
DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 527 Re-Reengrossed

2017 Regular Session

Havard

Abstract: Provides relative to safety, reliability, and access requirements for Transportation Network Companies (TNCs).

Proposed law adds references to the confidentiality provisions in proposed law to the public records law.

Proposed law defines "department" as the Dept. of Agriculture and Forestry.

Proposed law defines "digital network" as any online-enabled technology application service, website, or system offered or utilized by a TNC that enables the prearrangement of rides with TNC drivers.

Proposed law defines "transportation network company vehicle" or "TNC vehicle" as a vehicle that is used by a transportation network company driver to offer or provide a prearranged ride and is owned, leased, or otherwise authorized for use by the TNC driver. Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a transportation network company vehicle.

Proposed law defines "transportation network company", "TNC", or "Company" as a corporation, partnership, sole proprietorship, or other entity licensed and operating in this state that uses a digital network to connect a TNC rider to a TNC driver who provides a prearranged ride. A TNC may not control, direct, or manage the personal vehicle or the TNC driver who connects to its digital network, except where agreed to by written contract.

Proposed law defines "transportation network company driver" or "TNC driver" as an individual who receives connections to potential riders and related services from a TNC and, in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to riders upon connection through a digital network controlled by a TNC.

Proposed law defines "transportation network company rider" or "rider" as an individual or persons who use a TNC's digital network to connect with a TNC driver who provides prearranged rides in the TNC driver's TNC vehicle between points chosen by the rider.

Proposed law defines "prearranged ride" as the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the TNC driver transports a requesting rider, and ending when the last

requesting rider departs from the TNC vehicle. A prearranged ride does not include transportation provided by shared expense van pool services, as defined pursuant to present law (R.S. 45:162(18)), shared expense car pool services, as defined pursuant to present law (R.S. 45:162(1)), transportation provided using a vehicle subject to present law, or engaged solely in interstate commerce.

Proposed law defines "gross trip fare" as the total charge, including the base fare and any time or distance charges, for a prearranged ride.

Proposed law defines "TNC fee" as one percent of the gross trip fare.

Proposed law clarifies that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier, does not provide taxi or for-hire vehicle service, and is not required to register the TNC vehicle as a commercial motor vehicle or for-hire vehicle.

Proposed law requires a person to obtain a permit from the department prior to operating a TNC in the state and requires the department to issue a permit to each applicant who meets the requirements as provided in proposed law. Allows a TNC operating in this state prior to the effective date of proposed law to continue operating until the department creates a permit process and sets a registration deadline.

Proposed law requires a TNC to maintain an agent for service of process in the state.

Proposed law requires a TNC to disclose the fare or fare calculation method on its website or within the online-enabled technology application prior to the beginning of the prearranged ride. Requires the TNC disclose, at a minimum, an estimated fare before the start of the prearranged ride.

Proposed law requires a TNC's digital network to display a picture of the TNC driver and the license plate number of the motor vehicle used for providing the prearranged ride prior to the rider entering the vehicle.

Proposed law requires a TNC to transmit an electronic receipt to the rider, within a reasonable amount of time following completion of a trip, which provides the total fare, origin, destination, duration, and distance of the trip.

Proposed law requires TNCs to implement a substance abuse zero tolerance policy which must address the use of drugs or alcohol while a TNC driver is providing prearranged rides or is logged into the TNC's digital network.

Proposed law provides that a TNC must provide notice of this policy and procedures to report a complaint on its website about a TNC driver whom the rider suspects was under the influence of drugs or alcohol during the course of his trip. Suspends a TNC driver upon receipt of a rider complaint alleging violation of the substance abuse zero tolerance policy and requires an investigation of the reported incident. Specifies that the suspension must last the duration of the investigation and provides that the TNC must maintain records of all reported incidents for 10 years from the date of the complaint.

Proposed law specifies that TNC drivers are independent contractors and are not considered employees of the TNC if specific hours are not unilaterally prescribed to the TNC driver, the TNC does not impose an express prohibition on the TNC driver's ability to utilize the digital network, the TNC does not restrict the TNC driver from engaging in any other business or occupation, and the TNC and TNC driver agree, in writing, that the TNC driver is an independent contractor.

Proposed law requires the following conditions to be met before an individual is authorized to accept trip requests through a TNC's digital network:

- (1) The individual must submit an application to the TNC, which includes his address, age, a copy of his driver's license and motor vehicle registration, and any other required information.
- (2) The TNC or a third party must conduct a local and national criminal background check for each applicant.
- (3) The TNC or a third party must obtain and review a driving history research report for each potential TNC driver.

Proposed law requires a TNC or a third party to conduct the background check and driving history research report at least once every two years.

Proposed law prohibits a TNC from authorizing an individual to act as a TNC driver on its digital network if the driving history research report initially conducted reveals that the individual has had more than three moving violations in the prior three-year period.

