

ONE HUNDRED FOURTH LEGISLATURE - FIRST SESSION - 2015
COMMITTEE STATEMENT
LB629

Hearing Date: Monday March 02, 2015
Committee On: Transportation and Telecommunications
Introducer: Mello
One Liner: Provide for regulation of transportation network companies

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	5	Senators Brasch, Friesen, Garrett, Murante, Seiler
Nay:	2	Senators Smith, McCoy
Absent:		
Present Not Voting:	1	Senator Davis

Verbal Testimony:

Proponents:

Senator Heath Mello
Dave Barmore
Scott Hatfield
Inge Roettcher
Eric Brown
Todd Snover
David Arnold
Joslyn Maenner
Bruce Bohrer
Dick Clark
John Davis
Andy Pollock

Representing:

Introducer
Uber
Self
Uber
Lyft
Self
Greater Omaha Chamber
Association of Students of the University of Nebraska
Lincoln Chamber of Commerce
Platte Institute
Happy Cab Companies
Nebraska Transportation Association

Opponents:

Ron Hug
Kelly Campbell
Kirby Young
Korby Gilbertson
Coleen Nielsen
Tad Frazier
John Lindsay

Representing:

City Taxi Inc.
Property Casualty Insurers Association
Servant Cab Co.
Property Casualty Insurers Association of America
Nebraska Insurance Information Service
American Insurance Association
Nebraska Association of Trial Attorneys

Neutral:

Gerald Vap

Representing:

Nebraska Public Service Commission

Summary of purpose and/or changes:

Section 1- Amends section 75-109.01; jurisdiction of the Nebraska Public Service Commission (NPSC). The section is amended by adding a cross-reference to sections 2 through 21 of the bill.

Section 2-Enacts a new provision of law.

Definitions for purposes of the act. Defined terms include:

- 1) "Application Open Stage" - the time period from the moment a participating driver logs on to a transportation network company's (TNC) online-enabled application until the driver accepts a request to transport the passenger and from the moment a driver completes the transaction or the passenger exits the vehicle, whichever is later, until the driver either accepts another ride request or logs off the on-line enabled application;
- 2) "Engaged Stage" - the time period from the moment a participating driver accepts a ride request on the TNC's online-enabled application until the driver completes the transaction or until the passenger exits the vehicle, whichever is later;
- 3) "Participating driver or driver" - any person who uses a vehicle in connection with a TNC's online-enabled application to connect with passengers;
- 4) "Passenger" - a passenger in a personal vehicle for whom a driver provides transportation and who is connected with a driver by a TNC's online-enabled application;
- 5) "Passengers on board stage" the time period when there are passengers in the vehicle pursuant to the driver's participation in a TNC;
- 6) "Transportation network company" (TNC) - an entity operating in Nebraska that provides prearranged transportation services for compensation using an online-enabled application to connect passengers with drivers; and
- 7) "Transportation network company insurance"- an insurance policy that expressly covers loss arising from a participating driver's use of a personal vehicle in connection with a TNC's online-enabled application, including coverage for liability, uninsured motorist, and underinsured motorist.

Section 3- Enacts a new provision of law.

Any person wishing to operate a TNC shall obtain a permit from the NPSC. The NPSC, following submission of a complete application, shall issue a permit to each qualified TNC within 30 days.

Section 4- Enacts a new provision of law.

A TNC shall:

- 1) Provide the NPSC with contact information;
- 2) Display a picture of the driver's vehicle or license plate on the online application;
- 3) Maintain an agent for process in Nebraska;
- 4) Maintain a record of all drivers;
- 5) Maintain and enforce a zero-tolerance policy for drug or alcohol use for all drivers;
- 6) Maintain a web-based customer service telephone number or email address; and
- 7) Establish a driver training program.

A TNC shall not allow a driver to provide service if the driver has violated the zero-tolerance policy, or has failed to complete driving training instruction.

Section 5- Enacts a new provision of law. Drivers shall possess a valid license, vehicle registration, and automobile liability insurance, and be 21 years of age. Drivers shall not be utilized until the TNC completes a criminal history record check.

A TNC shall not utilize any driver who in the 3 years prior to the background check:

- 1) Has 4 or more moving violations; or
- 2) Has a conviction for failure to stop and render aid, reckless driving, speeding in excess of 35mph of the posted limit, or failure to yield to a pedestrian resulting in bodily injury.

A driver who has been convicted of the offense of DWI within 7 years of the background check may not be utilized as a driver.

A driver who has any conviction for any offense involving fraud, unlawful sexual behavior, use of a motor vehicle to commit a felony, a crime involving property theft or damage, acts of violence or terror shall not serve as a driver.

Section 6- Enacts a new provision of law.

A driver utilized by a TNC shall only offer rides that are prearranged through the TNC's online application. A TNC shall disclose rates and shall provide a receipt showing the driver's first name detailing the ride, including route, duration of trip and total amount paid- including additional charges.

