

HOUSE BILL No. 2286

By Committee on Taxation

2-10

Proposed amendment to HB 2286

3/23/2015

House Committee on Insurance

Prepared by David Wiese, Office of Revisor of Statutes

1 AN ACT regulating traffic; relating to transportation network companies,
2 transportation network company services; regulation.

3 *Be it enacted by the Legislature of the State of Kansas:*

4 Section 1. This act shall be known and may be cited as the Kansas
5 transportation network company services act.

6 Sec. 2. Except as otherwise provided, as used in the Kansas
7 transportation network company services act:

8 (a) "Act" means the Kansas transportation network company services
9 act.

10 (b) "Transportation network company" or "TNC" shall mean an entity
11 licensed pursuant to the provisions of this act and operating in Kansas that
12 uses a digital network or software application service to connect
13 passengers to TNC services provided by TNC drivers. A TNC is not
14 deemed to own, control, operate or manage the vehicles used by TNC
15 drivers, and is not a taxicab association or a for-hire vehicle owner.

16 (c) "Transportation network company (TNC) driver" shall mean an
17 individual who operates a motor vehicle that is:

18 (1) Owned, leased or otherwise authorized for use by the individual;
19 (2) not a taxicab or for-hire vehicle; and
20 (3) used to provide transportation network company services.

21 (d) "Transportation network company (TNC) services" shall mean
22 transportation of a passenger between points chosen by the passenger and
23 prearranged with a TNC driver through the use of a TNC digital network
24 or software application. TNC services shall begin when a TNC driver
25 accepts a request for transportation received through the TNC's digital
26 network or software application service, continues while the TNC driver
27 transports the passenger in the TNC driver's vehicle, and ends when the
28 passenger exits the TNC driver's vehicle. TNC service is not a taxicab, for-
29 hire vehicle or street-hail service.

30 Sec. 3. Transportation network companies or TNC drivers shall not be
31 considered motor carriers, private motor carriers or public motor carriers
32 of passengers as those terms are defined in K.S.A. 66-1,108, and
33 amendments thereto, nor determined to provide taxicab or for-hire vehicle
34 service so long as such TNC or TNC driver meets the requirements of this
35 act. In addition, a TNC driver shall not be required to register the vehicle

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

(c) "Personal vehicle" means a vehicle that is used by a transportation network company driver in connection with providing a prearranged ride and is:

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

(2) not a taxicab, limousine or for-hire vehicle.

(d) "Prearranged ride" means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. A "prearranged ride" does not include transportation provided using a taxi, limousine or other for-hire vehicle.

(e) "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 transportation network company riders to transportation network company drivers who provide prearranged rides. A transportation network company shall not be deemed to control, direct or manage the personal vehicles or transportation network company drivers that connect to its digital network, except where agreed to by written contract.

(f) "Transportation network company driver" or "driver" means an individual who:

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

(2) uses a personal vehicle to provide services for riders matched through a digital network controlled by a transportation network company.

(g) "Transportation network company rider" or "rider" means an individual or persons who use a transportation network company's digital network to connect with a transportation network driver who provides prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider

personal

prearranged rides

1 such driver uses for TNC services as a commercial or for-hire vehicle.
2 Sec. 4. (a) A person shall not operate a TNC in Kansas without first
3 having obtained a permit from the state corporation commission.

4 (b) The state corporation commission shall issue a permit to each
5 applicant that meets the requirements for a TNC set forth in this act, and
6 pays an annual permit fee of \$5,000 to the commission.

7 Sec. 5. The TNC must maintain an agent for service of process in the
8 state of Kansas.

9 Sec. 6. A TNC may charge a fare for the services provided to
10 passengers, provided that, if a fare is charged, the TNC shall disclose to
11 passengers the fare calculation method on its website or within the

riders

digital network

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

riders

riders

15 Sec. 7. The TNC's software application or website shall display a
16 picture of the TNC driver, and the license plate number of the motor
17 vehicle utilized for providing the TNC service before the passenger enters
18 the TNC driver's vehicle.

personal

riders

digital network

riders

19 Sec. 8. Within a reasonable period of time following the completion
20 of a trip, a TNC shall transmit an electronic receipt to the passenger that
21 lists:

riders

prearranged ride

22 (a) The origin and destination of the trip;

23 (b) the total time and distance of the trip; and
24 (c) an itemization of the total fare paid, if any.

25 Sec. 9. (a) On and after July 1, 2015, TNCs and TNC drivers shall
26 comply with the automobile liability insurance requirements of this
27 section.

