

CHAPTER 374
FORMERLY
SENATE BILL NO. 262
AS AMENDED BY
SENATE AMENDMENT NOS. 4 & 5

AN ACT TO AMEND TITLE 2 OF THE DELAWARE CODE RELATING TO TRANSPORTATION NETWORK COMPANIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend Title 2 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 19. Transportation networks.

§ 1901. Definitions. As used in this Chapter:

As used in this Chapter:

(a) "Personal Vehicle" means a vehicle that is used by a Transportation Network Company Driver and is:

(1) Owned, leased or otherwise authorized for use by the Transportation Network Company Driver; and

(2) Not a taxicab, limousine, or public carrier as defined in Chapter 18 of this Title.

(b) "Digital Network" means any online-enabled technology application service, website or system offered or utilized by a Transportation Network Company that enables the prearrangement of rides with Transportation Network Company Drivers.

(c) "Transportation Network Company" or TNC means a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this Chapter and operating in Delaware that uses a Digital Network to connect Transportation Network Company Riders to Transportation Network Company Drivers who provide Prearranged Rides. A Transportation Network Company shall not be deemed to control, direct or manage the Personal Vehicles or Transportation Network Company Drivers that connect to its Digital Network, except where agreed to by written contract. Transportation network company does not include a transportation broker arranging nonemergency medical transportation for Medicaid or Medicare members pursuant to a contract with the State or a managed care organization.

(d) "Transportation Network Company Driver" or "TNC Driver" means an individual who:

(1) Receives connections to potential passengers and related services from a Transportation Network Company in exchange for payment of a fee to the Transportation Network Company; and

(2) Uses a Personal Vehicle to offer or provide a Prearranged Ride to riders upon connection through a Digital Network controlled by a Transportation Network Company in return for compensation or payment of a fee.

(e) "Transportation Network Company Rider" or "rider" means an individual or persons who use a Transportation Network Company's Digital Network to connect with a Transportation Network Company Driver who provides Prearranged Rides to the rider in the TNC Driver's Personal Vehicle between points chosen by the rider.

(f) "Prearranged Ride" means the provision of transportation by a TNC Driver to a rider, beginning when a TNC Driver accepts a ride requested by a rider through a Digital Network controlled by a Transportation Network Company, continuing while the TNC Driver transports a requesting rider, and ending when the last rider departs from the Personal Vehicle. A Prearranged Ride does not include:

(1) transportation provided using a taxicab, limousine, or other public carrier pursuant to Chapter 18 of this Title; or

(2) a shared expense carpool or vanpool arrangement; or

(3) a regional transportation provider.

§ 1902. Not other carriers.

TNCs or TNC Drivers are not public carriers, as defined in Chapter 18 of this title, nor do they provide taxicab or limousine service. A TNC Driver shall not be required to register with any state or local agency the vehicle such TNC Driver uses to provide Prearranged Rides as a commercial or public carrier vehicle. A TNC Driver shall also not be required to obtain a Delaware business license from the Delaware Division of Revenue.

§1903. TNC permit required.

(a) A person shall not operate a TNC in Delaware without first having obtained a permit from the Delaware Department of Transportation, Delaware Transit Corporation (“Division”).

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

§ 1904. Agent and registration requirements.

(a) The TNC must maintain an agent for service of process in the State of Delaware.

(b) The TNC must file with the Delaware Secretary of State Articles of Incorporation or Foreign Articles of Incorporation and must meet all applicable business licensure requirements under the Delaware Code and Delaware Division of Revenue’s regulations

§ 1905. Fare collected for services.

On behalf of a TNC Driver, a TNC may charge a fare for the services provided to riders; provided that, if a fare is collected from a rider, the TNC shall disclose to the rider the fare or fare calculation method on its website or within the online-enabled technology application service. The TNC shall also provide riders with the option to receive an estimated fare before the rider enters the TNC Driver’s vehicle.

§ 1906. Identification of TNC vehicles and TNC Drivers and customer service.

(a) The TNC’s online-enabled technology application service or website shall display a picture of the TNC Driver, and the license plate number of the motor vehicle utilized for providing the Prearranged Ride, before the rider enters the TNC Driver’s vehicle.

(b) A TNC Driver must display on their vehicle at all times while logged into a TNC’s digital platform, a sign, emblem, or logo that can sufficiently identify the vehicle as being associated with the TNC or its associated digital platform.

(c) A TNC must provide a customer support telephone number, email address, or hyperlink on its digital application or website.

