

SESSION OF 2015

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE SUBSTITUTE FOR SENATE BILL NO. 117**

As Agreed to March 31, 2015

Brief*

House Sub. for SB 117, as amended, would create the Kansas Transportation Network Company Services Act (Act). The bill would define applicable terms; regulate transportation network companies (TNCs); establish the responsibilities, requirements, and rights of the parties involved in prearranged rides; establish automobile insurance coverage requirements for TNC drivers and vehicle owners, when applicable, and specify when the coverage applies; provide for allowable insurance exclusions; provide for the protection of lienholder interests; and provide for driver background checks to be conducted by the Kansas Bureau of Investigation (KBI). Additional bill details follow.

Definitions

The bill would define the following terms:

- “Transportation network company” or “TNC” would mean a corporation, partnership, sole proprietorship or other entity that is licensed pursuant to this Act and operating in Kansas that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. A TNC would not be deemed to control, direct or manage the personal vehicles or TNC drivers that connect

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to its digital network, except where agreed to by written contract;

- “Personal vehicle” would mean a vehicle that is used by a TNC driver in connection with providing a prearranged ride and is:
 - Owned, leased, or otherwise authorized for use by the TNC driver; and
 - Not a taxicab, limousine, or for-hire vehicle.
- “Digital network” would be defined as any online-enabled application, software, website, or system offered or utilized by a TNC that enables the prearrangement of rides with TNC drivers;
- “Prearranged ride” would mean the provision of transportation by a driver to a rider that begins when a driver accepts a ride requested by a rider through a digital network controlled by a TNC, continues through the transportation of a requesting rider, and ends when the last requesting rider departs from the personal vehicle. Transportation by taxi, limousine, or other for-hire vehicle would not be included;
- “TNC driver” or “driver” would be an individual who:
 - Receives connections to potential passengers and related services from a TNC in exchange for payment of a fee to the TNC;
 - Uses a personal vehicle to provide services for riders matched through a digital network controlled by a TNC; and
 - Receives, in exchange for providing the passenger a ride, compensation that exceeds the individual’s cost to provide the ride;

- “TNC rider” or “rider” would be an individual who uses or persons who use a TNC’s digital network to connect with a TNC driver for prearranged rides to the rider in the driver’s personal vehicle between points chosen by the rider; and
- “Vehicle owner” would be the owner of a personal vehicle.

TNC Requirements

Exclusion as Motor Carrier, Taxicab, For-Hire, or Commercial Vehicle

TNCs or drivers meeting the requirements of the Act would not be considered motor carriers, private motor carriers, or public motor carriers of passengers, nor determined to provide taxicab or for-hire vehicle service. A driver would not be required to register a personal vehicle used for prearranged rides as a commercial or for-hire vehicle.

Agent for Service

The TNC would be required to maintain an agent for service in the state.

Disclosures to Rider

A TNC would be required to provide the rider with the following:

- Fare calculation method, disclosed on its digital network, for any fare charged;
- Applicable rates being charged;

- The option to receive an estimated fare before the rider enters the driver's personal vehicle;
- Driver's picture and the license plate number of the personal vehicle used for providing prearranged rides, displayed on the TNC's digital network, prior to the rider entering the driver's vehicle; and
- An electronic receipt, within a reasonable time after completion of a trip, that lists the following information regarding the trip:
 - Origin and destination;
 - Total time and distance; and
 - An itemization of the total fare paid, if any.

Automobile Insurance Requirements

On and after January 1, 2016, a TNC driver or vehicle owner or TNC on the driver's behalf would be required to maintain primary automobile insurance that recognizes the driver is a TNC driver and covers the driver while logged on to the TNC's digital network, engaged in a prearranged ride, or transporting a passenger for compensation.

The coverage requirements for Periods 1 and 2, as described below, would be satisfied by automobile insurance maintained by the TNC driver or vehicle owner or by the TNC, or by a combination of both.

Period 1

While a TNC driver is logged on to the digital network and available to receive transportation requests but not engaged in a prearranged ride, the following automobile insurance requirements would apply:

- Primary automobile insurance of at least \$50,000 for death and bodily injury per person and \$100,000 per incident, and \$25,000 for property damage; and
- Primary automobile liability insurance that meets the minimum coverage requirements where required by statutes relating to uninsured and underinsured motorist coverage and motor vehicle liability insurance coverage.

