

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 817 Transportation Network Companies

SPONSOR(S): Transportation & Ports Subcommittee; Gaetz

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Ports Subcommittee	9 Y, 3 N, As CS	Johnson	Vickers
2) Economic Affairs Committee		Johnson	Creamer

SUMMARY ANALYSIS

Currently, transportation network companies (TNC) are not referenced in state statutes, however, some local jurisdictions have enacted regulations regarding these entities. The bill preempts to the state the regulation of TNCs and creates a regulatory framework for the operation of TNCs. Specifically, the bill:

- Provides definitions.
- Provides that a TNC is not a common carrier and does not provide taxi or for-hire vehicle service.
- Provides that a TNC driver is not required to register his or her vehicle as a commercial vehicle or a for-hire vehicle.
- Requires a permit from the Department of Highway Safety and Motor Vehicles (DHSMV) to operate a TNC.
- Provides an annual registration fee for TNCs.
- Requires that TNCs that charge fares disclose the fare calculation.
- Requires TNCs to provide passengers with the applicable rates being charged and an option to receive an estimated fare.
- Requires the identification of vehicles and drivers.
- Requires an electronic receipt to be provided to TNC passengers.
- Provides minimum TNC and driver insurance requirements.
- Provides certain TNC and insurer disclosure requirements.
- Provides that TNC drivers are independent contractors under certain circumstances.
- Requires TNCs to have a zero tolerance policy for drug or alcohol use.
- Provides minimum requirements for TNC drivers.
- Prohibits certain conduct from TNC drivers.
- Requires TNCs to develop a policy on nondiscrimination and accessibility.
- Requires TNCs to maintain certain records for a minimum period of time.
- Authorizes DHSMV to adopt rules.

The bill has an indeterminate positive fiscal impact on DHSMV. The bill may have an indeterminate, but positive fiscal impact on the Florida Department of Law Enforcement (FDLE) due to background checks being conducted on TNC drivers. The bill has a potential negative fiscal impact on local governments that are currently collecting fees from TNCs.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 316, F.S., is the Florida Uniform Traffic Control Law, which is intended to make uniform traffic laws apply throughout the state. Provisions in Ch. 316, F.S., relate to, but are not limited to, traffic laws, traffic infraction detectors, parking regulations, and driving under the influence.

Currently, the majority of taxi and limousine regulation in the State of Florida is controlled by local governments. Florida law currently provides the following requirements relating to limousines and taxis:

- Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, up to \$250,000 per incident for bodily injury, and \$50,000 for property damage;¹
- An owner or lessee who is required to maintain insurance under s. 324.021(9)(b), F.S., and who operates at least 300 taxicabs, limousines, jitneys, or any other for-hire passenger vehicles is authorized to fulfill the requirement through self-insurance as provided by s. 324.171, F.S.;²
- With respect to workers' compensation an "employee" is not a taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues;³
- The child restraint requirements imposed by s. 316.613, F.S., do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation; and
- To the extent not inconsistent with general or special law, the legislative and governing body of a county must have the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county; except that any constitutional charter county as defined in s. 125.011(1), F.S.,⁴ must on July 1, 1988, have been authorized to have issued a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, must be issued by lottery among individuals with such experience as a taxi driver as the county may determine.

For-hire vehicle services are undergoing changes with respect to models most often associated with the provision of transportation to individuals, such as by taxi. Technological advances are resulting in new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Some states and local governments have taken steps to recognize and regulate companies using these new technologies, which describe themselves as "transportation network companies" (TNCs) and not vehicles for hire.

¹ S. 324.032(1), F.S.

² S. 324.032(2), F.S.

³ S. 440.02, F.S.

⁴ "County" means any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions must include "board of county commissioners" of such county.

