

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF
SENATE BILL NO. 101**

As Agreed to May 14, 2015

Brief*

SB 101 would amend the Kansas Transportation Network Company (TNC) Services Act (Act), enacted in 2015 House Sub. for SB 117, which became effective on publication in the *Kansas Register* on May 14, 2015. The bill would modify the definition of a TNC; make changes to the required actions by a TNC prior to permitting an individual to act as a driver on its digital network by removing language regarding local and national criminal background check requirements on the Kansas Bureau of Investigation (KBI) and eliminating the requirement that the individual provide proof of comprehensive and collision insurance coverage for personal vehicles subject to a lien; replace the list of events outlined in current law disqualifying an individual as a TNC driver with an expanded list of disqualifying events; modify language regarding the disclosure provided by a TNC to its TNC drivers in the prospective drivers' written terms of service with regard to lienholders' interests; require a TNC driver to ensure the insurance coverage required by a lienholder on a vehicle used to provide TNC services is in effect; and remove obsolete language referencing an undefined Commission. Additional details are provided below.

The section addressing lienholders' interests would take effect on and after January 1, 2016. The remainder of the amendments to current law would take effect on publication in the statute book.

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

TNC Definition

The definition of a “transportation network company” would be amended to remove language regarding licensure pursuant to the Act and would be defined as “a corporation, partnership, sole proprietorship or other entity operating in Kansas that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. A TNC shall not be deemed to control, direct or manage the personal vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract.”

Requirements Prior to Acting as a TNC Driver

The bill would amend the actions required of a TNC prior to permitting an individual to act as a driver on its digital network to:

- Remove the requirement to obtain a local and national criminal background check on the individual, conducted by the KBI; and
- Remove the requirement, if the individual’s personal vehicle is subject to a lien, that the individual provide proof to the lienholder and the TNC of comprehensive and collision insurance coverage on the vehicle that would cover the period when the individual is logged on to a TNC’s digital network but not engaged in a prearranged ride (Period 1) and when the individual is engaged in a prearranged ride (Period 2).

The bill would add a list of disqualifying events that would prohibit a TNC from permitting an individual to act as a driver on its digital network. The list of disqualifying events would include permanent disqualifications and disqualifications occurring within an established period of time.

Disqualifications

A TNC would be prohibited from permitting an individual to act as a TNC driver on its digital network who:

- Does not possess a valid driver's license;
- Does not possess proof of registration for the motor vehicle or motor vehicles used to provide a prearranged ride;
- Does not possess proof of automobile liability insurance for the personal vehicle or personal vehicles used to provide a prearranged ride;
- Is not at least 19 years of age;
- Has a permanent disqualification, as described below; or
- Has a disqualification that occurred within a specified time frame, described below as staged disqualifications.

Permanent Disqualifications

An individual would be permanently disqualified as a TNC driver if he or she:

- Has been convicted of:
 - Any person felony described in statute in Article 34 or Article 54 of *Kansas Statutes Annotated* Chapter 21 (*i.e.*, capital murder, first or second degree murder, voluntary or involuntary manslaughter, assisting suicide, kidnapping or aggravated kidnapping, or aggravated assault);

- Any sex offense described in statute in Article 35 or Article 55 of Chapter 21 (*i.e.*, rape, criminal or aggravated criminal sodomy, sexual or aggravated sexual battery, indecent or aggravated indecent liberties with a child, indecent or aggravated indecent solicitation of a child, unlawful sexual relations, electronic solicitation, sexual exploitation of a child), or KSA 2014 Supp. 21-6419 through 21-6422 (*i.e.*, any sexual offense that is a crime against the public morals);
 - Identity theft, as described in KSA 2010 Supp. 21-4018, or KSA 2014 Supp. 21-6107;
 - Any attempt, conspiracy, or solicitation of any crime described above; or
 - A crime under the law of another jurisdiction that is substantially the same as the crimes described above; or
- Is registered on the National Sex Offender Registry, the Kansas Offender Registry, or any similar registry of any other jurisdiction.

Staged Disqualifications

An individual would be disqualified as a TNC driver for a set period of time if he or she has:

- Had a combined total of more than three moving violations in Kansas or any other jurisdiction within the past three years;
- Had a traffic violation in Kansas or any other jurisdiction within the past three years of attempting to evade the police, reckless driving, or driving on a suspended license; or

- Been convicted, adjudicated, or placed on diversion, within the past seven years, of:
 - Driving under the influence of drugs or alcohol in Kansas or any other jurisdiction;
 - Any crime involving controlled substances, as described in KSA 2010 Supp. 21-36a01 through 21-36a17 or in statute in Article 57 of Chapter 21, or any violation of any provision of the Uniform Controlled Substances Act prior to July 1, 2009;
 - Theft, as described in KSA 2009 Supp. 21-3701 or KSA 2014 Supp. 21-5801;
 - Any crime involving fraud, dishonesty, or deceit, as described by the Kansas Criminal Code;
 - Any attempt, conspiracy, or solicitation of any crime described above; or
 - A violation of the law or ordinance of another jurisdiction, including any municipality, which is substantially the same as the crimes described above.