Section 7- Enacts a new provision of law.

Any vehicle used by a driver shall be registered in accordance with the Nebraska Motor Vehicle Registration Act and the TNC or a third party shall inspect the vehicle annually. Inspection reports shall be made available to the NPSC.

Section 8- Enacts a new provision of law.

The TNC shall adopt and file with the NPSC an antidiscrimination policy prohibiting discrimination by any driver in the

provision of TNC services.

Section 9- Enacts a new provision of law.

A TNC shall not require drivers to sign a non-compete agreement.

Section 10- Enacts a new provision of law.

Creates the Transportation Network Company Regulation Cash Fund.

Section 11- Enacts a new provision of law.

A TNC shall disclose in writing to drivers:

- 1) The insurance coverage and limits of liability for insurance maintained by the TNC; and
- 2) The limitations of the driver's personal automobile insurance policy.

Section 12- Enacts a new provision of law.

A TNC and driver shall maintain liability insurance through a TNC insurance policy during the engaged and passenger on board stage in the following amounts- primary liability coverage of \$500,000 and uninsured and underinsured coverage in compliance with the state minimum requirements. (25/50/25)

Policies of insurance shall comply with the requirements of Nebraska law.

Section 13- Enacts a new provision of law.

TNC insurance maintained by a TNC or driver during the open application stage shall be primary and shall be in compliance with state minimum insurance requirements for liability and uninsured and underinsured coverage- 25/50/25.

Section 14- Enacts a new provision of law.

A TNC may satisfy insurance requirements under the act ,when such coverage is maintained by the driver, only when the TNC verifies the coverage is maintained by the driver and the requirements of section 18 of the act has been met.

Section 15- Enacts a new provision of law.

Nothing in the act shall limit the liability of a TNC arising from an accident involving a participating driver in any action for damages against a TNC for an amount above the required insurance coverage.

Section 16-Enacts a new provision of law.

The act is not to be construed to require a private passenger policy of insurance to provide primary or excess liability coverage from the time a driver logs on to the online application until the time the driver logs off, or the passenger exits the vehicle, whichever is later.

Section 17- Enacts a new provision of law.

During the time period a driver logs on to the TNC online application until a passenger exits the vehicle or the driver exits the application, whichever is later, the following applies:

- 1) The driver's personal insurance shall not provide coverage, unless the policy is expressly written to provide coverage; and
- 2) The driver's personal insurance carrier shall have no duty to defend the driver, unless the policy expressly states a duty.

Section 18 - Enacts a new provision of law.

A personal automobile insurance carrier may, at their discretion, offer liability insurance coverage to drivers who operate for TNC's that provide coverage when the driver is engaged in TNC driver activity.

Section- 19- Enacts a new provision of law.

A TNC shall cooperate with insurers that are involved in any claims coverage investigation involving a TNC driver. A TNC shall retain for 5 years all electronic information recording the log-in and log-out activity after a date of loss is reported to a TNC.

Section 20- Enacts a new provision of law.

A TNC driver shall at all times, when operating as a TNC driver, carry proof of TNC insurance coverage in their vehicle.

Section 21- Enacts a new provision of law.

The NPSC is to provide an annual report to the legislature regarding the implementation of the act. The report shall include:

- 1) The number of permits issued to TNC carriers;
- 2) A description of any revocation proceedings; and
- 3) Any other information the NPSC believes will be beneficial in evaluating the effectiveness of the act.

Section 22- Amends section 75-302; definitions for purposes of the Motor Carrier Act.

The term "Transportation Network Company" shall have the same meaning as provided in section 3 of the bill. A TNC

shall not own, control, operate, or manage the personal vehicles of drivers operating for the TNC.

Section 23- Amends section 75-304; classification of motor carriers.

The section authorizes the NPSC to adopt rules and regulations to carry out the provisions of the act. The existing rules found in chapter 3 of title 291 of the Nebraska Administrative Code shall not apply to any TNC.

Section 24- Amends section 75-305; motor carriers, payment of annual fees.

The section is amended to provide that the vehicles operated by a TNC are exempt from existing motor carrier fees. In the alternative, a TNC shall pay an annual fee. A TNC may elect to pay \$20,000 or not to exceed \$80 per personal vehicle operated by a TNC driver. The fees collected from a TNC shall be deposited to the TNC Regulation Cash Fund.

Section 25- Amends section 75-306; issuance of NPSC license plates.

Any personal vehicle operated by a TNC driver is exempted from this section.

Section 26- Amends section 75-307; filing of information with the NPSC by certificated carriers.

The section is amended by creating an exception for a TNC from the requirements of the section.

Section 27- Amends section 75-309; Requirement of motor carriers to hold a certificate or permit to operate as a motor carrier.

The section is amended by adding a reference to TNC permits issued in section 3.

Section 28- Amends section 75-310; Application for certificates of convenience and necessity by a motor carrier.

The section is amended by creating an exception for TNC applications.

