

## **Creation of Kansas Transportation Network Company Services Act; House Sub. for SB 117**

**House Sub. for SB 117** creates the Kansas Transportation Network Company Services Act (Act). The bill defines applicable terms; regulates transportation network companies (TNCs); establishes the responsibilities, requirements, and rights of the parties involved in prearranged rides; establishes automobile insurance coverage requirements for TNC drivers and vehicle owners, when applicable, and specifies when the coverage applies; provides for allowable insurance exclusions; provides for the protection of lienholder interests; and provides for driver background checks to be conducted by the Kansas Bureau of Investigation (KBI). The bill is amended with SB 101.

### ***Definitions***

The bill defines the following terms:

- “Transportation network company” or “TNC” means 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 is not 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;
- “Personal vehicle” means 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” is 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” means 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 is not included;
- “TNC driver” or “driver” is 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" is 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" is 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 are not considered motor carriers, private motor carriers, or public motor carriers of passengers, nor determined to provide taxicab or for-hire vehicle service. A driver is not required to register a personal vehicle used for prearranged rides as a commercial or for-hire vehicle.

#### *Agent for Service*

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

#### *Disclosures to Rider*

A TNC is 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 is 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, are 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 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 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 provides the coverage required beginning with the first dollar of a claim, and the TNC has the duty to defend the claim. Coverage by an automobile insurance policy maintained by the TNC does not depend on a personal automobile insurer first denying a claim, nor is a personal automobile insurance policy required to first deny a claim.

The bill provides 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 is 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 is 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 is 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 to the digital network or on a prearranged ride at the time of the accident.

### ***TNC Required Disclosure to Driver***

The following information is required to be disclosed in writing by the TNC to the driver before the driver is 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 are 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 provides a list of the coverage included in the automobile insurance policy an insurer is allowed to exclude. The exclusions apply regardless of any requirement under the Kansas Automobile Injury Reparations Act.

The bill clarifies 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 is allowed to provide coverage for the TNC driver's vehicle, if the provider chooses to do so by contract or endorsement.

Automobile insurers excluding coverage as permitted under the bill have no duty to defend or indemnify any claim expressly excluded. The Act is not 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, has 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 at the time of loss.

In a claims coverage investigation, the bill requires 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 is 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 is 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 is required to immediately suspend the driver's access to the digital network and to conduct an investigation. The suspension lasts the duration of the investigation. The TNC is 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 is 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 is 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 is 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 disqualifies 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 covers 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 provides for conditions under which a TNC is not allowed to permit an individual to act as a driver on its digital network. One such condition is the driver is not at least 19 years of age.

#### *Other Driver Requirements*

The bill requires 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 is allowed to provide only prearranged rides and is not allowed to solicit or accept street hails.

#### ***TNC Policy Prohibiting Solicitation or Acceptance of Cash Payments***

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

#### ***TNC Policy of Non-Discrimination***

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

The TNC is 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 is required to direct the rider to an alternate provider of such service, if available.

#### ***TNC Records Maintenance***

The TNC is required to maintain individual trip records for at least one year from the date the trip is provided. In addition, the TNC is 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 ends.

#### ***Confidentiality of Rider Information***

The TNC is 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 is 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 are allowed to accept requests for TNC services on the TNC's digital network or software application, a TNC is 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 is 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 is not allowed to assess any fines as a result of a violation of this requirement.

The bill took effect upon publication in the *Kansas Register*.