

ENGROSSED
COMMITTEE SUBSTITUTE
FOR
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FOR

Senate Bill No. 385

(By Senators D. Hall, Beach,
Blair, Ferns, Karnes, Kessler,
Kirkendoll, Mullins, Nohe, Sypolt,
Trump, Walters, Williams and Stollings)

[Originating in the Committee on
the Judiciary;
reported March 1, 2015.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17 and §17-29-18, all relating to regulation of transportation network companies; defining terms; establishing a permit and permit fee; establishing requirements relating to insurance, disclosures, transportation network companies and its drivers, safety and records; limiting controlling authority; and permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

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chapter, designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, §17H-1-15, §17H-1-16, §17H-1-17 and §17H-1-18, all to read as follows:

**CHAPTER 17H. TRANSPORTATION NETWORK
AND TAXICAB COMPANIES.**

ARTICLE 1. REGULATION OF TRANSPORTATION NETWORK COMPANIES.

§17H-1-1. Definitions.

1 As used in this article:

2 (a) “Transportation network company” or “TNC” means an entity licensed pursuant to this
3 article and operating in West Virginia that uses a digital network or software application service to
4 connect passengers to transportation network company services provided by transportation network
5 company drivers. A TNC is not deemed to own, control, operate or manage the vehicles used by
6 TNC drivers and is not a taxicab association or a for-hire vehicle owner.

7 (b) “Transportation network company (TNC) driver” means an individual who operates a
8 motor vehicle that is:

9 (1) Owned, leased or otherwise authorized for use by the individual;

10 (2) Not a taxicab; and

11 (3) Used to provide transportation network company services.

12 (c) “Transportation network company (TNC) service” means transportation of a passenger
13 between points chosen by the passenger and prearranged with a TNC driver through the use of a
14 TNC digital network or software application. TNC services begin when a TNC driver accepts a
15 request for transportation received through the TNC’s digital network or software application

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1 service, continue while the TNC driver transports the passenger in the TNC driver's vehicle and end
2 when the passenger exits the TNC driver's vehicle. TNC service is not a taxicab or street hail
3 service.

4 **§17H-1-2. Exemption from Public Service Commission regulation.**

5 TNCs or TNC drivers are not common carriers by motor vehicle or contract carriers by motor
6 vehicle, or motor carriers, as defined in section two, article one, chapter twenty-four-a of this code,
7 nor do they provide taxicab service. It is the express intent of this Legislature to exclude and exempt
8 TNCs and TNC drivers from regulation of the Public Service Commission.

9 **§17H-1-3. TNC permit required; permit fee; and use of fees.**

10 (a) A person may not operate a TNC in West Virginia without first having obtained a permit
11 from the Division of Motor Vehicles pursuant to this article.

12 (b) The Division of Motor Vehicles shall issue a permit to each applicant that meets the
13 requirements for a TNC set forth in this article and has paid an annual permit fee of \$5,000 to the
14 Division of Motor Vehicles. Any fees collected under the provisions of this article shall be deposited
15 into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two,
16 chapter seventeen-a of this code. The Division of Motor Vehicles shall use the fees collected for the
17 payment of the costs and expenses necessary for the administration of this article.

18 **§17H-1-4. Agent.**

19 A TNC shall maintain an agent for service of process in the state of West Virginia.

20 **§17H-1-5. Fare charged for services.**

21 A TNC may charge a fare for the TNC services provided to passengers: *Provided*, That if
22 a fare is charged, the TNC shall disclose to passengers the fare calculation method on its website or

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1 within the software application service. The TNC shall also provide passengers with the applicable
2 rates being charged and the option to receive an estimated fare before the passenger enters the TNC
3 driver's vehicle.

4 **§17H-1-6. Identification of TNC vehicles and drivers.**

5 The TNC's software application or website shall display a picture of the TNC driver and the
6 license plate number of the motor vehicle to be used for providing the TNC service before the
7 passenger enters the TNC driver's vehicle.

8 **§17H-1-7. Electronic receipt.**

9 Within a reasonable period of time following the completion of a trip, a TNC shall transmit
10 an electronic receipt to the passenger that lists:

- 11 (a) The origin and destination of the trip;
- 12 (b) The total time and distance of the trip; and
- 13 (c) An itemization of the total fare paid, if any.

14 **§17H-1-8. TNC and TNC driver insurance requirements.**

15 (a) TNCs and TNC drivers shall comply with the automobile liability insurance requirements
16 of this section.

