

Stricken language would be deleted from and underlined language would be added to present law.
Act 1050 of the Regular Session

State of Arkansas
90th General Assembly
Regular Session, 2015

As Engrossed: S3/24/15
A Bill

SENATE BILL 800

By: Senator Rapert

By: Representative Davis

For An Act To Be Entitled

AN ACT TO ENSURE THE SAFETY, RELIABILITY, AND COST-EFFECTIVENESS OF TRANSPORTATION NETWORK COMPANY SERVICES; TO PRESERVE AND ENHANCE ACCESS TO TRANSPORTATION OPTIONS FOR THE STATE'S RESIDENTS AND VISITORS; AND FOR OTHER PURPOSES.

Subtitle

TO ENSURE THE SAFETY, RELIABILITY, AND COST-EFFECTIVENESS OF TRANSPORTATION NETWORK COMPANY SERVICES; AND TO PRESERVE AND ENHANCE ACCESS TO TRANSPORTATION OPTIONS FOR THE STATE'S RESIDENTS AND VISITORS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 23, Chapter 13, is amended to add an additional subchapter to read as follows:

Subchapter 7 – Transportation Network Company Services Act

23-13-701. Title.

This subchapter shall be known and may be cited as the "Transportation Network Company Services Act".

23-13-702. Definitions.



As used in this subchapter:

(1)(A) "Transportation network company" means an individual or entity licensed under this subchapter that operates in this state and uses a website, digital network, or software application to connect passengers to transportation network company services provided by transportation network company drivers.

(B) "Transportation network company" does not mean:

(i) A broker, common carrier, contract carrier, or motor carrier, as defined in § 23-13-203;

(ii) A taxicab, taxicab association, for-hire vehicle owner, or for-hire motor vehicle service; or

(iii) An individual or entity that owns, controls, operates, or manages a motor vehicle used by a transportation network company driver;

(2) "Transportation network company driver" means an individual who operates a motor vehicle that is:

(A) Owned, leased, or otherwise authorized for use by the individual;

(B) Not a taxicab or a for-hire motor vehicle; and

(C) Used to provide transportation network company services; and

(3)(A) "Transportation network company services" means transporting a passenger between points chosen by the passenger and prearranged with a transportation network company driver through the use of a transportation network company website, digital network, or software application that:

(i) Begins when a transportation network company driver accepts a request for transportation received through the transportation network company's website, digital network, or software application;

(ii) Continues while:

(a) En route to the requesting passenger; and

(b) The transportation network company driver transports the passenger in the transportation network company driver's motor vehicle; and

(iii) Ends when the passenger exits the

transportation network company driver's motor vehicle.

(B) "Transportation network company services" does not mean:

(i) Taxicab service as defined in § 14-57-301 et seq.;

(ii) Motor carrier service under § 23-13-201 et seq.; or

(iii) Street hail service.

23-13-703. Commercial vehicle registration not required.

A transportation network company driver:

(1) Is not required to register the motor vehicle used for transportation network company services as a commercial or for-hire motor vehicle; and

(2) May conduct transportation network company services with a standard, noncommercial driver's license and is not required to obtain a P endorsement or any other endorsement on the transportation network company driver's license.

23-13-704. Transportation network company permit required.

(a) An individual or entity shall not operate a transportation network company in this state without first having obtained a permit to operate a transportation network company from the Arkansas Public Service Commission.

(b) The commission shall:

(1) Issue forms for a transportation network company to demonstrate that it meets all requirements of this subchapter to obtain a permit; and

(2) Issue a transportation network company permit to an applicant that:

(A) Meets all qualifications of this subchapter; and

(B) Pays an annual permit fee of fifteen thousand dollars (\$15,000) to the commission.

23-13-705. Agent for service of process.

A transportation network company shall maintain an agent for service of process under the Model Registered Agents Act, § 4-20-101 et seq.

23-13-706. Fare charged for transportation network company services.

(a) A transportation network company may charge a fare for transportation network company services.

(b) If a fare is charged, the transportation network company shall disclose to passengers on the transportation network company's website, digital network, or within its software application:

(1) The fare calculation method for transportation network company services;

(2) Applicable rates charged for transportation network company services; and

(3) The option to receive an estimated fare before the passenger enters the transportation network company driver's motor vehicle.

23-13-707. Identification of transportation network company drivers and motor vehicles.