Lienholders' Interest

The bill would add that a TNC would be required to disclose prominently, with a separate acknowledgment of acceptance, to its drivers in the prospective TNC drivers' written terms of service the following before the drivers are allowed to accept a request for TNC services on the TNC's digital platform: "If you are required by agreement with the lienholder to maintain comprehensive and collision insurance on the vehicle, using the vehicle for TNC services without such insurance coverage may violate your legal obligation to the lienholder under Kansas law."

In addition, if the vehicle used by a TNC driver is subject to a lien and the lienholder requires comprehensive and collision insurance in its agreement, the bill would require the TNC driver to ensure that such insurance is in effect and covers the periods when the TNC driver is logged on to a TNC's digital network but not engaged in a prearranged ride (Period 1) and when the TNC driver is engaged in a prearranged ride (Period 2).

The bill also would delete language in current law referencing an undefined commission that would be prohibited from assessing fines for violations under this section of the Act.

The lienholders' interest section of the bill would take effect on and after January 1, 2016. The remainder of the bill would take effect on publication in the statute book.

Conference Committee Action

The Conference Committee agreed to remove the contents of SB 101. (The contents of SB 101, which included SB 117, as recommended by the Senate Committee, were inserted into HB 2064 by Conference Committee action.) The Conference Committee further agreed to amend three sections in current law and insert new language with regard to TNCs as follows:

- Amend the definition of a “transportation network company” to remove language regarding licensure pursuant to the Act;
- Amend the actions required of a TNC prior to permitting an individual to act as a driver on its digital network to:
 - Remove the requirement to obtain a local and national criminal background check on the individual, conducted by the KBI; and

- Remove the requirement, if the individual's personal vehicle is subject to a lien, that the individual provide proof to the lienholder and to the TNC of comprehensive and collision insurance coverage on the vehicle that would cover the period when the individual is logged on to a TNC's digital network but not engaged in a prearranged ride (Period 1) and when the individual is engaged in a prearranged ride (Period 2);
- Insert conditions, both permanent and staged disqualifiers, under which a TNC would not be allowed to permit an individual to act as a driver on its digital network;
- Amend the disclosure by a TNC to a TNC driver in the prospective drivers' written terms of service to require the disclosure be made prominently, with a separate acknowledgment of acceptance, and to include language putting the prospective driver on notice that if the driver has an agreement with a lienholder to maintain comprehensive and collision insurance on the vehicle on which the lien has been placed, using the TNC services without such insurance may violate the driver's legal obligation to the lienholder under Kansas law;
- Insert language requiring the TNC network driver using a vehicle subject to a lien, for which the lienholder requires comprehensive and collision insurance, to ensure such coverage is in effect and covers the periods when the TNC driver is logged on to the digital network but not engaged in a prearranged ride (Period 1) and when engaged in a prearranged ride (Period 2);
- Delete a reference to an undefined Commission; and

- Set the effective date for the provisions related to lienholders' interests as January 1, 2016, and set the effective date for the remainder of the bill as publication in the statute book.

Background

The contents of SB 101 were removed by the Conference Committee. The current version of SB 101, as agreed to in this Conference Committee Report, is a trailer bill to amend current law regarding TNCs, enacted by 2015 House Sub. for SB 117. The background information provided below outlines the history of House Sub. for SB 117.

House Sub. for SB 117

House Sub. for SB 117, which is current law, was recommended by the House Committee on Insurance to incorporate provisions relating to the regulation of TNCs and its drivers and the associated insurance coverage requirements. Those provisions were originally contained in HB 2286 and were substantively modified by the House Committee (described later) before insertion into House Sub. for SB 117. [*Staff Note:* SB 117, as recommended by the Senate Committee on Financial Institutions and Insurance, related to permitting certain health care facilities to obtain self-insurance coverage under the Health Care Stabilization Fund. Those provisions were deleted by the House Committee action and inserted in SB 101, as amended by the House Committee. The contents of SB 101, as amended by the House Committee were inserted in HB 2064 by Conference Committee action.]

The House Committee of the Whole amended the substitute bill to require an individual with a vehicle subject to a lien to provide proof of comprehensive and collision insurance coverage covering Periods 1 and 2 to the lienholder and the TNC, prior to acting as a TNC driver.

