

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4305

BY MR. SPEAKER, (DELEGATE ARMSTEAD) AND DELEGATE

MILEY

BY REQUEST OF THE EXECUTIVE

[Introduced January 27, 2016; Referred
to the Committee on Roads and Transportation then
Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-
3 29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-
4 29-16, §17-29-17, §17-29-18 and §17-29-19, all relating to authorizing transportation
5 network companies to operate in the state; providing that transportation network
6 companies and transportation network company drivers are not common carriers or motor
7 carriers; requiring a permit from the Division of Motor Vehicles to operate a transportation
8 network company; setting forth requirements for obtaining a permit; requiring an agent for
9 service of process; authorizing transportation network companies to charge a fare for
10 services; setting forth requirements for fare collection; requiring identification of
11 transportation network company vehicles and drivers; requiring an electronic receipt;
12 requiring automobile insurance; requiring disclosures from the transportation network
13 company to transportation network company drivers; providing terms, conditions, and
14 allowable exclusions from insurance coverage; setting limitations on transportation
15 network companies; providing a zero tolerance policy for drug and alcohol use while
16 working as a transportation network company driver; setting minimum requirements to
17 become a transportation network company driver; requiring transportation network
18 company vehicles to pass state inspection; prohibiting solicitation and street hails;
19 prohibiting cash payments; requiring a no cash payment policy; requiring a policy of
20 nondiscrimination; requiring record keeping; providing for controlling authority to regulate
21 transportation network companies; providing exemption from certain taxes, fees and
22 licensing requirements; providing for limitations and restrictions; and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-

3 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,
4 §17-29-17, §17-29-18 and §17-29-19, all to read as follows:

ARTICLE 29. TRANSPORTATION NETWORK COMPANIES.

§17-29-1. Definitions.

1 As used in this article:

2 (1) "Personal vehicle" means a vehicle that is used by a TNC driver and is:

3 (A) Owned, leased or otherwise authorized for use by the TNC driver; and

4 (B) Not a taxicab or for-hire vehicle.

5 (2) "Digital network" means any online-enabled application, software, website or system
6 offered or utilized by a TNC that enables the prearrangement of rides with TNC drivers.

7 (3) "Transportation network company" or "TNC" means a corporation, partnership, sole
8 proprietorship, or other entity that is licensed pursuant to this article and operating in West Virginia
9 that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides.
10 A TNC shall not be deemed to control, direct or manage the personal vehicles or TNC drivers that
11 connect to its digital network, except where agreed to by written contract.

12 (4) "Transportation network company driver" or "TNC driver" means an individual who:

13 (A) Receives connections to potential riders and related services from a TNC in exchange
14 for payment of a fee to the TNC; and

15 (B) Uses a personal vehicle to offer or provide a prearranged ride to riders upon
16 connection through a digital network controlled by a TNC in return for compensation or payment
17 of a fee.

18 (5) "Transportation network company rider" or "rider" means a person or persons who use
19 a TNC's digital network to connect with a TNC driver who provides prearranged rides to the rider
20 in the TNC driver's personal vehicle between points chosen by the rider.

21 (6) "Prearranged ride" means the provision of transportation by a TNC driver to a rider,
22 beginning when a TNC driver accepts a ride requested by a rider through a digital network

23 controlled by a TNC, continuing while the TNC driver transports a requesting rider, and ending
24 when the last requesting rider departs from the personal vehicle. A prearranged ride does not
25 include:

26 (A) Transportation provided using a taxicab or other for-hire vehicle; or

27 (B) A ridesharing agreement, as that term is defined in section one, article twenty-two,
28 chapter seventeen-c of this code or any other type of arrangement or service in which the driver
29 receives a fee that does not exceed the individual's costs associated with providing the ride.

§17-29-2. Not other carriers.

1 TNCs and TNC drivers are not common carriers by motor vehicle, contract carriers by
2 motor vehicle, or motor carriers, as defined in section two, article one, chapter twenty-four-a of
3 this code, nor do they provide taxicab or for-hire vehicle service.