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

32 (1) Automobile liability insurance that meets at least the minimum
33 coverage requirements pursuant to K.S.A. 40-3107(c) and K.S.A. 40-284,
34 and amendments thereto; and

35 (2) automobile liability insurance that meets the minimum coverage
36 requirements where required by K.S.A. 40-3107(f) and amendments
37 thereto.

38 Automobile liability insurance in the amounts required in paragraph (1)
39 shall be maintained by a TNC and provide coverage in the event a
40 participating TNC driver's own automobile liability policy excludes
41 coverage according to its policy terms or does not provide coverage of at
42 least the limits required in paragraph (1).

43 (c) The following automobile liability insurance requirements shall

1 apply while a TNC driver is providing TNC services:

2 (1) Provides primary automobile liability insurance that recognizes
3 the TNC driver's provision of TNC services;

4 (2) Provides automobile liability insurance of at least \$1,000,000 for
5 death, personal injury and property damage;

6 (3) Provides automobile liability insurance that meets the minimum
7 coverage requirements where required by K.S.A. 40-3107(f), and
8 amendments thereto; and

9 (4) Provides uninsured and underinsured motorist coverage that meets
10 the minimum coverage requirements where required by K.S.A. 40-284,
11 and amendments thereto.

12 The coverage requirements of this subsection may be satisfied by any
13 of the following:

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

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

16 (C) Any combination of (A) and (B).

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

23 (e) Notwithstanding any other provision of law, insurance required by
24 this section may be placed with an insurer authorized to do business in the
25 state or with a surplus lines insurer eligible under K.S.A. 40-216b, and
26 amendments thereto.

27 (f) Insurance required by this section shall be deemed to satisfy the
28 financial responsibility requirement for a motor vehicle under the Kansas
29 automobile injury reparations act, K.S.A. 40-3101, et seq., and
30 amendments thereto.

31 See 10 (a) The TNC shall disclose in writing to TNC drivers the
32 following before they are allowed to accept a request for TNC services on
33 the TNC's digital network:

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

37 (2) that the TNC driver's own insurance policy may not provide
38 coverage while the TNC driver uses a vehicle in connection with a TNC's
39 digital network, depending on its terms.

40 (b) Insurers that write automobile liability insurance in Kansas may:

41 (1) Exclude any and all coverage and the duty to defend afforded
42 under the owner's insurance policy for any loss or injury that occurs while
43 an insured vehicle provides or is available to provide TNC services;

1 provided such exclusion is expressly set forth in the policy and approved
2 for sale in Kansas. This right to exclude coverage and the duty to
3 indemnify and defend may apply to any coverage included in an
4 automobile liability insurance policy, including but not limited to:

5 (A) Liability coverage for bodily injury and property damage;

6 (B) Uninsured and underinsured motorist coverage;

7 (C) Medical payments coverage;

8 (D) Comprehensive physical damage coverage;

9 (E) Collision physical damage coverage; and

10 (F) Personal injury protection coverage.

11 The insurer must notify an insured after receiving a notice of loss
12 within the time required by K.S.A. 40-2404(f), and amendments thereto,
13 that the insurer has no duty to defend or indemnify any person or
14 organization for liability for a loss that is preperely excluded pursuant to the
15 terms of the applicable primary or excess insurance policy.

16 (e) An insurer that writes automobile liability insurance in Kansas
17 must disclose on its application for insurance, in a prominent place,
18 whether or not the insurance policy provides coverage while an insured
19 vehicle provides or is available to provide TNC services. If an automobile
20 liability insurance policy contains an exclusion for TNC services, the
21 insurer or its agent must disclose in writing the exact language of such
22 exclusion to the applicant during the application process.

23 (d) In a claims coverage investigation, TNCs and any insurer
24 providing coverage under section 9, and amendments thereto, shall
25 cooperate to facilitate the exchange of information, including the precise
26 times that a TNC driver logged on and off of the TNC's digital network in
27 the 24-hour period immediately preceding the accident and disclose to one
28 another a clear description of the coverage, exclusions and limits provided
29 under any insurance policy each party issued or maintained.

