

H. B. 2736

(By Delegates J. Nelson, Howell, McGeehan, Householder, Hamrick, Ihle, Frich, Zatezalo, Moffatt, Reynolds and Sponaugle)

[Introduced February 13, 2015; referred to the

Committee on Roads and Transportation then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17 and §17-29-18, all relating to regulation of transportation network companies.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17 and §17-29-18, all to read as follows:

ARTICLE 29. TRANSPORTATION NETWORK COMPANIES.

§17-29-1. Definitions.

As used in this article:

(a) "Transportation Network Company" or "TNC" means an entity licensed pursuant to this

article and operating in West Virginia that uses a digital network or software application service to

1 connect passengers to Transportation Network Company services provided by transportation network
2 company drivers. A TNC is not deemed to own, control, operate or manage the vehicles used by
3 TNC drivers, and is not a taxicab association or a for-hire vehicle owner.

4 (b) "Transportation Network Company (TNC) Driver" means an individual who operates
5 a motor vehicle that is:

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

7 (2) Not a taxicab or for-hire vehicle; and

8 (3) Used to provide transportation network company services.

9 (c) "Transportation Network Company (TNC) Services" means transportation of a passenger
10 between points chosen by the passenger and prearranged with a TNC driver through the use of a
11 TNC digital network or software application. TNC services begin when a TNC driver accepts a
12 request for transportation received through the TNC's digital network or software application service,
13 continue while the TNC driver transports the passenger in the TNC driver's vehicle, and end when
14 the passenger exits the TNC driver's vehicle. TNC service is not a taxicab, for-hire vehicle or street
15 hail service.

16 **§17-29-2. Not other carriers.**

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

20 **§17-29-3. TNC permit required.**

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

1 **(b) The Division of Motor Vehicles shall issue a permit to each applicant that meets the**
2 **requirements for a TNC set forth in this article, and pays an annual permit fee of \$5,000 to the**
3 **Division of Motor Vehicles.**

4 **§17-29-4. Agent.**

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

6 **§17-29-5. Fare charged for services.**

7 A TNC may charge a fare for the services provided to passengers: *Provided*, That if a fare
8 is charged, the TNC shall disclose to passengers the fare calculation method on its website or within
9 the software application service. The TNC shall also provide passengers with the applicable rates
10 being charged and the option to receive an estimated fare before the passenger enters the TNC
11 driver's vehicle.

12 **§17-29-6. Identification of TNC vehicles and drivers.**

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

16 **§17-29-7. Electronic receipt.**

17 Within a reasonable period of time following the completion of a trip, a TNC shall transmit
18 an electronic receipt to the passenger that lists:

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

20 (b) The total time and distance of the trip; and

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

22 **§17-29-8. TNC and TNC driver insurance requirements.**

1 (a) On or before ninety days after the effective date of this article and thereafter, TNCs and
2 TNC drivers shall comply with the automobile liability insurance requirements of this section.

3 (b) The following automobile liability insurance requirements apply during the time that a
4 TNC driver is logged into the TNC's digital network and available to receive requests for
5 transportation but is not providing TNC services.

6 (1) Automobile liability insurance that meets at least the minimum coverage requirements
7 of section two, article four, chapter seventeen-d and subsection (b), section thirty-one, article six,
8 chapter thirty-three, both of this code.

9 (2) Automobile liability insurance in the amounts required in paragraph (1) of subsection (b)
10 shall be maintained by a TNC and provide coverage in the event a participating TNC driver's own
11 automobile liability policy excludes coverage according to its policy terms or does not provide
12 coverage of at least the limits required in paragraph (1) of subsection (b).

13 (c) The following automobile liability insurance requirements apply while a TNC driver is
14 providing TNC services:

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

17 (2) Provides automobile liability insurance of at least \$1 million for death, personal injury
18 and property damage;

19 (3) Provides uninsured motorist coverage as required by subsection (b), section thirty-one,
20 article six, chapter thirty-three of this code;

21 (4) The coverage requirements of this subsection (c) may be satisfied by any of the following:

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

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

2 (C) Any combination of subparagraphs (A) and (B).

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

7 (e) Insurance required by this section may be placed with an insurer authorized to do business
8 in the state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-
9 three of this code.

10 (f) Insurance required by this section shall be deemed to satisfy the financial responsibility
11 requirement for a motor vehicle under article four, chapter seventeen-d of this code.

12 **§17-29-9. TNC and insurer disclosure requirements.**

13 (a) The TNC shall disclose in writing to TNC drivers the following before they are allowed
14 to accept a request for TNC services on the TNC's digital network:

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

17 (2) That the TNC driver's own insurance policy may not provide coverage while the TNC
18 driver uses a vehicle in connection with a TNC's digital network depending on its terms.