§17-29-3. Transportation network company permit required.

1 (a) A person may not operate a TNC in West Virginia without first having obtained a permit
2 from the Division of Motor Vehicles.

3 (b) The Division of Motor Vehicles shall issue a permit to each applicant that:

4 (1) Provides proof of an agent for service of process in the State of West Virginia to the
5 Division of Motor Vehicles in accordance with section four of this article;

6 (2) Provides a copy of a certificate of insurance maintained by the TNC in accordance with
7 section eight of this article;

8 (3) Provides a copy of TNC's zero tolerance for drug or alcohol use policy to the Division
9 of Motor Vehicles in accordance with section twelve of this article;

10 (4) Provides a copy of TNC's policy prohibiting solicitation or acceptance of street hails to
11 the Division of Motor Vehicles in accordance with section fifteen of this article;

12 (5) Provides a copy of TNC's policy prohibiting solicitation or acceptance of cash payments
13 from riders to the Division of Motor Vehicles in accordance with section sixteen of this article;

14 (6) Provides a copy of the TNC's policy of nondiscrimination with respect to riders and

15 potential riders to the Division of Motor Vehicles in accordance with section seventeen of this
16 article; and

17 (7) Has paid an annual permit fee of \$1,000 to the Division of Motor Vehicles.

18 (c) Any fees collected under the provisions of this article shall be deposited into the Motor
19 Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter
20 seventeen-a of this code. The Division of Motor Vehicles shall use the fees collected for the
21 payment of the costs and expenses necessary for the administration of this article.

§17-29-4. Agent.

1 A TNC shall maintain an agent for service of process in the State of West Virginia.

§17-29-5. Fare collected for services.

1 On behalf of a TNC driver, a TNC may charge a fare for the services provided to riders:
2 Provided, That if a fare is collected from a rider, the TNC shall disclose to the rider the fare
3 calculation method on its digital network. The TNC shall also provide riders with the applicable
4 rates being charged and the option to receive an estimated fare before the rider enters the TNC
5 driver's personal vehicle.

§17-29-6. Identification of transportation network company vehicles and drivers.

1 The TNC's digital network shall display a picture of the TNC driver and the license plate
2 number of the personal vehicle utilized for providing the prearranged ride before the rider enters
3 the TNC driver's personal vehicle.

§17-29-7. Electronic receipt.

1 Within a reasonable period of time following the completion of a prearranged ride, a TNC
2 shall transmit an electronic receipt to the rider on behalf of the TNC driver that lists:

3 (1) The origin and destination of the prearranged ride;

4 (2) The total time and distance of the prearranged ride; and

5 (3) An itemization of the total fare paid, if any.

§17-29-8. Financial responsibility of transportation network companies.

1 (a) On or before July 1, 2016, and thereafter, a TNC driver or TNC on the TNC driver's
2 behalf shall maintain primary automobile insurance that recognizes that the individual is a TNC
3 driver or otherwise uses a personal vehicle to transport riders for compensation and covers the
4 TNC driver:

5 (1) While the TNC driver is logged on to the TNC's digital network; or

6 (2) While the TNC driver is engaged in a prearranged ride.

7 (b) The following automobile insurance requirements shall apply while a participating TNC
8 driver is logged on to the TNC's digital network and is available to receive transportation requests
9 but is not engaged in a prearranged ride:

10 (1) Primary automobile liability insurance in the amount of at least \$50,000 for death and
11 bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for
12 property damage; and

13 (2) Uninsured and underinsured motorists' coverage as required in section thirty-one,
14 article six, chapter thirty-three of this code.

15 (c) The coverage requirements of subsection (b) of this section may be satisfied by any of
16 the following:

17 (1) Automobile insurance maintained by the TNC driver;

18 (2) Automobile insurance maintained by the TNC; or

19 (3) Any combination of subdivisions (1) and (2) of this subsection.