California was the first state to recognize TNCs,⁵ such as Uber, Lyft, and SideCar, which use these new methods to match drivers of vehicles with passengers requesting vehicles for transportation. Currently, Florida law does not recognize TNCs, but some local governments have addressed the issue of regulating TNCs. The discussion below summarizes the status of local government regulatory actions in selected jurisdictions:

- Broward County-Set a final voting date of April 14, 2015, to vote on TNC regulations.
- Duval County-TNC drivers have been issued legal citations and the city council was considering impounding the vehicles of repeat offenders.
- Hillsborough County-TNCs and the Hillsborough County Public Transportation Commission have attempted to work out an agreement allowing TNCs to operate legally. However, no agreement has been reached.
- Orlando-Recently adopted regulations regarding the operation of TNCs.
- Palm Beach County-Reached an interim agreement with a TNC allowing it to operate through September 2015.
- Panama City Beach-The city maintains that TNCs fall under the city's vehicle for hire regulations.
- Miami-Dade County-Continues working toward a new ordinance regulating TNCs.
- Tallahassee-A TNC driver is only required to register with the police department as a vehicle for hire.

Proposed Changes

The bill creates s. 316.830, F.S., relating to transportation network companies. The bill preempts the licensure and regulation of TNCs to the state. Additionally, the bill creates a regulatory framework that would govern the operation of TNCs in this state.

Definitions

The bill provides the following definitions:

- Transportation Network Company or Company-an entity granted a permit under s. 316.680, F.S., to operate in this state using a digital network or software application service to connect passengers to TNC service provided by drivers. A company is not deemed to own, control, operate, or manage the vehicles used by drivers; is not deemed to control or manage drivers; and is not a taxicab association or for-hire vehicle owner. A transportation network company does not include an individual, corporation, partnership, sole proprietorship, or other entity arranging non-emergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or managed care organization.
- Transportation Network Company Driver or Driver-an individual who:
 - Receives connections to potential passengers and related services from a TNC in exchange for payment of a fee to the TNC; and
 - Operates a motor vehicle that is:
 - Owned, leased, or otherwise authorized for use by the individual;
 - Not a taxi, jitney, limousine, or for hire vehicle as defined in s. 320.01(15), F.S.;and

⁵ See Forbes, *California Becomes First State to Regulate Ridesharing Services Lyft, Sidecar, UberX*: <http://www.forbes.com/sites/tomiogeron/2013/09/19/california-becomes-first-state-to-regulate-ridesharing-services-lyft-sidecar-uberx/>. (Last visited March 4, 2015).

⁶ Section 320.01(15), F.S. defines "For-hire vehicle" as any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." The following are not included in the term "for-hire vehicle": a motor vehicle used for

- Used to provide TNC service.
- Transportation Network Company Service-the transportation of a passenger between points chosen by the passenger and prearranged with a driver through the use of a company digital network or software application service. Service begins when a driver accepts a request for transportation received through the company's digital network or software application service, continues while the driver transports the passenger in the driver's vehicle, and ends when the passenger exits the driver's vehicle. The term does not include a taxi, for-hire vehicle, or street hail service.
- Trip-The duration of TNC service beginning at the point of origin where the passenger enters the driver's vehicle and ending at a point of destination where the passenger exits the vehicle.

Not Common Carriers

The bill provides that a TNC or its driver is not a common carrier and does not provide taxi or for-hire vehicle service. Additionally, a TNC driver shall not be required to register the vehicle used for TNC service as a commercial vehicle or a vehicle for hire.

Permit Required

The bill requires a person to obtain a permit from the Department of Highway Safety and Motor Vehicles (DHSMV) to operate a TNC in the state.

DHSMV is required to issue a permit to each applicant meeting the TNC requirements and paying DHSMV an annual permit fee of \$5,000.

Agent for Service of Process Required

The bill requires each TNC to designate and maintain an agent for service of process in the state.

Fare Collected for Services

The bill authorizes TNCs on behalf of the driver, to collect a fare for services provided to passengers, provided that, if a fare is collected from a passenger, the TNC is required to disclose to passengers the fare calculation method on its website or within its software application. The company is also required to provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the driver's vehicle.

Identification of Vehicles and Drivers

The bill requires the company's software application to display a picture of the driver and the license plate number of the motor vehicle used to provide TNC service before the passenger enters the driver's vehicle.