House Sub. for SB 117 passed the House on March 25, 2015. The Senate non-concurred with House amendments and a Conference Committee was appointed on March 30, 2015. On April 2, 2015, the House and Senate adopted the Conference Committee Report, which made the following additions, revisions, and deletions:

- Strike sections referencing the Kansas Corporation Commission (KCC);
- Delay the implementation date of the insurance requirement provisions to January 1, 2016;
- Change the effective date to publication in the *Kansas Register* for all sections except the insurance requirement provisions;
- Add a definition for “vehicle owner” and amend references to insurance maintained by the TNC driver to add “or vehicle owner”; and
- Replace the background check language with the standard language used in Kansas statutes providing for background checks to be conducted by the KBI.

As a result of Conference Committee action to strike references regarding regulation by the KCC, a reference to an undefined Commission that would be prohibited from assessing fines remains in the section regarding protection for lienholders, and language relating to the preemption of local ordinances was removed.

The bill was vetoed by the Governor on April 20, 2015, and returned to the Senate. Motions by the Senate and House to override the veto prevailed on May 5, 2015. The bill became law on publication in the *Kansas Register* on May 14, 2015.

No fiscal note was prepared for the substitute bill.

HB 2286

The bill was introduced by the House Committee on Taxation. Representatives of Uber appeared in support of the bill, as introduced, at the House Committee on Insurance hearing. The representatives indicated Kansas needs comprehensive TNC regulation and the bill, as introduced, would provide regulatory certainty to both drivers and riders who could then rely upon TNCs for opportunity, safety, and reliable transportation statewide. The representatives indicated Uber hopes, if balanced regulations are passed, to further expand its operations in Wichita and the Kansas City metro area and into several cities including Manhattan, Lawrence, and Topeka.

Opponents appearing before the House Committee on the bill included representatives of the Kansas Association of Property and Casualty Insurance Companies (KAPCIC), the Property Casualty Insurers Association of America, Allstate Insurance, American Family Insurance, and Farmers Insurance. Written testimony was submitted by a representative of the State Farm Insurance Companies. The KAPCIC representative indicated its members oppose the insurance provision proposed in the bill, as introduced, stating a concern about gaps in insurance coverage for drivers who choose to participate in ridesharing agreements. Opponents noted that "Period 1" (when the TNC app is "on") required, in the original bill, only contingent, rather than primary, insurance coverage. During the House Committee hearing, a balloon amendment (changes made to another TNC-related bill, HB 2249, previously heard in the House Committee) was presented for consideration.

Neutral testimony was offered by representatives of the Commission, the KBI, the Kansas Bankers Association, the Kansas Credit Union Association, and the League of Kansas Municipalities. The Director of the KCC's Transportation Division addressed the issue of jurisdiction, the requirement to promulgate agency rules and regulations, and other enforcement provisions assigned by the bill to the KCC. The

KCC representative noted the annual permit fee would be insufficient to regulate TNCs as required by the bill. The Division Director of Information Services, KBI, presented information on the state and criminal history record provisions in the bill and noted currently no statutes authorize the utilization of third party vendors to conduct such checks. Lender representatives appearing before the House Committee requested consideration for an amendment to address damage to a vehicle engaged in a TNC transaction and the direct payment for repair of the vehicle.

The House Committee made several amendments to HB 2286 before incorporation into House Sub. for SB 117. Among those amendments were:

- Adding definitions for the terms “digital network,” “personal vehicle,” “prearranged ride,” and “transportation network company rider (rider)”; updating definitions for “transportation network company” and “transportation network company driver (driver)”; and deleting the term “transportation network company services”;
- Replacing references to “TNC services” with “prearranged rides” and also updating “passenger” with “rider”; clarifying the term “vehicle” (specifies “personal vehicle”); and replacing references to website and software application service with “digital network”;
- Inserting a TNC disclosure provision to be contained in the prospective drivers’ written terms of services regarding the use of a vehicle with a lien against it and payment for a claim covered under comprehensive coverage or collision coverage; and
- Modifying automobile insurance coverage requirements that correlate to the timing and activities associated with the TNC driver.

The fiscal note prepared by the Division of the Budget on HB 2286, as introduced, notes the current safety and economic jurisdiction of the KCC is based on entities that operate commercial motor vehicles. Since TNCs do not operate as commercial motor vehicles that transport more than eight passengers including the driver, the KCC indicates it would not have jurisdiction over these small for-hire operators, and is unable to estimate any fiscal effect from the passage of the bill.

transportation network companies; transportation network company services; regulation; insurance

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