

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4228

(BY DELEGATES COWLES, B. WHITE, SHOTT, ESPINOSA,
E. NELSON, HOWELL, UPSON, TRECOST, REYNOLDS,
GEARHEART AND HAMRICK)

[Originating in the Committee on Finance, February 10, 2016.]

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 transportation network
5 companies generally; providing definitions; establishing that transportation network
6 companies and transportation network company drivers are not certain common carriers,
7 contract carriers or motor carriers and do not provide taxicab or for-hire vehicle service;
8 requirements to obtain permit from the Division of Motor Vehicles; requiring an agent for
9 service of process; collection and disbursement of fees for permit; providing for fare
10 collection, electronic receipts and identification of vehicles and drivers; requiring
11 automobile liability insurance; requiring disclosures relating to insurance; allowing
12 automobile insurers to exclude certain coverages; establishing status of drivers and
13 relationship between drivers and transportation network companies; requiring
14 transportation network companies to implement a policy of zero tolerance for the use of
15 alcohol or drugs by drivers; providing requirements and conditions for being a driver;
16 requiring vehicle inspections; prohibiting street hails; requiring transportation network
17 companies to adopt policy relating to the prohibition of cash payments; requiring
18 transportation network companies to adopt policy relating to nondiscrimination; requiring
19 compliance with law; prohibiting additional charges in certain circumstances; requiring
20 retention of customer records; providing exclusivity of provisions governing regulation of
21 business activities of companies and drivers; prohibiting local governmental entities or
22 special districts from imposing requirements of licensure, fee, tax, entry registration or
23 operation; prescribing certain tax limitations and exemptions; and specifying certain other
24 provisions of law that are not affected by provisions of article.

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 transportation network company
3 driver and is:

4 (A) Owned, leased or otherwise authorized for use by the transportation network company
5 driver; and

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

7 (2) "Digital Network" means any online-enabled application, software, website or system
8 offered or utilized by a transportation network company that enables the prearrangement of rides
9 with transportation network company drivers.

10 (3) "Transportation Network Company" means a corporation, partnership, sole
11 proprietorship, or other entity that is licensed pursuant to this article and operating in West Virginia
12 that uses a digital network to connect transportation network company riders to transportation
13 network company drivers who provide prearranged rides. A transportation network company does
14 not control, direct or manage the personal vehicles or transportation network company drivers
15 that connect to its digital network, except where agreed to by written contract.

16 (4) "Transportation Network Company Driver" or "driver" means an individual who:

17 (A) Receives connections to potential passengers and related services from a
18 transportation network company in exchange for payment of a fee to the transportation network
19 company; and

20 (B) Uses a personal vehicle to offer or provide a prearranged ride to riders upon
21 connection through a digital network controlled by a transportation network company in return for
22 compensation or payment of a fee.

23 (5) “Transportation Network Company Rider” or “rider” means an individual or persons
24 who use a transportation network company’s digital network to connect with a transportation
25 network driver who provides prearranged rides to the rider in the driver’s personal vehicle between
26 points chosen by the rider.

27 (6) “Prearranged ride” means the provision of transportation by a driver to a rider,
28 beginning when a driver accepts a ride requested by a rider through a digital network controlled
29 by a transportation network company, continuing while the driver transports a requesting rider,
30 and ending when the last requesting rider departs from the personal vehicle. A prearranged ride
31 does not include:

32 (A) Transportation provided using a taxi, limousine, or other for-hire vehicle; or

33 (B) Transportation provided under a ridesharing arrangement, as defined in section one,
34 article twenty-two, chapter seventeen-c of this code, or any other type of arrangement or service
35 in which the driver receives a fee that does not exceed the driver’s costs associated with providing
36 the ride.

§17-29-2. Not other carriers.

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

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

1 (a) A person may not operate a transportation network company in West Virginia without
2 first having obtained a permit 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 transportation network
7 company in accordance with section eight of this article;

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

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

14 (5) Provides a copy of transportation network company's policy prohibiting solicitation or
15 acceptance of cash payments from riders to the Division of Motor Vehicles in accordance with
16 section sixteen of this article;

17 (6) Provides a copy of the transportation network company's policy of nondiscrimination
18 with respect to riders and potential riders to the Division of Motor Vehicles in accordance with
19 section seventeen of this article; and

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

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

§17-29-4. Agent.

1 A transportation network company shall maintain an agent for service of process in this
2 state.

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

1 On behalf of a transportation network company driver, a transportation network company
2 may charge a fare for the services provided to riders: *Provided*, That if a fare is collected from a

3 rider, the transportation network company shall disclose to the rider the fare calculation method
4 on its website or within the software application service. The transportation network company
5 shall also provide riders with the applicable rates being charged and the option to receive an
6 estimated fare before the rider enters the transportation network company's driver's vehicle.