Period 2

While a TNC driver is engaged in a prearranged ride, the following automobile insurance requirements would apply:

- Primary automobile insurance that provides at least \$1,000,000 for death, bodily injury, and property damage; and
- Primary automobile liability insurance that meets the minimum coverage requirements where required by statutes relating to uninsured and underinsured motorist coverage and motor vehicle liability insurance coverage.

If the insurance maintained by the driver or vehicle owner, as described in Periods 1 and 2 above, has lapsed or does not provide the required coverage, the insurance maintained by the TNC would provide the coverage required beginning with the first dollar of a claim, and the TNC would have the duty to defend the claim. Coverage by an automobile insurance policy maintained by the TNC would not depend on a personal automobile insurer first denying a claim, nor would a personal automobile insurance policy be required to first deny a claim.

The bill would provide that the required insurance may be placed with an insurer licensed under state law, or with an

eligible surplus lines insurer. Insurance meeting the requirements of the Act would be deemed to satisfy the financial responsibility requirement for a personal vehicle under the Kansas Automobile Injury Reparations Act.

At all times during the use of a vehicle in connection with a TNC's digital network, the driver would be required to carry proof of insurance meeting the requirements of the Act. In the event of an accident and upon a request pursuant to statutes relating to insurance verification, the driver would be required to provide to the directly interested parties, automobile insurers, and investigating police officers the insurance coverage information and whether the driver was logged on the digital network or on a prearranged ride at the time of the accident.

TNC Required Disclosure to Driver

The following information would be required to be disclosed in writing by the TNC to the driver before the driver would be allowed to accept a request for a prearranged ride on the digital network:

- Insurance coverage, including the types of coverage and limits for each coverage, provided by the TNC to the driver using a personal vehicle in connection with the digital network; and
- Notice that the driver's own automobile insurance policy, depending on its terms, might not provide any coverage while the driver is logged on to the digital network and available to receive transportation requests or is engaged in a prearranged ride (Periods 1 and 2).

Insurers' Allowable Exclusions

Insurers writing automobile insurance in the state would be allowed to exclude any and all coverage under the driver's or vehicle owner's insurance policy for any loss or injury occurring while the driver is logged on to a TNC's digital network or providing a prearranged ride. The bill would provide a list of the coverage included in the automobile insurance policy an insurer would be allowed to exclude. The exclusions would apply regardless of any requirement under the Kansas Automobile Injury Reparations Act.

The bill would clarify the Act does not imply or require a personal automobile insurance policy to provide coverage while the driver is logged on to a digital network, engaged in a prearranged ride, or otherwise using a vehicle to transport passengers for compensation. An insurer would be allowed to provide coverage for the TNC driver's vehicle, if the provider chose to do so by contract or endorsement.

Automobile insurers excluding coverage as permitted under the bill would have no duty to defend or indemnify any claim expressly excluded. The Act would not be deemed to invalidate or limit an exclusion contained in a policy. An automobile insurer defending or indemnifying a claim against a driver excluded under the terms of its policy, as allowed under the Act, would have the right of contribution against other insurers providing automobile insurance to the same driver in satisfaction of the required coverage under the automobile insurance requirements portions of the Act (specifically Section 8), at the time of loss.

In a claims coverage investigation, the bill would require TNCs and any insurer potentially providing coverage under the Act's automobile insurance requirements to cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the TNC driver if applicable, including precise times the driver logged on and off the digital network in the 12-hour period immediately preceding and the 12-hour period immediately following the

accident and to disclose to one another a clear description of the coverage, exclusions, and limits provided under any automobile insurance maintained under the Act.

TNC Requirements of Driver

Zero Tolerance Policy on Use of Drugs or Alcohol

The TNC would be required to implement a zero tolerance policy on the use of drugs or alcohol while a driver is providing a prearranged ride or logged into the digital network, but not providing a prearranged ride. The TNC would be required, on its website, to provide notice of the zero tolerance policy and procedures for a rider to report a complaint about a driver with whom the rider is matched and reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

Upon receipt of a complaint regarding an alleged violation of the zero tolerance policy, the TNC would be required to immediately suspend the driver's access to the digital network and to conduct an investigation. The suspension would last the duration of the investigation. The TNC would be required to maintain records pertaining to the enforcement of the zero tolerance policy for at least two years from the date of receipt of a passenger complaint.