Proposed law prohibits a TNC from authorizing an individual to act as a TNC driver on its digital network if any of the following exists:

- (1) The individual has had, in the prior three-year periods, a violation of attempting to evade the police; reckless driving; or driving with a suspended or revoked license one or more times.
- (2) The individual has been convicted, within the past seven years, of a felony; a misdemeanor for driving under the influence of drugs or alcohol; for hit and run, or any other driving-related offense; or a misdemeanor for a violent offense or sexual battery.
- (3) The individual is a match on the national sex offender public website maintained by the U.S. Dept. of Justice.
- (4) The individual does not possess a valid driver's license to operate a personal vehicle.
- (5) The individual does not possess proof of registration for the motor vehicle used to provide prearranged rides.

Proposed law prohibits a TNC driver from accepting a trip for compensation that was not arranged

through a TNC's digital network.

Proposed law requires the TNC to adopt a nondiscrimination policy and provide notice of the policy to its riders. Specifies that all TNC drivers must comply with all applicable laws relating to discrimination and transportation of service animals. Prohibits a TNC from imposing additional charges for providing services to persons with physical disabilities.

Proposed law requires a TNC to maintain individual trip records and individual records of all TNC drivers for at least three years from the date the trip was provided and the TNC driver and rider relationship was terminated, respectively.

Proposed law permits the department to annually inspect all records that the TNC is required to maintain at a time and place in the state determined by the department and authorizes the department to exclude information that would identify specific drivers or riders.

Proposed law authorizes the department to inspect records held by the TNC that are necessary to investigate and resolve any complaint made against a TNC driver or TNC at a time and place in the state determined by the department.

Proposed law clarify that proposed law must not be construed to apply to any other records of the department related to regulation of TNCs if such records do not include information that is designated confidential or exempt from disclosure.

Proposed law requires the department assess a TNC fee and administer the distribution of the fees in accordance with proposed law. Authorizes a TNC to collect a TNC fee for all intrastate prearranged rides and requires the TNC to determine the origin of each intrastate prearranged ride using geographic information system data made available by the department. Requires the TNC to submit the total TNC fees collected, a report listing percentages of gross trip fares that originated in each municipality, and a report listing the percentage of gross trip fares that originated outside a municipality to the department within 30 days of the end of a calendar quarter.

Proposed law mandates the department retain 5% of the total TNC fees collected to cover departmental expenses incurred from regulation of TNCs and the department must distribute remaining funds proportionately to each local governmental subdivision where a trip originated during the reporting period.

Proposed law prohibits any records maintained by a TNC pursuant to proposed law, obtained by the department or other public entity or any records that incorporate information from records maintained by a TNC, including third-party audit reports, from being disclosed under present law (Public Records Law). Specifies that the department is prohibited from disclosing records or information provided by a TNC unless disclosure is required by a subpoena or court order, except that nothing should prevent the department from allowing a representative of a local governmental subdivision of the state to inspect a third-party audit report in accordance with proposed law, and provides that if such disclosure is required, the department must notify the TNC prior to disclosure.

Proposed law requires all permits issued to a TNC by a governmental entity, all correspondence and documents exchanged between a TNC and governmental entity, and all contracts between a TNC and governmental entity to be a public record and subject to disclosure in accordance with present law (Public Records Law), except that in the absence of a valid subpoena, information maintained pursuant to proposed law and obtained by the department or other governmental entity will remain confidential.

Proposed law authorizes the department to request that a TNC engage an independent third-party auditor to verify the TNC fees submitted to the department pursuant to proposed law are accurate. Allows the TNC to select the third party auditor and bear all costs associated with the audit. Requires the auditor to be a certified public accounting firm licensed in the state and qualified to perform engagements in accordance with generally accepted government auditing standards.

Proposed law requires the audit report to be provided to the department within 15 days of completion, which must not occur later than 90 days after receipt of the department's written request, and provides for payment of any amount owed and refund of any amount overpaid.

Proposed law authorizes a representative of a local governmental subdivision of the state to request to inspect a copy of the third-party audit report and require the department grant that request if an audit is requested by the department and completed by a TNC.

Proposed law provides that TNCs, TNC drivers, and TNC vehicles are governed by the laws of the state and any rules promulgated by the department.

Proposed law prohibits a local governmental subdivision, special district, airport authority, port authority, or other local governmental entity or political subdivision from imposing a tax on or requiring a license for a TNC, a TNC driver, or a TNC vehicle if such tax or license relates to providing prearranged rides; from requiring a TNC or a TNC driver to obtain a business license or any other type of similar authorization to operate within the jurisdiction; and from subjecting a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the local governmental subdivision, special district, airport authority, port authority, or other local governmental entity or political subdivision.

Proposed law clarifies that proposed law does not prevent an airport from charging reasonable pick-up fees for use of airport facilities or designating locations for staging, pick-up, and other similar airport operations.