17 (b) The following automobile liability insurance requirements apply during the time that a
18 TNC driver is logged into the TNC's digital network and available to receive requests for
19 transportation, but is not providing TNC services:

- 20 (1) Primary automobile insurance that covers the driver and recognizes that such driver is
21 a transportation network company driver or otherwise uses the covered vehicle to transport
22 passengers for compensation.

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1 (2) The primary automobile liability insurance required in subdivision (1) of this subsection
2 shall meet at least the minimum coverage requirements of section two, article four, chapter
3 seventeen-d of this code and subsection (b), section thirty-one, article six, chapter thirty-three of this
4 code: *Provided*, That the minimum coverage shall not be less than the amount of \$50,000 because
5 of bodily injury to or death of one person in any one accident and, subject to said limit for one
6 person, in the amount of \$100,000 because of bodily injury to or death of two or more persons in any
7 one accident, and in the amount of \$25,000 because of injury to or destruction of property of others
8 in any one accident.

9 (3) The automobile liability insurance required in this subsection may be satisfied by any of
10 the following:

11 (A) Automobile liability insurance maintained by the TNC driver; or

12 (B) Automobile liability insurance maintained by the TNC; or

13 (C) Any combination of paragraphs (A) and (B) of this subdivision.

14 (c) While a TNC driver is providing TNC services, the TNC shall:

15 (1) Provide primary automobile liability insurance that recognizes the TNC driver's provision
16 of TNC services;

17 (2) Provide automobile liability insurance of at least \$1 million for death, personal injury and
18 property damage;

19 (3) Provide uninsured motorist coverage as required by subsection (b), section thirty-one,
20 article six, chapter thirty-three of this code;

21 (4) The coverage requirements of this subsection may be satisfied by any of the following:

22 (A) Automobile liability insurance maintained by the TNC driver; or

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1 (B) Automobile liability insurance maintained by the TNC; or

2 (C) Any combination of paragraphs (A) and (B) of this subdivision.

3 (d) In every instance where insurance maintained by a TNC driver to fulfill the insurance
4 requirements of this section has lapsed, failed to provide the required coverage, denied a claim for
5 the required coverage or otherwise ceased to exist, insurance maintained by a TNC shall provide the
6 coverage required by this section beginning with the first dollar of a claim.

7 (e) Insurance required by this section may be placed with an insurer authorized to do business
8 in this state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-
9 three of this code.

10 (f) Insurance required by this section satisfies the financial responsibility requirement for a
11 motor vehicle under article four, chapter seventeen-d of this code.

12 **§17H-1-9. TNC and insurer disclosure requirements.**

13 (a) The TNC shall disclose in writing to TNC drivers the following before they are allowed
14 to accept a request for TNC services on the TNC's digital network:

15 (1) The insurance coverage and limits of liability that the TNC provides while the TNC driver
16 uses a personal vehicle in connection with a TNC's digital network;

17 (2) That the TNC driver's own insurance policy, depending on its terms, may not provide
18 coverage while the TNC driver uses a vehicle in connection with a TNC's digital network; and

19 (3) That the TNC driver should identify each vehicle used to provide TNC services to his or
20 her insurer.

21 (b) In a claims coverage investigation, the TNC's insurer and any insurer providing coverage
22 under this section shall cooperate to facilitate the exchange of information, including the precise

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1 times that a TNC driver logged on and off of the TNC’s digital network in the 24-hour period
2 immediately preceding the accident and disclose to one another a clear description of the coverage,
3 exclusions and limits provided under any insurance policy each party issued or maintained.

4 **§17H-1-10. Zero tolerance for drug or alcohol use.**

5 (a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a
6 TNC driver is providing TNC services or is logged into the TNC’s digital network but is not
7 providing TNC services, and shall provide notice of this policy on its website. The website shall set
8 forth procedures to report a complaint about a driver with whom a passenger was matched and whom
9 the passenger reasonably suspects was under the influence of drugs or alcohol during the course of
10 the trip.

11 (b) Upon receipt of a passenger complaint alleging a violation of the zero tolerance policy,
12 the TNC shall immediately suspend the TNC driver’s access to the TNC’s digital platform and shall
13 conduct an investigation into the reported incident. The suspension shall last the duration of the
14 investigation.

15 (c) The TNC shall maintain records relevant to the enforcement of this requirement for a
16 period of at least two years from the date that a passenger complaint is received by the TNC.