20 (d) The following automobile insurance requirements shall apply while a TNC driver is
21 engaged in a prearranged ride:

22 (1) Primary automobile liability insurance that provides at least \$1 million for death, bodily
23 injury and property damage; and

24 (2) Uninsured and underinsured motorists' coverage as required in section thirty-one,
25 article six, chapter thirty-three of this code.

26 (e) The coverage requirements of subsection (d) of this section may be satisfied by any of

27 the following:

28 (1) Automobile insurance maintained by the TNC driver;

29 (2) Automobile insurance maintained by the TNC; or

30 (3) Any combination of subdivisions (1) and (2) of this subsection.

31 (f) If insurance maintained by a TNC driver in subsections (b) or (d) of this section has
32 lapsed or does not provide the required coverage, insurance maintained by a TNC shall provide
33 the coverage required under this section beginning with the first dollar of a claim and have the
34 duty to defend such claim.

35 (g) Coverage under an automobile insurance policy maintained by the TNC shall not be
36 dependent on a personal automobile insurer first denying a claim nor shall a personal automobile
37 insurance policy be required to first deny a claim.

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

41 (i) Insurance satisfying the requirements of this section shall be deemed to satisfy the
42 financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of
43 this code.

44 (j) A TNC driver shall carry proof of coverage satisfying subsections (b) and (d) of this
45 section with him or her at all times during his or her use of a personal vehicle in connection with
46 a TNC's digital network. In the event of an accident, a TNC driver shall provide this insurance
47 coverage information to the directly interested parties, automobile insurers, and investigating
48 police officers upon request pursuant to section four, article two-a, chapter seventeen-d of this
49 code. Upon such request, a TNC driver shall also disclose to directly interested parties,
50 automobile insurers, and investigating police officers, whether he or she was logged on to the
51 TNC's digital network or on a prearranged ride at the time of an accident.

§17-29-9. Disclosures.

1 The TNC shall disclose in writing to TNC drivers the following before they are allowed to
2 accept a request for a prearranged ride on the TNC's digital network:

3 (1) The insurance coverage, including the types of coverage and the limits for each
4 coverage, that the TNC provides while the TNC driver uses a personal vehicle in connection with
5 a TNC's digital network; and

6 (2) Disclosure that the TNC driver's own automobile insurance policy might not provide
7 any coverage while the TNC driver is logged on to the TNC's digital network and is available to
8 receive transportation requests or is engaged in a prearranged ride, depending on its terms.

§17-29-10. Automobile insurance provisions.

1 (a) Insurers that write automobile insurance in this state may exclude any and all coverage
2 afforded under the policy issued to an owner or operator of a personal vehicle for any loss or
3 injury that occurs while a TNC driver is logged on to a TNC's digital network or while a TNC driver
4 provides a prearranged ride. This right to exclude all coverage may apply to any coverage
5 included in an automobile insurance policy including, but not limited to:

6 (1) Liability coverage for bodily injury and property damage;

7 (2) Uninsured and underinsured motorist coverage;

8 (3) Medical payments coverage;

9 (4) Comprehensive physical damage coverage; and

10 (5) Collision physical damage coverage.

11 Such exclusions shall apply notwithstanding any requirement under article four, chapter
12 seventeen-d of this code. Nothing in this section implies or requires that a personal automobile
13 insurance policy provide coverage while the TNC driver is logged on to the TNC's digital network,
14 while the TNC driver is engaged in a prearranged ride or while the TNC driver otherwise uses a
15 personal vehicle to transport riders for compensation. Nothing shall be deemed to preclude an
16 insurer from providing coverage for the TNC driver's personal vehicle, if it chooses to do so by
17 contract or endorsement.

18 (b) Automobile insurers that exclude the coverage described in section eight of this article
19 shall have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in
20 this article shall be deemed to invalidate or limit an exclusion contained in a policy, including any
21 policy in use or approved for use in this state prior to the enactment of this article that excludes
22 coverage for vehicles used to carry persons or property for a charge or available for hire by the
23 public. An automobile insurer that defends or indemnifies a claim against a TNC driver that is
24 excluded under the terms of its policy shall have a right of contribution against other insurers that
25 provide automobile insurance to the same TNC driver in satisfaction of the coverage requirements
26 of section eight of this article at the time of loss.