Before a passenger enters the transportation network company driver's motor vehicle, the transportation network company website, digital network, or software application used by the transportation network company to arrange the transportation network company service shall display:

(1) A picture of the transportation network company driver; and

(2) The license plate number of the motor vehicle the transportation network company driver will use to provide the transportation network company service.

23-13-708. Electronic receipt.

Within a reasonable time after transportation network company services end, a transportation network company shall transmit an electronic receipt to the passenger that lists:

(1) The origin and destination of the trip;

(2) The total time and distance of the trip; and

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

23-13-709. Insurance requirements.

(a) No later than ninety (90) days after the effective date of this subchapter, a transportation network company and transportation network

company drivers shall comply with the motor vehicle liability insurance coverage requirements of this section.

(b)(1) While a transportation network company driver is logged into the transportation network company's website, digital network, or software application and available to receive requests for transportation but is not providing transportation network company services, motor vehicle liability insurance coverage that meets the minimum coverage requirements under § 27-22-104(b) shall be maintained by the transportation network company that provides coverage beginning with the first dollar of a claim in the event a transportation network company driver's own motor vehicle liability insurance policy:

(A) Excludes coverage under the terms of the policy; or

(B) Does not provide the minimum coverage required by § 27-22-104(b).

(2) With the exception of a factual dispute regarding when a transportation network company driver is logged into the transportation network company's website, digital network, or software application, a transportation network company and its insurer shall not:

(A) Challenge a private passenger motor vehicle liability insurer's denial of a claim based on a proper exclusion pursuant to § 23-13-711(b); or

(B) Seek reimbursement or contribution from a private passenger motor vehicle liability insurer.

(c)(1) While a transportation network company driver is providing transportation network company services, the transportation network company shall:

(A) Provide primary motor vehicle liability insurance that expressly recognizes the transportation network company driver's provision of transportation network company services or other for-hire motor vehicle services; and

(B) Provide primary motor vehicle liability insurance of at least one million dollars (\$1,000,000) for death, personal injury, and property damage.

(2) The motor vehicle liability insurance coverage required by subdivision (c)(1) of this section may be satisfied by any combination of:

(A) Motor vehicle liability insurance coverage maintained

by the transportation network company driver; or

(B) Motor vehicle liability insurance coverage maintained by the transportation network company.

(d) If the motor vehicle liability insurance coverage maintained by a transportation network company driver to fulfill the insurance requirements of this section has lapsed, is denied, is nonexistent, or the transportation network company driver has failed to provide the required coverage, the motor vehicle liability insurance coverage maintained by the transportation network company shall provide the coverage required by this section, beginning with the first dollar of a claim.

(e) The motor vehicle liability insurance coverage required by this section may be placed with an insurer authorized to do business in this state or with a surplus lines insurer eligible under § 23-65-305.

(f) Compliance with the motor vehicle liability insurance coverage required by this section satisfies all financial responsibility requirements for a motor vehicle under § 27-22-101 et seq.

23-13-710 Insurer disclosure requirements.

Before a transportation network company driver is allowed to accept a request for transportation network company services on the transportation network company's website, digital network, or software application, the transportation network company shall disclose in writing to the transportation network company drivers:

(1) The motor vehicle liability insurance coverage and limits of liability that the transportation network company provides while the transportation network company driver uses a personal motor vehicle in connection with a transportation network company's website, digital network, or software application; and

(2) That the transportation network company driver's own motor vehicle liability insurance policy may not provide coverage while the transportation network company driver uses a motor vehicle for transportation network company services.

23-13-711. Exclusions—Claim investigations.

(a)(1) A private passenger motor vehicle liability insurance policy may exclude coverage against all loss from liability imposed by law for

damages arising out of the ownership, maintenance, or use of a motor vehicle:

(A) While the motor vehicle is being used to provide transportation network company services; and

(B) While a transportation network company driver is logged on to the transportation network company's website, digital network, or software application.

(2) An exclusion of coverage under subdivision (a)(1) of this section may apply to any coverage included in a private passenger motor vehicle liability insurance policy, including without limitation:

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

(B) Uninsured and underinsured motorist coverage;

(C) Medical payments coverage;

(D) Comprehensive physical damage coverage;

(E) Collision physical damage coverage; and

(F) Coverage under § 23-89-202.

(b) A private passenger motor vehicle liability insurer that properly excludes coverage under subsection (a) of this section does not have a duty to defend or indemnify a loss.

(c) The failure to pay or receive a suggested donation set by a transportation network company does not constitute the charitable carrying or transportation of persons.

