

Senate Bill No. 419

(By Senators Nohe and Gaunch)

[Introduced February 5, 2015; referred to the Committee on Banking and Insurance; and then to the Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §24A-9-1, §24A-9-2, §24A-9-3, §24A-9-4, §24A-9-5, §24A-9-6 and §24A-9-7, all relating to insurance requirements for transportation network companies and drivers operating in West Virginia.

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 article, designated §24A-9-1, §24A-9-2, §24A-9-3, §24A-9-4, §24A-9-5, §24A-9-6 and §24A-9-7, all to read as follows:

ARTICLE 9. TRANSPORTATION NETWORK COMPANIES.

§24A-9-1. Purpose.

It is the purpose of the Legislature in enacting this article to ensure that the rapidly evolving

1 transportation network industry is properly developed in a responsible manner with adequate
2 insurance regulations for transportation network companies, drivers, and passengers.

3 **§24A-9-2. Definitions.**

4 (a) "Transportation network company" means an organization, including, but not limited to,
5 a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating
6 in West Virginia that provides prearranged transportation services for compensation using an online-
7 enabled application or platform to connect passengers with drivers using a personal vehicle.

8 (b) "Participating driver" or "driver" means any person who uses a vehicle in connection with
9 a transportation network company's online-enabled application or platform to connect with
10 passengers.

11 (c) "Transportation network company insurance" means a liability insurance policy that
12 specifically covers liabilities arising from a driver's use of a vehicle in connection with a
13 transportation network company's online-enabled application or platform.

14 **§24A-9-3. Required disclosures by transportation network company.**

15 (a) A transportation network company shall disclose in writing to participating drivers, as part
16 of its agreement with those drivers, the insurance coverage and limits of liability that the
17 transportation network company provides while the driver uses a vehicle in connection with a
18 transportation network company's online-enabled application or platform, and shall advise a
19 participating driver in writing that the driver's personal automobile insurance policy may not provide
20 coverage when the driver uses a vehicle in connection with a transportation network company's
21 online-enabled application or platform.

1 (b) A transportation network company shall also disclose in writing to participating drivers,
2 as part of its agreement with those drivers, that the driver's personal automobile insurance policy may
3 not provide collision or comprehensive coverage for damage to the vehicle used by the driver from
4 the moment the driver logs on to the transportation network company's online-enabled application
5 or platform to the moment the driver logs off the transportation network company's online-enabled
6 application or platform.

7 (c) A transportation network company shall provide direct notice of participation in the
8 transportation network to the driver's personal auto insurer unless that insurer is providing
9 transportation network company insurance to the driver.

10 **§24A-9-4. Required insurance coverages for transportation network companies and drivers.**

11 (a) A transportation network company and any participating driver shall maintain
12 transportation network company insurance as provided in this section.

13 (b) The following requirements apply to transportation network company insurance from the
14 moment a participating driver accepts a ride request on the transportation network company's online-
15 enabled application or platform until the driver completes the transaction on the online-enabled
16 application or platform or until the ride is complete, whichever is later:

17 (1) Transportation network company insurance shall be primary and in the amount of \$1
18 million for death, bodily injury, and property damage. The requirements for the coverage required
19 by this subsection may be satisfied by any of the following:

20 (A) Transportation network company insurance maintained by a participating driver;

21 (B) Transportation network company insurance maintained by a transportation network

1 company;

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

3 (2) A transportation network company may meet its obligations under this subsection through
4 a policy obtained by a participating driver pursuant to paragraph (A) or (C) of subdivision (1) of this
5 subsection only if the transportation network company verifies that the policy is maintained by the
6 driver and is specifically written to cover the driver's use of a vehicle in connection with a
7 transportation network company's online-enabled application or platform.

