

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 324

BY SENATORS WALTERS, BLAIR, BOSO, CARMICHAEL,
FERNS, GAUNCH, HALL, MULLINS, SYPOLT, TRUMP,
MILLER, PLYMALE AND PALUMBO

[Introduced January 19, 2016;

Referred to the Committee on Transportation and
Infrastructure; and then to the Committee on the Judiciary.]

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 authorizing transportation
5 network companies to operate in the state; providing definitions; declaring transportation
6 network companies and drivers are not common carriers or motor carriers; requiring permit
7 from Division of Motor Vehicles to operate a transportation network company; identifying
8 requirements for obtaining a permit; requiring an agent for service of process; authorizing
9 transportation network companies to charge a fare for services; requiring identification of
10 transportation network company vehicles and drivers; requiring an electronic receipt;
11 requiring automobile insurance; requiring disclosures from the transportation network
12 company to transportation network company drivers; allowing automobile insurers to
13 exclude certain coverages; defining the relationship between drivers and transportation
14 network companies; providing zero tolerance policy for alcohol or drug use while working
15 as a transportation network company driver; setting minimum requirements to become a
16 transportation network company driver; requiring transportation network company
17 vehicles to pass state inspection; prohibiting solicitation and street hails; prohibiting cash
18 payments; requiring a no cash payment policy; requiring policy of nondiscrimination;
19 requiring recordkeeping; and prohibiting local entity taxes or licenses.

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

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

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

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

22 "Transportation Network Company Rider" or "rider" means an individual or persons who
23 use a transportation network company's digital network to connect with a transportation network
24 driver who provides prearranged rides to the rider in the driver's personal vehicle between points
25 chosen by the rider.

26 "Prearranged ride" means the provision of transportation by a driver to a rider, beginning

27 when a driver accepts a ride requested by a rider through a digital network controlled by a
 28 transportation network company, continuing while the driver transports a requesting rider, and
 29 ending when the last requesting rider departs from the personal vehicle. A prearranged ride does
 30 not include:

31 (a) Transportation provided using a taxi, or other for-hire vehicle; or

32 (b) Ridesharing, as that term is defined in section one, article twenty-two, chapter
 33 seventeen-c of this code or any other type of arrangement or service in which the driver receives
 34 a fee that does not exceed the driver's costs associated with providing 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 the transportation network company's policy prohibiting solicitation
15 or 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 carrier shall disclose to the rider the fare calculation method on
4 its digital network. The transportation network company shall also provide riders with the
5 applicable rates being charged and the option to receive an estimated fare before the rider enters
6 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 digital network shall display a picture of the
2 transportation network company driver and the license plate number of the motor vehicle utilized
3 for providing the prearranged ride before the rider enters the transportation network company

4 driver's personal vehicle.

§17-29-7. Electronic receipt.

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

4 (a) The origin and destination of the prearranged ride;

5 (b) The total time and distance of the prearranged ride; and

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

§17-29-8. Financial responsibility of transportation network companies.

1 On or before July 1, 2016, and thereafter, a transportation network company driver or
2 transportation network company on the transportation network driver's behalf shall maintain
3 primary automobile insurance that:

4 (a) Recognizes that the driver is a transportation network company driver or otherwise
5 uses a vehicle to transport riders for compensation and covers the driver:

6 (1) While the driver is logged on to the transportation network company's digital network;

7 or

8 (2) While the driver is engaged in a prearranged ride.

9 (b) The following automobile insurance requirements apply while a participating
10 transportation network company driver is logged on to the transportation network company's
11 digital network and is available to receive transportation requests, but is not engaged in a
12 prearranged ride:

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

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

18 (c) The coverage requirements of subsection (b) of this section may be satisfied by any of
19 the following:

20 (1) Automobile insurance maintained by the transportation network company driver; or

21 (2) Automobile insurance maintained by the transportation network company; or

22 (3) Any combination of subparagraphs (1) and (2) of this subsection.

23 (d) The following automobile insurance requirements apply while a transportation network
24 company driver is engaged in a prearranged ride:

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

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

29 (e) The coverage requirements of this subsection (d) may be satisfied by any of the
30 following:

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

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

33 (C) Any combination of subparagraphs (A) and (B) of this subsection.

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

38 (g) Coverage under an automobile insurance policy maintained by the transportation
39 network company may not be dependent on a personal automobile insurer first denying a claim
40 nor may a personal automobile insurance policy be required to first deny a claim.

41 (h) Insurance required under this section may be placed with an insurer authorized to do
42 business in this state or with a surplus lines insurer eligible under section five, article twelve-c,
43 chapter thirty-three of this code.

44 (i) Insurance satisfying the requirements of this section shall be deemed to satisfy the
45 financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of
46 this code.