(d) In a claims coverage investigation, a transportation network company and its insurer shall:

(1) Cooperate with the private passenger motor vehicle liability insurer that insures the motor vehicle that the transportation company network driver uses to provide transportation network company services; and

(2) Within ten (10) business days of receiving a request for information from a private passenger motor vehicle liability insurer, provide to the private passenger motor vehicle liability insurer information, including the precise times that a transportation network company driver logged on and off of the transportation network company's website, digital network, or software application within the twenty-four (24) hours immediately preceding the accident being investigated.

23-13-712. Drug or alcohol use prohibited.

(a) A transportation network company shall:

(1) Implement a zero-tolerance policy prohibiting the use of drugs or alcohol while a transportation network company driver is providing transportation network company services or is logged into the transportation network company's website, digital network, or software application, but is not providing transportation network company services; and

(2) Provide notice on its website, digital network, and software application of the zero-tolerance policy and its procedures to report a complaint about a transportation network company driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the time that transportation network company services were provided.

(b)(1) Upon receipt of a passenger complaint under this section, the transportation network company shall immediately suspend the transportation network company driver's access to the transportation network company's website, digital network, and software application, and shall conduct an investigation into the reported incident.

(2) The suspension shall last until the investigation is completed.

(c) The transportation network company shall maintain records relevant to a complaint under this section for at least two (2) years from the date the complaint is received by the transportation network company.

23-13-713. Driver requirements.

(a) Before permitting an individual to act as a transportation network company driver on its website, digital network, or software application, a transportation network company shall:

(1) Require the individual to submit an application to the transportation network company that includes information regarding the individual's address, age, driver's license, driving history, motor vehicle registration, motor vehicle liability insurance coverage, and other information required by the transportation network company;

(2) Conduct, or have a third party conduct, a state and national criminal background check for each applicant that includes searching:

(A) A multistate and multijurisdictional criminal records locator or other similar commercial nationwide database with validation of

primary source searches; and

(B) The National Sex Offender Registry database; and

(3) Obtain and review the individual's driving history.

(b) A transportation network company shall not permit an individual to act as a transportation network company driver on its website, digital network, or software application who at the time of submitting an application:

(1) Has had more than three (3) moving violations or has had one (1) major violation within the previous three (3) years including without limitation attempting to evade the police, reckless driving, or driving on a suspended or revoked license;

(2) Has been convicted within the past seven (7) years of driving under the influence of drugs or alcohol, fraud, a sexual offense, using a motor vehicle to commit a felony, or a crime involving property damage, 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 to be used to provide transportation network company services;

(6) Does not possess proof of motor vehicle liability insurance coverage for the motor vehicle or motor vehicles to be used to provide transportation network company services; or

(7) Is not at least nineteen (19) years of age.

23-13-714. Compliance with motor vehicle safety and emissions requirements.

(a) A transportation network company shall not allow a transportation network company driver to accept trip requests through the transportation network company's website, digital network, or software application unless the motor vehicle that the transportation network company driver will use to provide transportation network company services meets the state's motor vehicle safety and emissions requirements for a private motor vehicle or the safety and emissions requirements for a private motor vehicle of the state in which the motor vehicle is registered.

(b)(1) A transportation network company shall verify that an initial

safety inspection of a motor vehicle used as a transportation network company motor vehicle is conducted by a mechanic within ninety (90) days of beginning service.

(2) The inspection shall be performed or supervised by a mechanic certified by the National Institute for Automotive Service Excellence.

(3) A safety inspection conducted under this subsection shall include a check of the following motor vehicle equipment to ensure that the equipment is safe and in proper operating condition:

(A) Foot brakes;

(B) Emergency parking brake;

(C) Suspension and steering mechanisms;

(D) Windshield;

(E) Rear window and other glass;

(F) Windshield wipers;

(G) Headlights;

(H) Taillights;

(I) Turn indicator lights;

(J) Brake lights;

(K) Front seat adjustment mechanism;

(L) Doors, including the opening, closing, and locking mechanisms;

(M) Horn;

(N) Speedometer;

(O) Bumpers;

(P) Muffler and exhaust system;

(Q) Tires, including their condition and tread depth;

(R) Interior and exterior rear view mirrors; and

(S) Safety belts for driver and passengers.

23-13-715. Street hails prohibited.

A transportation network company driver shall not solicit or accept a passenger who hails the transportation network company driver from the street.

23-13-716. Cash trips prohibited.

(a) A transportation network company shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify transportation network company drivers of the policy.