Electronic Receipt

The bill requires the TNC, within a reasonable period of time after the completion of a trip, to be determined by DHSMV, to provide the passenger an electronic receipt, which lists:

- The origin and destination of the trip.
- The total time and distance of the trip.
- An itemization of the total fare paid.

TNC and Driver Insurance Requirements

transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; or a motor vehicle not exceeding 11/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes."

The bill provides that beginning October 1, 2015, TNCs and their drivers must comply with the prescribed automobile liability insurance requirements.

When a TNC driver is logged into the TNC's digital network and available to receive requests for transportation, but is not providing TNC service, the following automobile liability insurance requirements apply:

- Automobile liability insurance that meets at least the minimum coverage requirements under s. 324.021(7)(a)-(c), F.S. This subsection requires proof to respond to damages in the event of a motor vehicle crash in the amounts of:
 - \$10,000 because of bodily injury to, or death of, one person in any one crash;
 - \$20,000 because of bodily injury to, or death of, two or more persons in any one crash; and
 - \$10,000 because of injury to, or destruction of, property of others in any one crash.
- Automobile liability insurance that provides the minimum coverage requirements required by a limousine by the Florida Motor Vehicle No-Fault Law.⁷ Pursuant to s. 627.733(1)(a), F.S., limousines are exempt from this law.

A TNC shall maintain automobile liability insurance in the amount required above and shall provide coverage in the event a participating driver's own automobile liability policy excludes coverage according to its policy terms and limits or does not provide coverage for the minimum requirements above.

When a driver is providing TNC service, the following automobile liability insurance requirements apply:

- Automobile liability insurance that recognizes the driver's provision of TNC service.
- Automobile liability insurance of at least \$1 million for death, personal injury, and property damage.
- Automobile liability insurance that provides the minimum coverage requirements where required for a limousine by the Florida Motor Vehicle No Fault Law.

The coverage requirements above may be satisfied by:

- Automobile liability insurance maintained by the driver;
- Automobile liability insurance maintained by the TNC; or
- A combination of coverage maintained by the driver and the TNC.

If the insurance maintained by the driver has lapsed, failed to provide the required coverage, denied a claim for the required coverage, or otherwise ceased to exist, insurance maintained by the TNC shall provide the coverage required beginning with the first dollar of the claim.

The required insurance may be placed with an insurer authorized to do business in the state or with a surplus lines insurer eligible under the Surplus Lines Law.⁸

A TNC or driver may prove financial responsibility⁹ by providing satisfactory evidence of holding an automobile liability policy.

TNC and Insurer Disclosure Requirements

The bill requires the TNC to disclose in writing to drivers before drivers are allowed to accept a request for TNC service on the company's digital network the following:

- The insurance coverage limits of liability that the company provides when the driver uses a personal vehicle in connection with a TNCs digital network.

⁷ Sections 627.730 through 627.7405, F.S.

⁸ SS. 626.913-626.937, F.S.

⁹ This is under Ch. 324, F.S. and s. 627.733, F.S.

- That the driver's personal insurance policy may not provide coverage while the driver uses a vehicle in connection with a TNC's digital network depending on its terms.

An insurer that provides automobile liability insurance policies under part XI of Ch. 627, F.S.,¹⁰ may:

- Exclude any and all coverage and the duty to defend the owner's insurance policy for a loss or injury that occurs while an insured vehicle provides or is available to provide TNC service, if such exclusion is expressly set forth in the policy and approved for sale in the state. This right to exclude coverage and the duty to indemnify and defend applies to any coverage included in an automobile insurance policy, including, but not limited to:
 - Liability coverage for bodily injury and property damage.
 - Uninsured and underinsured motorist coverage.
 - Comprehensive physical damage coverage.
 - Collision physical damage coverage.
 - Personal injury protection.

The insurer is required to notify the insured within 30 days after receiving a notice of loss that the insurer has no duty to defend or indemnify any person or organization for liability for a loss that is properly excluded pursuant to the terms of the applicable primary or excess insurance policy.