Insert attachment #1 and
redesignate sections accordingly

30 Sec. 11. (a) The TNC shall implement a zero tolerance policy on the
31 use of drugs or alcohol while a TNC driver is providing TNC services or is
32 logged into the TNC's digital network but is not providing TNC services,
33 and shall provide notice of this policy on its website, as well as procedures
34 to report a complaint about a driver with whom a passenger was matched
35 and whom the passenger reasonably suspects was under the influence of
36 drugs or alcohol during the course of the trip.

a prearranged ride

rider

37 (b) Upon receipt of such passenger/complaint alleging a violation of
38 the zero tolerance policy, the TNC shall immediately suspend such TNC
39 driver's access to the TNC's digital platform and shall conduct an
40 investigation into the reported incident. The suspension shall last the
41 duration of the investigation.

network

42 (c) The TNC shall maintain records relevant to the enforcement of
43 this requirement for a period of at least two years from the date that a

passenger-complaint is received by the TNC.

Sec. 12. (a) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:

(1) Require the individual to submit an application to the TNC, which includes 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;

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

(A) Multi-state/multi-jurisdiction criminal records locator or other similar commercial nationwide database with validation (primary source search); and

(B) national sex offender registry database; and

(3) obtain and review a driving history research report for such individual.

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

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

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

(3) is a match in the national sex offender registry database;

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

(5) does not possess proof of registration for the motor vehicle or motor vehicles used to provide TNC services;

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

(7) is not at least 19 years of age.

Sec. 13. The TNC shall require that any motor vehicle that a TNC driver will use to provide TNC services meets the equipment requirements applicable to private motor vehicles under article 17 of chapter 8 of the Kansas Statutes Annotated, and amendments thereto.

Sec. 14. A TNC-driver shall only provide TNC services and shall not solicit or accept street hails.

Sec. 15. The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify TNC drivers of such policy. TNC drivers shall not solicit or accept cash payments from passengers. Any payment for TNC services shall be made only electronically using the TNC's digital network or software application.

rider

network

network

prearranged rides

personal

a prearranged ride

personal

prearranged rides

riders

Drivers

riders

prearranged rides

1 Sec. 16. (a) The TNC shall adopt a policy of non-discrimination with
2 respect to passengers and potential passengers and notify TNC drivers of
3 such policy.

4 (b) TNC drivers shall comply with all applicable laws regarding non-
5 discrimination against passengers for potential passengers.

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

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

10 (e) A TNC shall provide passengers an opportunity to indicate
11 whether they require a wheelchair-accessible vehicle. If a TNC cannot
12 arrange wheelchair-accessible TNC service in any instance, it shall direct
13 the passenger to an alternate provider of wheelchair-accessible service, if
14 available.

15 Sec. 17. A TNC shall maintain:

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

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

21 Sec. 18. A TNC shall not disclose a passenger's personally
22 identifiable information to a third party unless: (a) The passenger consents
23 or disclosure is required by a legal obligation; or (b) disclosure is required
24 to protect or defend the terms of use of the service or to investigate
25 violations of those terms. In addition to the foregoing, a TNC shall be
26 permitted to share a passenger's name or telephone number with the TNC
27 driver providing TNC services to such passenger in order to facilitate
28 correct identification of the passenger by the TNC driver; or to facilitate
29 communication between the passenger and the TNC driver.

30 Sec. 19. Notwithstanding any other provision of law, TNCs and TNC
31 drivers are governed exclusively by this act and any rules promulgated by
32 the commission consistent with this act. No municipality or other local
33 entity may impose a tax on, or require a license for, a TNC, a TNC driver,
34 or a vehicle used by a TNC driver where such tax or licenses relate to
35 providing TNC services, or subject a TNC to the municipality or other
36 local entity's rate, entry, operational or other requirements.

37 Sec. 20. The state corporation commission shall have the power to
38 adopt all rules and regulations specifically necessary to enforce the
39 provisions of this act.

40 Sec. 21. This act shall take effect and be in force from and after its
41 publication in the statute book.

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Drivers

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Drivers

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Driver

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prearranged rides

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Sec. 20. (a) A TNC shall disclose to its TNC drivers in the prospective TNC
drivers' written terms of service the following before the drivers are allowed to
accept a request for TNC services on the TNC's digital network or software
application:
"If the vehicle that you plan to use to provide transportation network company
services has a lien against it, using the vehicle for transportation network
company services may violate the terms of your contract with the lienholder."
(b) If a TNC's insurer makes a payment for a claim covered under
comprehensive coverage or collision coverage, the TNC shall cause its insurer
to issue the payment 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 shall not assess any fines as a result of a violation of this
subsection.

prearranged rides

On July 1, 2015, and thereafter, a transportation network company driver or transportation network company on the driver's behalf shall maintain primary automobile insurance that:

- (a) Recognizes that the driver is a transportation network company driver and covers the driver while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride or while the driver otherwise uses a vehicle to transport passengers for compensation.
- (b) (1) The following automobile insurance requirements shall apply while a participating transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation requests but is not engaged in a prearranged ride:
 - (A) Primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage; and
 - (B) primary automobile liability insurance that meets the minimum coverage requirements where required by K.S.A. 40-284 and 40-3107(f), and amendments thereto.
- (2) The coverage requirements of this subsection (b) may be satisfied by any of the following:
 - (A) Automobile insurance maintained by the transportation network company driver;
 - (B) automobile insurance maintained by the transportation network company; or
 - (C) any combination of subparagraphs (A) and (B).
- (c) (1) The following automobile insurance requirements shall apply while a transportation network company driver is engaged in a prearranged ride:
 - (A) Primary automobile liability insurance that provides at least \$1,000,000 for death, bodily injury and property damage;
 - (B) primary automobile liability insurance that meets the minimum coverage requirements where required by K.S.A. 40-284 and 40-3107(f), and amendments thereto.
 - (2) The coverage requirements of this subsection (c) may be satisfied by any of the following:
 - (A) Automobile insurance maintained by the transportation network company driver;
 - (B) automobile insurance maintained by the transportation network company; or
 - (C) any combination of subparagraphs (A) and (B).
- (d) If insurance maintained by the driver in subsection (b) or (c) has lapsed or does not provide the required coverage, insurance maintained by a transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim and shall have the duty to defend such claim.
- (e) Coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.
- (f) Insurance required by this section may be placed with an insurer licensed under K.S.A. 40-208 or 40-209, and amendments thereto, or with a surplus lines insurer eligible under K.S.A. 40-246b, and amendments thereto.
- (g) Insurance satisfying the requirements of this section shall be deemed to satisfy the financial responsibility requirement for a personal vehicle under the Kansas automobile injury reparations act, K.S.A. 40-3101 et seq., and amendments thereto.

(h) A transportation network company driver shall carry proof of coverage satisfying subsections (b) and (c) with such driver at all times during such driver's use of a vehicle in connection with a transportation network company's digital network. In the event of an accident, a transportation network company driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request pursuant to K.S.A. 8-173, and amendments thereto. Upon such request, a transportation network company driver shall also disclose to directly interested parties, automobile insurers and investigating police officers, whether such driver was logged on to the transportation network company's digital network or on a prearranged ride at the time of an accident.

Sec. 10. The transportation network company shall disclose in writing to transportation network company drivers the following before they are allowed to accept a request for a prearranged ride on the transportation network company's digital network:

- (a) The insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network company provides while the transportation network company driver uses a personal vehicle in connection with a transportation network company's digital network; and
- (b) the transportation network company driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the transportation network company's digital network and is available to receive transportation requests or is engaged in a prearranged ride, depending on its terms.

Sec. 11. (a) Insurers that write automobile insurance in Kansas may exclude any and all coverage afforded under the owner's insurance policy for any loss or injury that occurs while a driver is logged on to a transportation network company's digital network or while a driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- (1) Liability coverage for bodily injury and property damage;
- (2) personal injury protection coverage as defined in K.S.A. 40-3107(f), and amendments thereto;
- (3) uninsured and underinsured motorist coverage;
- (4) medical payments coverage;
- (5) comprehensive physical damage coverage; and
- (6) collision physical damage coverage.

Such exclusions shall apply notwithstanding any requirement under the Kansas automobile injury reparations act, K.S.A. 40-3101 et seq., and amendments thereto. Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in a prearranged ride or while the driver otherwise uses a vehicle to transport passengers for compensation.

(b) Nothing in this section shall be deemed to preclude an insurer from providing coverage for the transportation network company driver's vehicle, if such insurer chooses to do so by contract or endorsement.

- (c) Automobile insurers that exclude coverage as permitted in subsection (a) shall have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this act shall be deemed to invalidate or limit an exclusion contained in a policy.
- (d) An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy as permitted in subsection (a) shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of section 9, and amendments thereto, at the time of loss.
- (e) In a claims coverage investigation, transportation network companies and any insurer potentially providing coverage under section 9, and amendments thereto, shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the transportation network company driver if applicable, including the precise times that a transportation network company driver logged on and off of the transportation network company's digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any automobile insurance maintained under section 9, and amendments thereto