47 (j) A transportation network company driver shall carry proof of coverage satisfying
48 subsections (b) and eight (d) of this section with him or her at all times during his or her use of a
49 personal vehicle in connection with a transportation network company's digital network. In the
50 event of an accident, a transportation network company driver shall provide this insurance
51 coverage information to the directly interested parties, automobile insurers and investigating
52 police officers, upon request pursuant to section four, article two-a, chapter seventeen-d of this
53 code. Upon such request, a transportation network company driver shall also disclose to directly
54 interested parties, automobile insurers, and investigating police officers, whether he or she was
55 logged on to the transportation network company's digital network or on a prearranged ride at the
56 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 transportation network driver is logged on to a transportation network
4 company's digital network or while a transportation network driver provides a prearranged ride.
5 This right to exclude all coverage may apply to any coverage included in an automobile insurance
6 policy including, but not limited to:

7 (1) Liability coverage for bodily injury and property damage;

8 (2) Uninsured and underinsured motorist coverage,

9 (3) Medical payments coverage;

10 (4) Comprehensive physical damage coverage; and

11 (5) Collision physical damage coverage.

12 Such exclusions apply notwithstanding any requirement under article four, chapter seventeen-d
13 of this code. Nothing in this section implies or requires that a personal automobile insurance policy
14 provide coverage while the transportation network company driver is logged on to the
15 transportation network company's digital network, while the transportation network company
16 driver is engaged in a prearranged ride or while the transportation network company driver
17 otherwise uses a vehicle to transport passengers for compensation. Nothing shall be deemed to
18 preclude an insurer from providing coverage for the transportation network company driver's
19 personal vehicle, if it so chooses to do so by contract or endorsement.

20 (b) Automobile insurers that exclude the coverage described in section eight of this article
21 have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this
22 article invalidates or limits an exclusion contained in a policy, including any policy in use or
23 approved for use in this state prior to the enactment of this article that excludes coverage for
24 vehicles used to carry persons or property for a charge or available for hire by the public. An
25 automobile insurer that defends or indemnifies a claim against a transportation network company
26 driver that is excluded under the terms of its policy shall have a right of contribution against other

27 insurers that provide automobile insurance to the same transportation network company driver in
28 satisfaction of the coverage requirements of section eight of this article at the time of loss.

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

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

1 (a) Transportation network company drivers are independent contractors and not
2 employees of the transportation network 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 network;

6 (2) The transportation network company imposes no restrictions on the transportation
7 network company driver's ability to utilize digital networks 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 transportation network company driver is an independent contractor of the

15 transportation network company.

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

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

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

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

13 (c) The transportation network company shall maintain records relevant to the
14 enforcement of this requirement for a period of at least two years from the date that a rider
15 complaint is received by the transportation network company.

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

1 (a) Before allowing an individual to become a transportation network company driver and
2 accept prearranged ride requests through a transportation network company's digital network:

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 obtain, and review, a driving history
13 research report for such applicant.

14 (b) The transportation network company shall not permit an individual to act as a
15 transportation network company driver on its digital network 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, any felony, or misdemeanor of
20 driving under the influence, reckless driving, hit and run or any other misdemeanor driving-related
21 offense or any misdemeanor violent offense or sexual offense or more than three misdemeanors
22 of any kind;

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

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

25 (5) Does not possess proof of registration for the personal vehicle(s) used to provide
26 prearranged rides;

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

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

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

1 The transportation network company shall require any personal vehicle that a

2 transportation network company driver will use to provide transportation network company
3 prearranged rides to meet the inspection requirements of section four, article sixteen, chapter
4 seventeen-c of this code or the inspection requirements for a private motor vehicle of the state in
5 which the motor vehicle is 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.

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.

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

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

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

§17-29-18. Records.

1 A transportation network company shall maintain the following records:

2 (a) Prearranged ride records of each rider for at least two years from the date each
3 prearranged ride was provided; and

4 (b) Individual records of transportation network company drivers, as described in section
5 thirteen of this article, for at least two years after the transportation network company driver's
6 relationship with the transportation network company has ended.

§17-29-19. Controlling authority.

1 Notwithstanding any other provision of law, transportation network companies and
2 transportation network company drivers are governed exclusively by this article. No municipality
3 or other local entity may impose a tax on, or require a license for, a transportation network
4 company, a transportation network company driver, or a personal vehicle used by a transportation
5 network company driver where such tax or licenses relates to providing prearranged rides, or to
6 require a transportation network company driver to obtain a business license, or any type of
7 similar authorization to operate within the jurisdiction, or subject a transportation network
8 company or transportation network company driver to the municipality or other local entity's rate,
9 entry, operational or other requirements.

NOTE: The purpose of this bill is to allow transportation network companies to operate in this state.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.