Section 29- Amends section 75-311; NPSC issuance of certificates of convenience and necessity.

The section is amended by creating an exception for TNC applications.

Section 30- Amends section 75-313; information requirements for a certificate of convenience and necessity.

The section is amended by creating an exception for TNC applications.

Explanation of amendments:

The committee considered and adopted an amendment which does the following:

Amends section 2- definition of "Transportation Network Company" is expanded by excluding Medicaid non-emergency transportation brokerage services provided pursuant to a contract with the Department of Health and Human Services.

Amends section 3- issuance of authority to a transportation network company (TNC) by the Nebraska Public Service Commission (NPSC). The section is amended to provide that if a TNC is authorized to do business in another state the NPSC shall issue a permit within 60 days of receipt of a completed application. If the TNC is not authorized in another state the permit shall be issued within 90 days of receipt of a completed application.

Amends section 4- in addition to other prescribed information a TNC shall obtain from a participating driver the vehicle identification number for the personal vehicle to be operated in connection with the TNC. A TNC shall adopt and file with the NPSC an anti-discrimination policy.

Amends section 6- the section is amended to include the requirement that a TNC driver shall not participate as a TNC driver for more than 12 hours in any 24 hour period.

A TNC shall file with the NPSC rates for compensation or suggested compensation, including any use of dynamic pricing.

When dynamic pricing is in use the online platform of the TNC must indicate such fact, the passenger must expressly confirm they understand dynamic pricing is in effect, the online application must provide the passenger with a fare estimator. and dynamic pricing shall not be available during any period of emergency declared by the Governor.

Amends section 8- the original language of the section relating to the adoption and filing of an anti-discrimination policy is transferred to section 4 of the amendment.

New language is added to the section that authorizes the NPSC to inspect any records held by the TNC. Such inspections shall occur at least once each calendar quarter on an audit basis. The NPSC may, at anytime, inspect any records of the TNC to resolve a complaint when a specific complaint has been lodged against the TNC. Any records inspected by the NPSC are not to be considered public records and shall not be subject to disclosure by the NPSC.

Amends section 11- required disclosures by a TNC to participating drivers include the requirement that if the personal vehicle to be operated for TNC purposes has a lien against it, the owner of the vehicle must notify the lien holder that it will be used for TNC purposes and may be in violation of the terms of a contract with the lien holder.

Amends section 14- by striking the section as introduced. New language is added which provides that coverage under a TNC insurance policy shall not be dependent on a personal insurance policy first denying a claim or being required to first deny a claim. When a TNC driver fails to maintain TNC insurance, the TNC shall provide coverage beginning with the first dollar of a claim.

For TNC insurance maintained by a TNC to meet the requirements of the act the TNC shall file with the NPSC a certificate of insurance specifying that cancellation or non-renewal of the policy may not occur until the NPSC has received at least 30 days written notice from the insurer.

Amends section 15- by adding language providing that in the event of a loss involving a personal vehicle used in connection with a TNC, the TNC shall require its insurer to conduct a record search to determine if a lien exists upon the personal vehicle. If a lien exists, and if the TNC's insurer makes a payment for the claim under comprehensive or collision physical damage coverage, payment shall be made to the facility repairing such damage or made jointly to the vehicle owner and the primary lien holder.

Adds a new section 16 to the bill- the owner of a personal vehicle used for TNC purposes shall have the duty to maintain comprehensive and collision physical damage coverage if the vehicle is required to carry such coverage due to a contractual obligation.

Former section 16 is renumbered as section 17.

Amends section 18- existing language of the section is stricken and new language is added that provides a personal insurer may offer a policy of insurance, and endorsement, or a rider to a policy that covers personal vehicles with a capacity of 8 persons or less with coverage for use as a TNC vehicle only if the policy expressly provides for insurance coverage during the time periods prescribed in sections 12 and 13 of the act.

Adds a new section 21 to the bill- no TNC or participating driver shall provide transportation services to any person under contract with the Department of Health and Human Services without specific authorization from the NPSC. If a TNC or participating driver seeks to obtain authorization from the NPSC for such service they shall be required to demonstrate that public convenience and necessity exists before any authority is granted by the NPSC.

Former section 21 is renumbered as section 22.

Former section 22 is renumbered as section 23.

Former section 23 is renumbered as section 24- a new subsection (2) is added to the section that provides contract carriers shall obtain and maintain uninsured and underinsured insurance coverage for each passenger in each vehicle in minimum amounts to be established by the NPSC.

Former section 24 is renumbered as section 25.

Former section 25 is renumbered as section 26.

Former section 26 is renumbered as section 27.

Former section 27 is renumbered as section 28.

Former section 28 is renumbered as section 29.

Former section 29 is renumbered as section 30.

Former section 30 is renumbered as section 31.

New section 32- provides direction to the Revisor of Statutes to assign sections 2-22 of this act to Chapter 75, Article 3.

Section 33- Repealer

Section 34- Emergency Clause

Jim Smith, Chairperson