclusion of mandatory workers' compensation coverage for drivers is removed. Beginning January 1, 2023, L&I must assess premiums for TNCs for workers' compensation coverage applicable to drivers while the driver is engaged in passenger platform time and dispatch platform time. For purposes of calculating premiums for drivers, L&I must multiply the total number of hours spent by drivers in passenger platform time and dispatch platform time by the rates established for taxicab companies. The L&I may subsequently adjust premiums in accordance to L&I rules. The application of the industrial insurance statutes is not indicative of, or considered a factor in determining, the existence of an employer-employee relationship between a TNC and a driver for purposes of any other right, benefit, or obligation under other state and local employment

laws.

Driver Resource Center and appeals process for deactivations. The Driver Resource Center Fund (Fund), is created in the custody of the state treasurer, to be administered by L&I. Only the director of L&I may authorize expenditures and an appropriation is not required. Expenditures may be used for services to drivers, provided by the Drivers Resource Center (Center). L&I's administrative costs may not exceed 10 percent of the revenues to the Fund.

Beginning July 1, 2024, the TNCs must collect and remit 15 cents of every passenger fare to the Fund. Drivers may make voluntary per-trip earnings deduction contributions to the Fund if 100 or more drivers working for the TNC authorize such a deduction. Procedures are established regarding the TNC deducting voluntary contributions. The L&I must adjust the per trip fee annually by the rate of inflation using the consumer price index for urban wage earners and clerical workers.

The Center must be a nonprofit organization, selected by L&I, that: (1) allows drivers the right to be members of the organization; (2) has demonstrated experience providing dispute resolution and deactivation representation services to gig economy drivers in the state; and (3) provides culturally competent driver representation services, outreach, and education.

The TNCs must enter into L&I-approved agreements with the Center to provide an appeals process for drivers whose accounts have been deactivated. Agreements must include:

- opportunity for a driver representative to support drivers during the deactivation process;
- provisions regarding notices to drivers;
- provisions for the TNC to provide information it relied on in making its deactivation decision;
- a good faith 30-day informal resolution process;
- a formal process that includes a just cause standard; and
- provisions to use the just cause standard in disputes adjudicated by private arbitration.

The deactivation appeals process does not apply to deactivations based on allegations of discrimination, harassment, assault, fraud, impaired driving, or other conduct agreed to by the TNC and the Center.

Procedures are established, including requiring mediation and binding arbitration, if the TNC and the Center fail to reach agreement. L&I may gather evidence and conduct public hearings for the purposes of determining whether to approve agreements and may request revised agreements.

Enforcement. Enforcement provisions are created allowing L&I to investigate complaints for compensation, paid sick time, and retaliation violations, to impose civil penalties, and

for parties to appeal.

Statewide Regulatory Requirements. Uniform statewide regulations of TNCs are created for TNCs to, among other things:

- obtain an annual \$5,000 permit to operate from the Department of Licensing (DOL);
- implement zero tolerance drug and alcohol policies;
- implement nondiscrimination policies;
- conduct local and national background checks on drivers;
- prohibit drivers who have certain moving violations, certain criminal convictions, and who are under 20 years old;
- require that vehicles may not be more than 15 years old;
- maintain certain records and allow the DOL to randomly inspect records; and
- not charge fares that exceed two and one-half times ordinary fares during the first seven days of a state of emergency.

A TNC is not vicariously liable for injuries resulting from or arising out of the use of a personal motor vehicle while the driver is logged on to the TNC driver platform if there is no negligence or criminal wrongdoing on the part of the TNC and the TNC has fulfilled all its obligations to the driver under the statewide regulatory statutes.

The requirement for underinsured motorist coverage of \$1 million applicable while a passenger is in the car is replaced with a requirement for \$100,000 per person and \$300,000 per accident.

Preemption. With certain exceptions, the state preempts the field of regulating TNCs and drivers and no local government may impose any tax, fee, or other charge on TNCs or drivers. The preemption does not apply to generally applicable business, sales, use, excise, or property taxes.

A local ordinance or regulation existing on or before January 1, 2022, that imposes a tax, fee, or surcharge on a TNC or driver remains in effect at the rate that exists on or before January 1, 2022. The county, city, town or other municipal corporation may continue to collect that tax, fee, or surcharge, but may not increase the amount.

Beginning January 1, 2023, any local ordinance or regulation existing on or before the effective date of the bill that imposed a per trip fee to fund a driver conflict resolution center, may continue to be in effect but must be reduced by \$0.15 and may not increase the per trip fee.