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

1 The transportation network company's software application or website shall display a
2 picture of the transportation network company driver and the license plate number of the motor
3 vehicle utilized for providing the prearranged ride before the rider enters the transportation
4 network company driver's vehicle.

§17-29-7. Electronic receipt.

1 Within a reasonable period of time following the completion of a trip, a transportation
2 network company shall transmit an electronic receipt to the rider on behalf of the transportation
3 network company driver that lists:

- 4 (1) The origin and destination of the trip;
5 (2) The total time and distance of the trip; and
6 (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 transportation network company driver or
2 transportation network company on the driver's behalf shall maintain primary automobile
3 insurance that recognizes that the driver is a transportation network company driver or otherwise
4 uses a vehicle to transport passengers for compensation and covers the driver:

- 5 (1) While the driver is logged on to the transportation network company's digital network;
6 or
7 (2) While the driver is engaged in a prearranged ride.

8 (b) The following automobile insurance requirements apply while a participating
9 transportation network company driver is logged on to the transportation network company's

10 digital network and is available to receive transportation requests, but is not engaged in a
11 prearranged ride:

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

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

17 (3) The coverage requirements of this subsection may be satisfied by any of the following

18 (A) Automobile insurance maintained by the transportation network company driver; or:

19 (B) Automobile insurance maintained by the transportation network company; or

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

21 (c) The following automobile insurance requirements apply while a transportation network
22 company driver is engaged in a prearranged ride:

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

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

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

28 (A) Automobile insurance maintained by the transportation network company driver; or

29 (B) Automobile insurance maintained by the transportation network company; or

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

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

35 (e) Coverage under an automobile insurance policy maintained by the transportation
36 network company may not be dependent on a personal automobile insurer first denying a claim
37 nor may a personal automobile insurance policy be required to first deny a claim.

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

§17-29-9. Disclosures.

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

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

8 (2) That the transportation network company driver's own automobile insurance policy
9 might not provide any coverage while the driver is logged on to the transportation network
10 company's digital network and is available to receive transportation requests or is engaged in a
11 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 driver is logged on to a transportation network company's digital network
4 or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any
5 coverage 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 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 driver is logged on to the transportation network
14 company's digital network, while the driver is engaged in a prearranged ride or while the driver
15 otherwise uses a vehicle to transport passengers for compensation. Nothing shall be deemed to
16 preclude an insurer from providing coverage for the transportation network company driver's
17 vehicle, if it so chooses to do so by contract or endorsement.

18 (b) Automobile insurers that exclude the coverage described in section eight of this article
19 have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this
20 article invalidates or limits an exclusion contained in a policy, including any policy in use or
21 approved for use in this state prior to the enactment of this article that excludes coverage for

22 vehicles used to carry persons or property for a charge or available for hire by the public. An
23 automobile insurer that defends or indemnifies a claim against a driver that is excluded under the
24 terms of its policy shall have a right of contribution against other insurers that provide automobile
25 insurance to the same driver in satisfaction of the coverage requirements of section eight of this
26 article at the time of loss.

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

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

1 (a) Drivers are independent contractors and not employees of the transportation network
2 company if all of the following conditions are met:

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

6 (2) The transportation network company imposes no restrictions on the transportation
7 network company driver's ability to utilize digital platforms from other transportation network
8 companies;

9 (3) The transportation network company does not assign a transportation network
10 company driver a particular territory in which to operate;

11 (4) The transportation network company does not restrict a transportation network
12 company driver from engaging in any other occupation or business; and

13 (5) The transportation network company and transportation network company driver agree
14 in writing that the driver is an independent contractor of the transportation network company.

15 (b) A transportation network company operating under this article is not required to provide
16 workers' compensation coverage to a transportation network company driver that is classified as
17 an independent contractor pursuant to this section.

§17-29-12. Zero tolerance for drug or alcohol use.

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

10 (b) Upon receipt of such rider complaint alleging a violation of the zero tolerance policy,
11 the transportation network company shall immediately suspend such transportation network
12 company driver's access to the transportation network company'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 transportation network company shall maintain records relevant to the
16 enforcement of this requirement for a period of at least two years from the date that a rider
17 complaint is received by the transportation network company.

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

1 (a) Before allowing an individual to accept trip requests through a transportation network
2 company's digital platform:

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

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

9 (A) Multistate/ multijurisdiction Criminal Records Locator or other similar commercial
10 nationwide database with validation (primary source search); and

11 (B) National Sex Offender Registry database.

12 (3) The transportation network company shall review, or have a third party review, a driving
13 history research report for such individual.