Driver Requirements

Requirements Prior to Acting as TNC Driver

The TNC would be required to take the following actions prior to allowing an individual to act as a driver on its digital network:

- Require the individual to submit an application to the TNC, including information regarding the applicant's address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC;
- Obtain a local and national criminal background check on the individual, conducted by the KBI as outlined in the bill:
 - The Attorney General would be required to release fingerprints to the KBI for the purpose of conducting criminal history records checks, utilizing the files and records of the KBI and the Federal Bureau of Investigation; and
 - Each individual would be subject to a state and national criminal history records check which conforms to applicable federal standards for the purpose of verifying the identity of the individual and whether the individual has been convicted of any crime that would disqualify the individual from being a TNC driver;
- Obtain and review the applicant's driving history research report; and
- If the individual's personal vehicle is subject to a lien, require the individual to 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).

The bill would provide for conditions under which a TNC would not be allowed to permit an individual to act as a driver

on its digital network. One such condition would be the driver is not at least 19 years of age.

Other Driver Requirements

The bill would require the motor vehicle used by a driver to provide prearranged rides to meet the equipment requirements applicable to private motor vehicles under the state Uniform Act Regulating Traffic. The driver would be allowed to provide only prearranged rides and would not be allowed to solicit or accept street hails.

TNC Policy Prohibiting Solicitation or Acceptance of Cash Payments

The TNC would be required to adopt a policy prohibiting solicitation or acceptance of cash payments from riders and notify the drivers of the policy, and the drivers would be required to follow the policy. Only electronic payments using the TNC's digital network would be allowed.

TNC Policy of Non-Discrimination

The TNC would be required to adopt a policy of non-discrimination with respect to riders and potential riders and notify the drivers of the policy. The drivers would be required to comply with all applicable laws regarding non-discrimination against riders or potential riders and relating to accommodation of service animals. The driver would not be allowed to impose additional charges for providing services to individuals with physical disabilities because of those disabilities.

The TNC would be required to provide riders an opportunity to indicate the need for a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC

services, it would be required to direct the rider to an alternate provider of such service, if available.

TNC Records Maintenance

The TNC would be required to maintain individual trip records for at least one year from the date the trip was provided. In addition, the TNC would be required to maintain driver records at least until the one-year anniversary of the date on which the driver's activation on the digital network has ended.

Confidentiality of Rider Information

The TNC would be prohibited from disclosing a rider's personally identifiable information to a third party unless the rider consents or a legal obligation to disclose exists, or disclosure is required to protect or defend the terms of the use of the service or to investigate violations of the terms. The TNC would be allowed to share a rider's name or telephone number with the driver providing prearranged rides for the purpose of facilitating correct identification of the rider or communication between the rider and the driver.

Lienholders' Interest

Before the drivers would be allowed to accept requests for TNC services on the TNC's digital network or software application, a TNC would be required to disclose the following to its drivers in the prospective TNC drivers' written terms of service: "If the vehicle you plan to use to provide transportation network services has a lien against it, using the vehicle for transportation network company services may violate the terms of your contract with the lienholder."

Payment made by a TNC's insurer for a claim covered under comprehensive coverage or collision coverage would

be required to be made directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle. The Commission would not be allowed to assess any fines as a result of a violation of this requirement.

The bill would be in effect upon publication in the *Kansas Register*.

Conference Committee Action

The Conference Committee agreed to the House amendments to the bill with the following additions, revisions, and deletions:

- Strike sections referencing the State Corporation Commission;
- 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 State Corporation Commission, a reference to an undefined Commission that would be prohibited from assessing fines remains in the

section regarding protection for lien holders, and language relating to the preemption of local ordinances was removed.

Background

The House Committee on Insurance recommended a substitute bill to incorporate provisions relating to the regulation of transportation network companies 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. 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 (contents are now contained in SB 101, as amended by the House Committee).

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.

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”) only required, in the original bill, 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 Kansas Bureau of Investigation (KBI), the Kansas Bankers Association, the Kansas Credit Union Association, and the League of Kansas Municipalities. The Director of the Commission’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 Commission. The Commission 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 are:

- 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 State Corporation Commission 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 State Corporation Commission 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.

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