Proposed law requires that records inspected by the department remain confidential, prohibit the disclosure of the records by the department to a third party without prior written consent, and specify that the records are exempt from disclosure pursuant to present law (Public Records Law).

Proposed law specifies that the provisions of present law will supersede any provision of proposed law if deemed to conflict and the provisions relative to jurisdiction, liability, permitting, maintaining insurance and prohibiting an advance limitation of liability will remain in full force and effect.

Effective July 1, 2017.

(Amends R.S. 44:4.1(B)(30); Adds R.S. 45:211-227)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Transportation, Highways and Public Works to the original bill:

1. Make technical changes.
2. Transfer regulating authority to the Department of Agriculture and Forestry.
3. Require the TNC or third party to conduct a background check and driving history research report at least once every two years.
4. Prohibit a TNC from authorizing an individual to act as a TNC driver on its digital network if the driving history research report initially conducted reveals that the individual has had more than three moving violations in the prior three-year period.
5. Clarify a provision that prohibits a TNC from authorizing an individual to act as a TNC driver on its digital network if the background check initially conducted reveals that the individual has had one or more violations enumerated in proposed law in the prior three-year period.
6. Specify that a TNC cannot authorize an individual to act as a TNC driver if the person does not possess a valid driver's license to operate a personal vehicle.
7. Permit the department to annually visually inspect a sample of records that the TNC is required to maintain, chosen randomly by the department in a manner agreeable to both parties, at a mutually agreed location in the state and allows for the exclusion of information that would identify specific drivers or riders.
8. Authorize the department to inspect records held by the TNC that are necessary to investigate and resolve any complaint made against a TNC driver or TNC. Provide that the department and TNC have the inspection take place at a mutually agreed location in the state and any record furnished to the department may exclude information that would identify a specific driver or rider, unless such identification is relevant to the complaint.
9. Specify that any records inspected by the department are designated confidential, are not subject to disclosure to a third party by the department without prior written consent of the TNC, and are exempt from disclosure under present law.
10. Delete the requirement that an airport charge reasonable pick-up fees consistent with any such fees charged to taxicab companies at that airport, if the airport elects to charge pick-up fees.

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill:

1. Add provisions relative to the confidentiality of records to provide that proposed law does not apply to department records related to its regulation of TNCs if such records do not include information that is otherwise designated confidential or exempted pursuant to present law (Public Records Law).
2. Make technical changes.

Summary of Amendments Adopted by House

The House Floor Amendments to the reengrossed bill:

1. Require the TNC to maintain records of all reported incidents for a period of at least 10 years.
2. Increase the time period that TNC's are required to maintain individual trip and driver records from one to three years.
3. Clarify that the department has the right to inspect all records that the TNC is required to maintain and requires the inspection and audit take place at a time and place determined by the department.
4. Clarify that the department may inspect records necessary for investigation and resolution of a complaint at a time and place in the state determined by the department, instead of a mutually agreed upon place.
5. Remove a provision that authorized the exclusion of identifying information of a driver or rider provided to the department, unless the identity of a driver or rider is relevant to the complaint.
6. Change the name of the fee from a local assessment fee to a TNC fee.
7. Require the department to assess the TNC fee and administer the distribution of such fee in accordance with the provisions of proposed law.
8. Add that third-party audit reports are not be subject to disclosure under the Public Records Law or any other applicable law.
9. Add that a public body or local governmental subdivision cannot disclose records or information provided by a TNC unless disclosure is required by a court order or subpoena.
10. Clarify that nothing in proposed law will prevent the department from allowing a local governmental subdivision to inspect a third-party audit report in accordance with proposed law.

11. Add a requirement that all permits issued to a TNC by a governmental entity, all correspondence and documents exchanged between a TNC and governmental entity, and all contracts between a TNC and governmental entity to be a public record and subject to disclosure in accordance with the Public Records Law, except that in the absence of a valid subpoena, information maintained pursuant to proposed law and obtained by the department or other governmental entity will remain confidential.
12. Add authorization for a representative of a local governmental subdivision of the state request to inspect a copy of the third-party audit report and require the department grant that request if an audit is requested by the department and completed by a TNC.
13. Add a conflict provision that specify that the provisions of present law will supersede any provision of proposed law if deemed to conflict and the provisions relative to jurisdiction, liability, permitting, maintaining insurance and prohibiting an advance limitation of liability will remain in full force and effect.
14. Add a provision requiring that records inspected by the department remain confidential, prohibiting disclosure of the records by the department to a third party without prior written consent, and specifying that the records are exempt from disclosure pursuant to Public Records Law.
15. Clarify that proposed law must not be construed to apply to any other records of the department related to regulation of TNCs if such records do not include information that is designated confidential or exempt from disclosure.
16. Make technical changes.