An insurer that provides automobile liability insurance in the state must disclose in a prominent place on its application for insurance whether the insurance policy provides coverage for an insured vehicle providing or available to provide TNC service. If an automobile liability insurance policy contains an exclusion for TNC service, the insurer or its agent must disclose in writing the exact language of such exclusion to the applicant during the application process.

In a claims coverage investigation, TNCs and any insurer providing coverage under s. 316.680, F.S., shall cooperate to facilitate the exchange of information, including the precise times that a driver logged on and off the TNC's digital network in the 24-hour period immediately preceding the accident and disclose to one another a clear description of the coverage, exclusions, and the limits provided under the insurance policy each party issued or maintained.

Drivers as Independent Contractors

The bill provides that a TNC driver is an independent contractor and is not an employee of the TNC if all of the following conditions are met:

- The TNC does not prescribe specific hours during which a driver must be logged into the TNCs digital platform;
- the TNC imposes no restrictions on the driver's ability to utilize digital platforms from other companies;
- the TNC does not assign a driver a particular territory in which TNC services can be provided;
- the TNC does not restrict a driver from engaging in any other occupation or business; and
- the TNC and driver agree in writing that the driver is an independent contractor of the TNC.

Zero Tolerance for Drug and Alcohol Use

The bill requires TNCs to implement a zero tolerance policy on the use of drugs or alcohol by a driver who is providing TNC service or who is logged into the TNC's digital network but is not providing service.

The TNC is required to provide notice on its website of its zero tolerance policy and provide procedures for a passenger to file a complaint about a driver who a passenger reasonably suspects was under the influence of drugs or alcohol during the course of a trip.

¹⁰ Part XI of Ch. 627, F.S., relates to motor vehicle property and casualty insurance contracts.

Upon receiving a passenger complaint alleging a violation of the zero tolerance policy, the TNC is required to immediately suspend the accused driver's access to its digital platform and shall investigate the reported incident. The suspension lasts the duration of the investigation.

The company is required to maintain records of a passenger complaint for at least two years after the date the complaint is received by the TNC.

TNC Driver Requirements

Prior to allowing a person to act as a driver on its digital platform, a TNC shall:

- Require the person to submit an application, including his or her address, date of birth, driver license number, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC.
- Conduct, or have a third party conduct, a state and national criminal background check for each applicant to include:
 - The Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial national database with validation.
 - The Dru Sjodin National Sex Offender Public Website.
- Obtain and review a driving history research report on the person.

The TNC is required to prohibit a person to act as a driver on its digital platform if the person:

- Has had more than three moving violations in the preceding 3-year period or one major violation in the preceding 3-year period. A major violation includes, but is not limited to, fleeing or attempting to elude a law enforcement officer, reckless driving, or driving with a suspended or revoked license;
- 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;
- Is a match in the Dru Sjodin National Sex Offender Public Website;
- Does not possess a valid driver license;
- Does not possess proof of registration for the motor vehicle used to provide TNC service;
- Does not possess proof of automobile liability insurance for the motor vehicle used to provide TNC service; or
- Has not attained the age of 19 years.

Vehicle Safety and Emissions

The bill requires TNCs to require that a motor vehicle used to provide TNC service meets the vehicle safety standards and emissions requirements for a private motor vehicle of the state in which the vehicle is registered.

Prohibited Conduct

The bill prohibits a driver from:

- Accepting a ride other than a ride arranged through the TNCs digital network or software application service.
- Soliciting or accepting street hails.
- Soliciting or accepting cash payment for passengers. TNCs are required to adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify drivers of the policy. The policy must require a payment for TNC service to be made electronically using the TNCs digital network or software application service.

Nondiscrimination and Accessibility

The bill requires TNCs to adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to passengers and potential passengers and shall notify drivers of such policy.

Drivers are required to comply with the TNC's nondiscrimination policy.

Drivers are required to comply with all applicable laws relating to the accommodation of service animals.

The bill prohibits a company from imposing additional charges for providing TNC service to persons with physical disabilities because of those disabilities.

TNCs are required to provide passengers with the opportunity to indicate whether they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible service, the TNC is required to direct the passenger to an alternative provider of wheelchair-accessible service, if available.