8 (3) Transportation network company insurance coverage provided under this subsection shall
9 also provide for uninsured motorist coverage and underinsured motorist coverage in the amount of
10 \$1 million from the moment a passenger enters the vehicle of a participating driver until the
11 passenger exits the vehicle. The policy may also provide this coverage during any other time period,
12 if requested by a participating driver relative to insurance maintained by the driver.

13 (4) Transportation network company insurance coverage for bodily injury pursuant to section
14 two, article four, chapter seventeen-d of this code;

15 (5) The insurer, in the case of insurance coverage provided under this article, shall have the
16 duty to defend and indemnify the insured.

17 (c) The following requirements apply to transportation network company insurance from the
18 moment a participating driver logs on to the transportation network company's online-enabled
19 application or platform until the driver accepts a request to transport a passenger, and from the
20 moment the driver completes the transaction on the online-enabled application or platform or the ride
21 is complete, whichever is later, until the driver either accepts another ride request on the online-

1 enabled application or platform or logs off the online-enabled application or platform:

2 (1) Transportation network company insurance shall be primary and in amounts not less than
3 the requirements of section two, article four, chapter seventeen-d of this code.

4 (2) Transportation network company insurance coverage shall also provide:

5 (A) Uninsured motorist coverage under section thirty-one, article six, chapter thirty-three of
6 this code unless affirmatively waived under subsection (d), section thirty-one-d, article 6, chapter
7 thirty-three of this code;

8 (B) Underinsured motorist coverage under section thirty-one, article six, chapter thirty-three,
9 unless affirmatively waived under subsection (d), section thirty-one-d, article six, chapter thirty-three
10 of this code; and

11 (C) Coverage for bodily injury under section two, article four, chapter seventeen-d of this
12 code;

13 (3) Transportation network company insurance shall provide collision physical damage
14 coverage and comprehensive physical damage coverage from the moment a participating driver logs
15 on to the transportation network company's online-enabled application or platform until the driver
16 logs off the online-enabled application or platform if the participating driver carries those coverages
17 on their personal auto policy unless that insurer is providing transportation network company
18 insurance to the driver.

19 (A) The requirements for the coverage required by this paragraph may be satisfied by any of
20 the following:

21 (I) Transportation network company insurance maintained by a participating driver.

1 (ii) Transportation network company insurance maintained by a transportation network
2 company that provides coverage in the event a participating driver's insurance policy under
3 subparagraph (I) has ceased to exist or has been canceled, or the participating driver does not
4 otherwise maintain transportation network company insurance pursuant to this subsection.

5 (iii) Any combination of subparagraphs (I) and (ii).

6 (B) A transportation network company shall also maintain insurance coverage that provides
7 excess coverage insuring the transportation network company and the driver in the amount of at least
8 \$200,000 per occurrence to cover any liability arising from a participating driver using a vehicle in
9 connection with a transportation network company's online-enabled application or platform within
10 the time periods specified in this subsection, which liability exceeds the required coverage limits in
11 paragraph (1) of this subsection.

12 (I) The insurer providing insurance coverage under this subsection shall be the only insurer
13 having the duty to defend any liability claim arising from an accident occurring within the time
14 periods specified in this subsection.

15 (ii) A transportation network company may meet its obligations under this subsection through
16 a policy obtained by a participating driver pursuant to paragraph (A) or (C) of subdivision (1) only
17 if the transportation network company verifies that the policy is maintained by the driver and is
18 specifically written to cover the driver's use of a vehicle in connection with a transportation network
19 company's online-enabled application or platform.

20 (d) Coverage under a transportation network company insurance policy is not dependent on
21 a personal automobile insurance policy first denying a claim nor is a personal automobile insurance

1 policy required to first deny a claim.

2 (e) In every instance where transportation network company insurance maintained by a
3 participating driver to fulfill the insurance obligations of this section has lapsed or ceased to exist,
4 the transportation network company shall provide the coverage required by this section beginning
5 with the first dollar of a claim.