27 (c) In a claims coverage investigation, a TNC and any insurer potentially providing
28 coverage under section eight of this article shall cooperate to facilitate the exchange of relevant
29 information with directly involved parties and any insurer of the TNC driver, if applicable, including
30 the precise times that a TNC driver logged on and off of the TNC's digital network in the twelve
31 hour period immediately preceding and in the twelve hour period immediately following the
32 accident and disclose to one another a clear description of the coverage, exclusions and limits
33 provided under any automobile insurance maintained under section eight of this article.

§17-29-11. Limitation on transportation network companies.

1 (a) TNC drivers shall be independent contractors and not employees of the TNC if all of
2 the following conditions are met:

3 (1) The TNC does not prescribe specific hours during which a TNC driver must be logged
4 into the TNC's digital network;

5 (2) The TNC imposes no restrictions on the TNC driver's ability to utilize digital networks
6 from other TNCs;

7 (3) The TNC does not assign a TNC driver a particular territory in which to operate;

8 (4) The TNC does not restrict a TNC driver from engaging in any other occupation or
9 business; and

10 (5) The TNC and TNC driver agree in writing that the TNC driver is an independent
11 contractor of the TNC.

12 (b) A TNC operating under this article shall not be required to provide workers'
13 compensation coverage to a TNC driver that is classified as an independent contractor pursuant
14 to this section.

§17-29-12. Zero tolerance policy.

1 (a) The TNC shall implement a zero tolerance policy addressing the use of drugs or alcohol
2 while a TNC driver is providing prearranged rides or is logged into the TNC's digital network but
3 is not providing prearranged rides. The TNC shall provide notice of this policy on its digital
4 network, as well as procedures to report a complaint about a TNC driver with whom a rider was
5 matched and whom the rider reasonably suspects was under the influence of drugs or alcohol
6 during the course of the prearranged ride.

7 (b) Upon receipt of such rider complaint alleging a violation of the zero tolerance policy,
8 the TNC shall immediately suspend such TNC driver's access to the TNC's digital network, and
9 shall conduct an investigation into the reported incident. The suspension shall last the duration
10 of the investigation.

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

§17-29-13. Transportation network company driver requirements.

1 (a) Before allowing an individual to become a TNC driver and accept prearranged ride
2 requests through a TNC's digital network:

3 (1) The individual shall submit an application to the TNC, which includes information
4 regarding his or her address, age, driver's license, motor vehicle registration, automobile liability
5 insurance, and other information required by the TNC;

6 (2) The TNC shall conduct, or have a third party conduct, a local and national criminal
7 background check for each applicant that shall include:

8 (A) MultiState/MultiJurisdiction Criminal Records Locator or other similar commercial
9 nationwide database with validation (primary source search); and

10 (B) National Sex Offender Registry database; and

11 (3) The TNC shall review, or have a third party review, a driving history research report for
12 such applicant.

13 (b) The TNC shall not permit an individual to act as a TNC driver on its digital network
14 who:

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

18 (2) Has been convicted, within the past seven years, of any felony, or misdemeanor driving
19 under the influence, reckless driving, hit and run, or any other misdemeanor driving-related
20 offense or any misdemeanor violent offense or sexual offense, or more than three misdemeanors
21 of any kind;

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

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

24 (5) Does not possess proof of registration for the personal vehicle(s) used to provide
25 prearranged rides;

26 (6) Does not possess proof of automobile liability insurance for the personal vehicle(s)
27 used to provide prearranged rides; or

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

§17-29-14. Vehicle safety and emissions.

1 The TNC shall require any personal vehicle(s) that a TNC driver will use to provide TNC
2 prearranged rides to meet the inspection requirements of section four, article sixteen, chapter
3 seventeen-c of this code or the inspection requirements for a private motor vehicle of the state in
4 which the motor vehicle is registered.