Any per ride fee imposed by a non-preempted local ordinance, the proceeds of which is used to offset expenses of enforcing the ordinance may be adjusted if:

- the city or county demonstrate to DOL that the revenues from existing per ride fee amounts are insufficient to offset the cost of enforcement;
- the total amount expected to be collected under the increase will not exceed the

- expected costs; and
- DOL has not authorized an increase in the per trip fee in the last two fiscal years.

Any local ordinance or regulation in a city with a population of more than 600,000 or a county with a population of more than two million, and that existed on or before January 1, 2022, that regulated licensing for TNCs and drivers, or processing of applications, examinations, and background checks, remains in effect as the requirements exist on the effective date of the bill. The county or city may continue to enforce its ordinance and may not amend it unless such amendments conform to the requirements of the statewide regulatory provisions.

As of January 1, 2023, local ordinances or regulations of a city with a population of more than 600,000, or a county of more than 2 million and that relate to compensation, deactivation, paid sick time, and workers' compensation are preempted.

The preemption provisions do not prevent an airport operator from requiring TNCs from entering into contracts related to TNCs operating on airport property.

EFFECT OF TRANSPORTATION COMMITTEE AMENDMENT(S):

- Adds additional protected classes regarding a transportation network company's (TNC's) nondiscrimination policy and nondiscrimination laws applicable to passengers and drivers.
- Removes the vicarious liability protection applicable to TNCs if the TNC's policies, directives, or procedures for operation of the network, or the company's requirements of the driver, are found to be a proximate cause of an injury.
- Provides that nothing under the vicarious liability protection applicable to TNCs alters or limits a party's rights to bring a cause of action for independent negligence on the part of the TNC for injury resulting out of the operation of a TNC vehicle.
- Adds additional protected classes regarding the basis upon which a TNC may not refuse to contract with or terminate the contract of a driver.
- Provides that drivers have all the rights and remedies available under chapter 49.60 —RCWDiscrimination-Human Rights Commission—solely to enforce the prohibition against certain actions around contracting between TNCs and drivers.
- Provides that the preemption section may not be construed to preempt any generally applicable taxes, fees, or surcharges.

Appropriation: None.

Fiscal Note: Fiscal note available on the Substitute House Bill.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is about protecting TNC drivers. It is a result of years of negotiations between TNCs and TNC drivers. The bill represents a compromise on all sides. The bill does 4 things: (1) provides certainty of wages for TNC drivers, (2) provides certainty of benefits for TNC drivers, (3) establishes a neutral dispute resolution process, and (4) establishes a statewide regulatory structure regarding licensing of TNCs and regulating drivers. The bill provides historic protections for TNC drivers. The bill provides due process for drivers. Being a TNC driver provides a lot of flexibility given family challenges, and this bill will greatly help drivers. The insurance coverages should be increased though. Uber provides very low rates of pay for drivers and this bill helps drivers make a better wage and to come off food stamps. The bill preserves the flexibility drivers appreciate. The bill puts insurance coverage levels on parity with taxis. The bill provides drivers with many benefits available to other workers.

CON: Members should read the National Employment Law Project letter. This bill is a major attempt to skirt labor law.

OTHER: A fingerprint-based background check via law enforcement databases is preferred because those provide more access to background records. Many professions already are required to use a fingerprint-based background check and this bill should require the same. Tacoma, and other cities, are generally supportive but would like revisions to the preemption section. There would be unintended consequences of the current preemption language, particularly regarding generally applicable fees. Changes should be made to remove generally applicable fees from the preemption language. Please make Tacoma treated similarly to Seattle and King Co. under the preemption language. The bill would greatly increase the workload of the Department of Labor and Industries. The bill establishes a new kind of classification unique to TNC drivers.

Persons Testifying: PRO: Representative Liz Berry, Prime Sponsor; Peter Kuel, President, Drivers Union; Patrice Tisdale, Drivers Union; Ahmed Farah; Francis Kamau; Bob Gulbranson; Jennifer Heinlein; Sukhchain Banwait; Bright Nkrumah; Ibrahim Said; Walt Ellis; Brenda Wiest, Teamsters 117; Jen Hensley, VP, Govt. Relations, Lyft; Ramona Prieto, Head of Public Policy, Western US, Uber.

CON: Steven Tolman, Massachusetts AFL-CIO.

OTHER: James McMahan, WA Assoc Sheriffs & Police Chiefs; Rory Paine-Donovan, Office of the Insurance Commissioner; Michael Walker, Office of the Insurance Commissioner; Briahna Murray, City of Tacoma; Candice Bock, Association of Washington Cities; Tammy Fellin, Labor & Industries.

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