19 (b) Insurers that write automobile liability insurance in West Virginia may:

20 (1) Exclude any and all coverage and the duty to defend afforded under the owner's insurance
21 policy for any loss or injury that occurs while an insured vehicle provides or is available to provide
22 TNC services, provided such exclusion is expressly set forth in the policy and approved for sale in

1 West Virginia. This right to exclude coverage and the duty to indemnify and defend may apply to
2 any coverage included in an automobile liability insurance policy including, but not limited to:

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

4 (B) Uninsured and underinsured motorist coverage;

5 (C) Medical payments coverage;

6 (D) Comprehensive physical damage coverage; and

7 (E) Collision physical damage coverage.

8 (2) Notify an insured after a loss, and within the time required by subdivision nine, section
9 four, article eleven, chapter thirty-three of this code, that the insurer has no duty to defend or
10 indemnify any person or organization for liability for a loss that is properly excluded pursuant to the
11 terms of the applicable primary or excess insurance policy.

12 (c) Insurers that write automobile liability insurance in West Virginia must disclose on its
13 application for insurance, in a prominent place, whether or not the insurance policy provides
14 coverage while an insured vehicle provides or is available to provide TNC services. If an automobile
15 liability insurance policy contains an exclusion for TNC services, the insurer or its agent must
16 disclose in writing the exact language of such exclusion to the applicant during the application
17 process.

18 (d) In a claims coverage investigation, TNC's and any insurer providing coverage under this
19 section shall cooperate to facilitate the exchange of information, including the precise times that a
20 TNC driver logged on and off of the TNC's digital network in the twenty-four hour period
21 immediately preceding the accident and disclose to one another a clear description of the coverage,
22 exclusions and limits provided under any insurance policy each party issued or maintained.

1 **§17-29-10. Zero tolerance for drug or alcohol use.**

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

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

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

13 **§17-29-11. TNC driver requirements.**

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

16 (1) Require the individual to submit an application to the TNC, which includes information
17 regarding his or her address, age, driver's license, driving history, motor vehicle registration,
18 automobile liability insurance, and other information required by the TNC;

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

21 (A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial
22 nationwide database with validation (primary source search); and

1 (B) National Sex Offender Registry database;

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

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

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

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

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

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

12 (5) Does not possess proof of registration for the motor vehicle(s) used to provide TNC
13 services;

14 (6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to
15 provide TNC services; or

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

17 **§17-29-12. Vehicle safety and emissions.**

18 The TNC shall require that any motor vehicle(s) that a TNC driver will use to provide TNC
19 Services to meet the inspection requirements of section four, article sixteen, chapter seventeen-c of
20 this code or the inspection requirements of the state in which the motor vehicle is registered.

21 **§17-29-13. No street hails.**

22 A TNC driver shall exclusively accept rides booked through a TNC's digital network or

1 software application service and may not solicit or accept street hails.

2 **§17-29-14. No cash trips.**

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

7 **§17-29-15. No discrimination; accessibility.**

8 (a) The TNC shall adopt a policy of nondiscrimination on the basis of destination, race, color,
9 national origin, religious belief or affiliation, sex, disability, age or sexual orientation/identity with
10 respect to passengers and potential passengers and notify TNC drivers of such policy.

11 (b) TNC drivers shall comply with all applicable laws regarding nondiscrimination against
12 passengers or potential passengers on the basis of destination, race, color, national origin, religious
13 belief or affiliation, sex, disability, age, sexual orientation, or gender identity.

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

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

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

22 **§17-29-16. Records.**

1 A TNC shall maintain:

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

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

5 **§17-29-17. Personally identifiable information.**

6 A TNC may not disclose a passenger's personally identifiable information to a third party
7 unless: The passenger consents, disclosure is required by a legal obligation, or disclosure is required
8 to protect or defend the terms of use of the service or to investigate violations of those terms. In
9 addition to the foregoing, a TNC is permitted to share a passenger's name and/or telephone number
10 with the TNC driver providing TNC services to such passenger in order to facilitate correct
11 identification of the passenger by the TNC driver, or to facilitate communication between the
12 passenger and the TNC driver.

13 **§17-29-18. Controlling authority.**

14 Notwithstanding any other provision of law, TNC's and TNC drivers are governed
15 exclusively by this article and any rules promulgated by the Division of Motor Vehicles consistent
16 with this article. No municipality or other local entity may impose a tax on, or require a license for,
17 a TNC or TNC driver or subject a TNC to the municipality or other local entity's rate, entry,
18 operational or other requirements.

NOTE: The purpose of this bill is to allow and regulate transportation network companies.

This article is new; therefore, it has been completely underscored.