Records

A TNC is required to maintain:

- Individual trip records for at least one year after the date each trip was provided.
- Driver records for at least one year after the date on which a driver's activation on the TNC's digital network has ended.

Preemption

The bill provides that it is the intent of the Legislature to provide for uniformity of laws governing TNCs and TNC drivers throughout the state. Notwithstanding any other provision of law, TNCs and their drivers are governed exclusively by s. 316.680, F.S., and any DHSMV rules adopted to administer s. 316.680, F.S. A county, municipality, special district, or other local governmental entity or subdivision may not impose a tax on, or require a license for, a TNC or a driver, or a vehicle used by a TNC driver which such tax or license relates to providing TNC services, or subject a TNC to a county's, municipality's, special district's, or other local governmental entity's or subdivision's rate, entry, operational, or other requirements.

Rulemaking

The bill authorizes DHSMV to adopt rules to administer s. 316.680, F.S.

Effective Date

The bill has an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1 Creates s. 316.680, F.S., relating to transportation network companies.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The bill will provide a positive fiscal impact to DHSMV. The bill requires TNCs to pay an annual permit fee of \$5,000 to DHSMV.

The bill may have an unknown positive fiscal impact on the Florida Department of Law Enforcement (FDLE) for the background check fees. However, it is unknown how many background checks will need to be obtained. The current cost for a state record check through FDLE is \$24.

The Revenue Estimating Conference has not officially estimated the impact at this time.

2. Expenditures:

DHSMV may incur some expenses associated with regulating TNCs.

FDLE may incur some expenditures associated with conducting background checks on TNC drivers. However, it is unknown how many individuals would require background checks.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill preempts to the state the regulation of TNCs. To the extent municipalities and other local governmental entities are imposing fees on TNCs, they will experience a negative fiscal impact.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

TNCs may see a reduced cost associated with statewide regulation instead of regulation at the local government level.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill preempts to the state the regulation of transportation network companies; however, an exception applies since it applies to similarly situated persons, including special districts regulating transportation network companies. If the provision applies, the bill will require a two-thirds vote.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DHSMV to adopt rules administering the regulation of TNCs.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

According to FDLE, the language in the bill does not qualify under P.L. 92-544 to obtain a national background check through the Federal Bureau of Investigation (FBI) as the bill does not require TNCs to submit electronic fingerprints to the FBI via FDLE. Although the state, through DHSMV, will issue permits for TNCs, the TNCs themselves will conduct and review the results of the required criminal history screening. TNCs are not identified as care providers under s. 943.0542, F.S., so a national records check through the FBI is precluded on that basis as well.

If TNC's only perform state-level criminal history record checks, it is permissible under s. 943.053(12), F.S., for the TNC to obtain criminal history information using a third party to conduct the background check. However, s. 943.053(12), F.S., requires that "such Florida criminal history may be provided by a private vendor only if that information is directly obtained from the [FDLE] for each request."

Thus, the bill would require a TNC to conduct or have a third-party conduct a state criminal history background check. Either way, by virtue of s. 943.053(12), F.S., the background check would need to include an FDLE check. However, the bill would prevent any use of the national criminal history database accessed through the FBI.¹¹

The bill provides that TNCs must maintain the level of coverage required for limousines under the Florida Motor Vehicle No-Fault Law. However, limousines are exempt from that law. This may exempt TNC drivers from this coverage requirement under certain circumstances.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Transportation & Ports subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the definitions of “transportation network company” and “transportation network company driver.”
- Provided that TNC drivers are not required to register their vehicles as commercial or for-hire vehicles.
- Revised provisions regarding fare collection.
- Revised provisions regarding TNC insurance.
- Provided that TNC drivers are independent contractors under certain circumstances.
- Revised provisions regarding the preemption of TNC service to the state.

This analysis is drafted to the committee substitute.

¹¹ FDLE Bill Analysis of HB 817. Copy on file with the Transportation & Ports Subcommittee.
STORAGE NAME: h0817b.EAC
DATE: 3/24/2015