6 (f) This article shall not limit the liability of a transportation network company arising out
7 of an automobile accident involving a participating driver in any action for damages against a
8 transportation network company for an amount above the required insurance coverage.

9 **§24A-9-5. Time in effect; optional endorsements; personal insurance.**

10 (a) Nothing in this section requires a private passenger automobile insurance policy to
11 provide primary or excess coverage during the period of time from the moment a participating driver
12 in a transportation network company logs on to the transportation network company's online-enabled
13 application or platform until the driver logs off the online-enabled application or platform or the
14 passenger exits the vehicle, whichever is later.

15 (b) During the period of time from the moment a participating driver in a transportation
16 network company logs on to the transportation network company's online-enabled application or
17 platform until the driver logs off the online-enabled application or platform or the passenger exits
18 the vehicle, whichever is later, all of the following apply:

19 (1) The participating driver's or the vehicle owner's personal automobile insurance policy
20 does not provide any coverage to the participating driver, vehicle owner, or any third party, unless
21 the policy expressly provides for that coverage during the period of time to which this subsection is

1 applicable, with or without a separate charge, or the policy contains an amendment or endorsement
2 to provide that coverage, for which a separately stated premium is charged.

3 (2) The participating driver's or the vehicle owner's personal automobile insurance policy
4 does not have the duty to defend or indemnify for the driver's activities in connection with the
5 transportation network company, unless the policy expressly provides otherwise for the period of
6 time to which this subsection is applicable, with or without a separate charge, or the policy contains
7 an amendment or endorsement to provide that coverage, for which a separately stated premium is
8 charged.

9 (c) Notwithstanding any other law, a personal automobile insurer may, at its discretion, offer
10 an automobile liability insurance policy, or an amendment or endorsement to an existing policy that
11 covers a private passenger vehicle, station wagon type vehicle, sport utility vehicle, or similar type
12 of vehicle with a passenger capacity of eight persons or less, including the driver, while used in
13 connection with a transportation network company's online-enabled application or platform only if
14 the policy expressly provides for the coverage during the time period specified in subsection (b),
15 with or without a separate charge, or the policy contains an amendment or an endorsement to provide
16 that coverage, for which a separately stated premium may be charged.

17 **§24A-9-6. Required proof for drivers; claims investigation by insurer; study of sufficiency.**

18 (a) A participating driver of a transportation network company shall carry proof of
19 transportation network company insurance coverage with him or her at all times during his or her
20 use of a vehicle in connection with a transportation network company's online-enabled application
21 or platform. In the event of an accident, a participating driver shall provide this insurance coverage

1 information to any other party involved in the accident, and to a police officer, upon request.

2 (b) In a claims coverage investigation, a transportation network company or its insurer shall
3 cooperate with insurers that are involved in the claims coverage investigation to facilitate the
4 exchange of information, including the provision of dates and times at which an accident occurred
5 that involved a participating driver and the precise times that the participating driver logged on and
6 off the transportation network company's online-enabled application or platform.

7 (c) The Insurance Commissioner shall develop a study of transportation network company
8 insurance to assess whether coverage requirements are appropriate to the risk of transportation
9 network company services in order to promote data-driven decisions on insurance requirements, and
10 shall report the findings of this study to the Legislature no later than December 31, 2015.

11 **§24A-9-7. Privacy.**

12 A transportation network company may not disclose to a third party any personally
13 identifiable information of a transportation network company passenger unless one of the following
14 applies:

15 (1) The customer knowingly consents.

16 (2) Pursuant to a legal obligation.

17 (3) The disclosure is to the Insurance Commissioner in order to investigate a complaint filed
18 with the Insurance Commissioner against a transportation network company or a participating driver
19 and the Insurance Commissioner treats the information under confidentiality protections.

NOTE: The purpose of this bill is to provide insurance requirements for transportation network companies and their drivers.

This article is completely new; therefore, strike-throughs or underscoring have been omitted.