17 **§17H-1-11. TNC driver requirements.**

18 (a) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC
19 shall:

20 (1) Require the individual to submit an application to the TNC, which includes information
21 regarding his or her address, age, driver’s license, driving history, motor vehicle registration,
22 automobile liability insurance and other information required by the TNC;

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1 (2) Conduct, or have a third party conduct, a local and national criminal background check
2 for each applicant that shall include review of a:

3 (A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial
4 nationwide database with validation (primary source search); and

5 (B) National Sex Offender Registry database;

6 (3) Obtain and review a driving history research report for the applicant.

7 (b) The TNC shall deny the application an individual to act as a TNC driver on its digital
8 platform who:

9 (1) Has had more than three moving violations in the prior three-year period or one major
10 violation in the prior three-year period, including, but not limited to, attempting to evade the police,
11 reckless driving or driving on a suspended or revoked license;

12 (2) Has been convicted, within the past seven years, of driving under the influence of drugs
13 or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving
14 property damage, or theft, acts of violence or acts of terror;

15 (3) Is a match in the National Sex Offender Registry database;

16 (4) Does not possess a valid driver's license;

17 (5) Does not possess proof of registration for the motor vehicles used to provide TNC
18 services;

19 (6) Does not possess proof of automobile liability insurance for the motor vehicles used to
20 provide TNC services; or

21 (7) Is not at least nineteen years of age.

22 **§17H-1-12. Vehicle safety.**

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1 The TNC shall require that any motor vehicle that a TNC driver will use to provide TNC
2 services meets the inspection requirements of section four, article sixteen, chapter seventeen-c of this
3 code or the inspection requirements of the state in which the motor vehicle is registered.

4 **§17H-1-13. Street hails prohibited.**

5 A TNC driver shall exclusively accept rides booked through a TNC’s digital network or
6 software application service and may not solicit or accept street hails.

7 **§17H-1-14. No cash trips.**

8 The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from
9 passengers and notify TNC drivers of the policy. TNC drivers may not solicit or accept cash
10 payments from passengers. A passenger may only pay for TNC services shall be made only
11 electronically using the TNC’s digital network or software application.

12 **§17H-1-15. No discrimination; accessibility.**

13 (a) The TNC shall adopt a policy of nondiscrimination on the basis of destination, race, color,
14 national origin, religious belief or affiliation, sex, disability, age or sexual orientation/identity with
15 respect to passengers and potential passengers and notify TNC drivers of the policy.

16 (b) TNC drivers shall comply with all applicable laws regarding nondiscrimination against
17 passengers or potential passengers on the basis of destination, race, color, national origin, religious
18 belief or affiliation, sex, disability, age, sexual orientation or gender identity.

19 (c) TNC drivers shall comply with all applicable laws relating to accommodation of service
20 animals.

21 (d) A TNC shall not impose additional charges for providing TNC services to persons with
22 physical disabilities because of those disabilities.

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1 (e) A TNC shall provide passengers an opportunity to indicate that they require a wheelchair-
2 accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC service in any instance, it
3 shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

4 **§17H-1-16. Records.**

5 A TNC shall maintain:

6 (a) Individual trip records for at least one year from the date each trip was provided; and

7 (b) TNC driver records at least until the one year anniversary of the date on which a TNC
8 driver's activation on the TNC digital network has ended.

9 **§17H-1-17. Personally identifiable information.**

10 A TNC may not disclose a passenger's personally identifiable information to a third party
11 unless: The passenger consents, disclosure is required by a legal obligation, disclosure is required
12 to protect or defend the terms of use of the TNC service or to investigate violations of those terms.

13 A TNC may also share a passenger's name and telephone number with the TNC driver providing
14 TNC services to the passenger in order to facilitate correct identification of the passenger by the
15 TNC driver, or to facilitate communication between the passenger and the TNC driver.

16 **§17H-1-18. Rules; controlling authority.**

17 The Commissioner of the Division of Motor Vehicles may propose rules for legislative
18 approval in accordance with the provisions of article three, chapter twenty-nine-a of this code
19 relating to the implementation and exercise of the authority granted by this article and the oversight
20 of TNCs and TNC drivers. Notwithstanding any other provision of law, TNC's and TNC drivers
21 are governed exclusively by this article and any rules promulgated by the Division of Motor Vehicles
22 consistent with this article. A municipality or other local entity may not impose a tax on, or require

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- 1 a license for, a TNC or TNC driver or subject a TNC to the municipality or other local entity's rate,
- 2 entry, operational or other requirements.