14 (b) The transportation network company shall not permit an individual to act as a
15 transportation network company driver on its digital platform who:

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

19 (2) Has been convicted, within the past seven years, of any felony, or misdemeanor
20 driving under the influence, reckless driving, hit and run, or any misdemeanor violent offense or
21 sexual offense, or more than three misdemeanors 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 motor vehicle(s) used to provide
25 prearranged rides;

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

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

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

1 The transportation network company shall require any motor vehicle that a transportation
2 network company driver will use to provide transportation network company services to meet the
3 inspection requirements of section four, article sixteen, chapter seventeen-c of this code or the
4 inspection requirements for a private motor vehicle of the state in which the motor vehicle is
5 registered.

§17-29-15. No street hails.

1 A transportation network company driver may not solicit or accept street hails.

§17-29-16. No cash trips.

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

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

1 (a) The transportation network company shall adopt a policy of nondiscrimination with
2 respect to riders and potential riders and notify transportation network company drivers of such
3 policy: *Provided*, That no provision of this article may be construed to require that the policy of
4 nondiscrimination with respect to riders and potential riders be more stringent than state law
5 governing unlawful discriminatory practices.

6 (b) Transportation network company drivers shall comply with all applicable laws regarding
7 nondiscrimination against riders or potential riders.

8 (c) Transportation network company drivers shall comply with all applicable laws relating
9 to accommodation of service animals.

10 (d) A transportation network company may not impose additional charges for providing
11 services to persons with physical disabilities because of those disabilities.

§17-29-18. Records.

1 A transportation network company shall maintain the following customer records:

2 (a) Individual trip records of rider customers for at least two years from the date each trip
3 was provided; and

4 (b) Individual records of transportation network company driver customers at least until
5 the two year anniversary of the date on which a transportation network company driver's customer
6 relationship with the transportation network company has ended.

§17-29-19. Controlling authority.

1 (a) Notwithstanding any provision of chapter twenty-four or any other provision of this code
2 to the contrary, the regulation of the business activities of transportation network companies and
3 transportation network company drivers is governed exclusively by this article.

4 (b) *Taxation.* No municipality, county or other local governmental entity or special district
5 may impose a special district excise tax, sales tax, use tax, business and occupation tax, or any
6 other tax or fee on, or require a license for, a transportation network company, a transportation
7 network company driver, or a personal vehicle used by a transportation network company driver,
8 where such tax or license relates to, or is imposed upon, the service or privilege of providing
9 prearranged transportation of persons or property. No municipal consumers sales and service
10 tax and use tax or special district excise tax may be imposed on the customers of a transportation
11 network company or a transportation network company or a transportation network company
12 driver for, or with relation to, purchases of transportation network company transportation
13 services.

14 (c) *Licensure, registration and qualification.* No municipality, county or other local
15 governmental entity or special district may require a transportation network company driver to
16 obtain a business license or any other similar authorization to operate within the jurisdiction, or

17 subject a transportation network company or transportation network company driver to any
18 licensure requirement, fee, tax, entry requirement, registration requirement, operating or
19 operational requirement or other requirement.

20 (d) Consumers sales and service tax and use tax exemptions.

21 (1) The provision of prearranged transportation service by a transportation network
22 company driver is exempt from the consumers sales and service tax and use tax imposed under
23 articles fifteen and fifteen-a, chapter eleven of this code.

24 (2) Transportation network companies may assert a lawful and timely exemption from the
25 consumers sales and service tax and use tax, in accordance with section nine, article fifteen,
26 chapter eleven of this code, for purchases of tangible personal property and services directly used
27 in transportation.

28 (e) Limitations and interpretation.

29 (1) No provision of this section or this article shall be interpreted to void, abrogate, restrict
30 or affect imposition of the ad valorem property tax on tangible personal property of a transportation
31 network company or of a transportation network company driver by any levying body.

32 (2) No provision of this section or this article shall be interpreted to void, abrogate, restrict
33 or affect imposition of the state personal income tax or state corporation net income tax on a
34 transportation network company or a transportation network company driver.

35 (3) No provision of this section or this article shall be interpreted to void, abrogate, restrict
36 or affect imposition of the motor fuel excise tax on any taxable motor fuel or alternative fuel
37 purchased by any transportation network company or transportation network company driver.

38 (4) No provision of this section or this article shall be interpreted to void, abrogate, restrict
39 or affect the requirements of chapter eleven of this code for issuance of a business registration
40 certificate for transportation network companies and transportation network drivers.

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

43 (6) Transportation network company drivers may not assert the exemption from the
44 consumers sales and service tax and use tax, for purchases of tangible personal property and
45 services directly used in transportation under section nine, article fifteen, chapter eleven of this
46 code.