§17-29-15. No street hails.

1 A TNC driver shall not solicit or accept street hails.

§17-29-16. No cash trips.

1 The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from
2 riders and notify TNC drivers of such policy. TNC drivers shall not solicit or accept cash payments
3 from riders. Any payment for prearranged rides shall be made only electronically using the TNC's
4 digital network.

§17-29-17. No discrimination; accessibility.

1 (a) The TNC shall adopt a policy of nondiscrimination with respect to riders and potential
2 riders and notify TNC drivers of such policy.

3 (b) TNC drivers shall comply with all applicable laws regarding nondiscrimination against
4 riders or potential riders.

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

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

§17-29-18. Records.

1 A TNC shall maintain the following records:

2 (a) Prearranged ride records of each rider for at least two years from the date each
3 prearranged ride was provided; and

4 (b) Individual records of TNC drivers, as described in section thirteen of this article, for at
5 least two years after the TNC driver's relationship with the TNC has ended.

§17-29-19. Controlling authority, tax, limitations.

1 (a) Notwithstanding any other provision of law, TNCs and TNC drivers are governed
2 exclusively by this article.

3 (b) Taxation. No municipality or other governmental entity or special district may impose

4 a special district excise tax, sales tax, use tax, business and occupation tax, or any other tax or
5 fee on, or require a license for, a TNC, a TNC driver, or a personal vehicle used by a TNC driver,
6 where such tax or license relates to, or is imposed upon, the service or privilege of providing
7 prearranged transportation of persons or property. No municipal consumers sales and service
8 tax and use tax or special district excise tax may be imposed on the customers of a TNC or a
9 TNC or a TNC driver for, or with relation to, purchases of TNC transportation services.

10 (c) *Licensure, registration and qualification.* No municipality, or other local governmental
11 entity or special district may require a TNC driver to obtain a business license or any other similar
12 authorization to operate within the jurisdiction, or subject a TNC or TNC driver to any licensure
13 requirement, fee, tax, entry requirement, registration requirement, operating or operational
14 requirement or other requirement.

15 (d) *Consumers sales and service tax and use tax exemptions.*

16 (1) The provision of prearranged transportation service by a TNC driver is exempt from
17 the consumers sales and service tax and use tax imposed under articles fifteen and fifteen-a,
18 chapter eleven of this code.

19 (2) TNCs and TNC drivers may assert a lawful and timely exemption from the consumers
20 sales and service tax and use tax, in accordance with section nine, article fifteen, chapter eleven
21 of this code, for purchases of tangible personal property and services directly used in
22 transportation.

23 (e) *Limitations and interpretation.*

24 (1) No provision of this section or this article shall be interpreted to void, abrogate, restrict
25 or affect imposition of the ad valorem property tax on tangible personal property of a TNC or of a
26 TNC driver by any levying body.

27 (2) No provision of this section or this article shall be interpreted to void, abrogate, restrict
28 or affect imposition of the state personal income tax or state corporation net income tax on a TNC
29 or a TNC driver.

30 (3) No provision of this section or this article shall be interpreted to void, abrogate, restrict
31 or affect imposition of the motor fuel excise tax on any taxable motor fuel or alternative fuel
32 purchased by any TNC or TNC driver.

33 (4) No provision of this section or this article shall be interpreted to void, abrogate, restrict
34 or affect the requirements of chapter eleven of this code for issuance of a business registration
35 certificate for TNCs and TNC drivers.

36 (5) No provision of this section or this article voids, abrogates, restricts or affects any
37 requirement of state law with relation to licensure of drivers or motor vehicles.

38 (6) TNC drivers may not assert the exemption from the consumers sales and service tax
39 and use tax, for purchases of tangible personal property and services directly used in
40 transportation under section nine, article fifteen, chapter eleven of this code.

NOTE: The purpose of this bill is to allow transportation network companies to operate in the state and to specify requirements and limitations with relation to such operations.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.