(b) Transportation network company drivers shall not solicit or accept cash payments from passengers.

(c) A payment for transportation network company services shall be made only electronically using the transportation network company's digital network or software application.

23-13-717. No discrimination – Accessibility.

(a) A transportation network company shall adopt a policy of nondiscrimination with respect to passengers and potential passengers and notify transportation network company drivers of its policy.

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

(c) Transportation network company drivers shall comply with all applicable laws to accommodate service animals.

(d) A transportation network company shall not impose additional charges for providing services to a person with a physical disability because of the disability.

(e)(1) A transportation network company shall provide a passenger an opportunity to indicate whether he or she requires a wheelchair-accessible motor vehicle.

(2) If a transportation network company cannot arrange wheelchair-accessible transportation network company service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

23-13-718. Records – Inspection.

(a) A transportation network company shall maintain:

(1) Individual trip records for at least one (1) year from the date each trip was provided;

(2) Transportation network company driver records for at least one (1) year from the date a transportation network company driver was active on the transportation network company's website, digital network, or software

application; and

(3) Any other records required by this subchapter.

(b) In response to a specific complaint, the Arkansas Public Service Commission or its employees or duly authorized agents may inspect records held by a transportation network company that are needed to investigate or resolve the complaint.

(c)(1) No more than annually as determined by regulation of the commission, the commission or its employees or duly authorized agents may in a mutually agreed upon setting inspect or, if inspection is not feasible, be provided copies of records required to be maintained by a transportation network company under this subchapter that are necessary to ensure public safety.

(2) The inspection of records under subdivision (c)(1) of this section shall be on an audit rather than a comprehensive basis.

(d)(1) Records obtained by the commission under this subchapter pertaining to transportation network company services, transportation network company drivers, or transportation network company drivers' motor vehicles:

(A) Are not subject to disclosure to a third party by the commission; and

(B) Are exempt from the Freedom of Information Act of 1967, § 25-19-101 et seq.

(2) Nothing in this subsection shall be construed as limiting the applicability of any other exemptions under the Freedom of Information Act of 1967, § 25-19-101 et seq., to any other records obtained by the commission under this subchapter.

23-13-719. Status of transportation network company drivers – Workers' compensation coverage.

(a) Notwithstanding any provision of law to the contrary, a transportation network company driver is an independent contractor and not the employee of the transportation network company if:

(1) The transportation network company does not prescribe specific hours during which a transportation network company driver must be logged into the transportation network company's website, digital platform, or software application;

(2) The transportation network company imposes no restrictions

on the transportation network company driver's ability to utilize a website, digital network, or software application of other transportation network companies;

(3) The transportation network company does not assign a transportation network company driver a particular territory in which transportation network company services may be provided;

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

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

(b) A transportation network company that complies with subsection (a) of this section is not required to provide workers' compensation coverage for a transportation network company driver that is classified as an independent contractor under this section.

23-13-720. Exclusive authority.

(a)(1) Transportation network companies and transportation network company drivers are governed exclusively by this subchapter and any rules promulgated by the Arkansas Public Service Commission consistent with this subchapter.

(2) This subchapter does not limit the Arkansas State Highway and Transportation Department, the Department of Arkansas State Police, the Attorney General, other state agencies, law enforcement, and local governments within this state from enforcing state and federal laws or regulations of general applicability that apply to transportation network companies and transportation network company drivers.

(b) A county, municipality, or other local entity shall not tax or license a transportation network company, a transportation network company driver, or a motor vehicle used by a transportation network company driver if the tax or license relates to providing transportation network company services or subjects a transportation network company to any type of rate, entry, operational, or other requirement of the county, municipality, or other local entity.

23-13-721. Penalties.

(a) The Arkansas Public Service Commission may levy a fine not to exceed:

(1) One thousand dollars (\$1,000) for a violation of this subchapter; and

(2) Five thousand dollars (\$5,000) for a knowing violation of this subchapter.

(b) To determine the amount of the fine, the commission shall consider relevant factors, including without limitation:

(1) The appropriateness of the penalty to the size of the business of the transportation network company charged with the violation;

(2) The severity of the violation;

(3) The good faith of the transportation network company charged with the violation in attempting to achieve compliance with this subchapter after being notified of the violation; and

(4) Any history of previous violations of this subchapter by the transportation network company charged with the violation.

23-13-722. Rules.

The Arkansas Public Service Commission may promulgate rules to implement this subchapter.

/s/Rapert

APPROVED: 04/04/2015