§ 1907. Electronic receipt.

Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the rider on behalf of the TNC Driver that lists:

(a) The origin and destination of the trip;

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

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

§ 1908. Financial responsibility of Transportation Network Companies.

On or before the effective date of this Act and thereafter, a Transportation Network Company Driver or Transportation Network Company on the TNC Driver’s behalf shall maintain primary automobile insurance that:

(a) Recognizes that the TNC Driver is a Transportation Network Company Driver or otherwise uses a vehicle to transport passengers for compensation and covers the TNC Driver in both of the following two circumstances:

(1) while the TNC Driver is logged on to the Transportation Network Company’s Digital Network; and

(2) while the TNC Driver is engaged in a Prearranged Ride.

(b) The following automobile insurance requirements shall apply while a participating Transportation Network Company Driver is logged on to the Transportation Network Company's Digital Network and is available to receive transportation requests but is not engaged in a Prearranged Ride:

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

(2) Personal injury protection benefits that meet the minimum coverage amounts where required by § 2118 of Title 21 of the Delaware Code;

(3) The coverage requirements of this subsection (b) may be satisfied by any of the following:

a. Automobile insurance maintained by the Transportation Network Company Driver; or

b. Automobile insurance maintained by the Transportation Network Company; or

c. Any combination of subparagraphs a. and b.

(c) The following automobile insurance requirements shall apply while a Transportation Network Company Driver is engaged in a Prearranged Ride:

(1) Primary automobile liability insurance that provides at least \$1,000,000 for death, bodily injury and property damage;

Minimum coverage amounts where required by § 2118 of Title 21 of the Delaware Code and Section 3902 of Title 18.

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

a. Automobile insurance maintained by the Transportation Network Company Driver; or

b. Automobile insurance maintained by the Transportation Network Company; or

c. Any combination of subparagraphs a. and b.

(d) If insurance maintained by TNC Driver in subsections (b) or (c) has lapsed or does not provide the required coverage, insurance maintained by a Transportation Network Company shall provide the coverage required by c beginning with the first dollar of a claim and have the duty to defend such claim.

(e) Coverage under an automobile insurance policy maintained by the Transportation Network Company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(f) Insurance required by § 1908 may be placed with an insurer licensed under Delaware law or with a surplus lines insurer eligible under 18 Del. C. § 1912 that has a credit rating of no less than “A-” from A.M. Best or “A” from Demotech or similar rating from another rating agency recognized by the Department of Insurance.

(g) Insurance satisfying the requirements of § 1908 shall be deemed to satisfy the financial responsibility requirements of Chapter 29 of Title 21 of the Delaware Code.

(h) A Transportation Network Company Driver shall carry digital or physical proof of coverage satisfying § 1908(b) and § 1908 (c) with him or her at all times during his or her use of a vehicle in connection with a Transportation Network Company’s Digital Network. In the event of an accident, a Transportation Network Company Driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request. Upon such request, a Transportation Network Company Driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether he or she was logged on to the Transportation Network Company’s Digital Network or on a Prearranged Ride at the time of an accident.

(i) As part of the permit application under Section 1903, a TNC shall file with the Division certificates of insurance showing that it maintains insurance that meets the requirements of subsection (d) of this Section.

§ 1909. Disclosures.

(a) The Transportation Network Company shall disclose in writing to Transportation Network Company Drivers the following before they are allowed to accept a request for a Prearranged Ride on the Transportation Network Company’s Digital Network:

(1) The insurance coverage, including the types of coverage and the limits for each coverage, that the Transportation Network Company provides while the Transportation Network Company Driver uses a Personal Vehicle in connection with a Transportation Network Company’s Digital Network; and

(2) That the Transportation Network Company Driver’s own automobile insurance policy might not provide any coverage while the TNC Driver is logged on to the Transportation Network Company’s Digital Network and is available to receive transportation requests or is engaged in a Prearranged Ride, depending on its terms.

(b) A transportation network company shall make the following disclosure to a TNC Driver in the TNC Driver's terms of service: 'If the vehicle with which you provide transportation network company services has a lien against it, you must notify the lienholder that you provide transportation network company services with such vehicle. Providing such transportation network company services may violate the terms of your contract with the lienholder.

§ 1910. Automobile insurance provisions.

(a) Insurers that write automobile insurance in Delaware may exclude any and all coverage afforded under the policy issued to an owner or operator of a Personal Vehicle for any loss or injury that occurs while a TNC Driver is logged on to a Transportation Network Company's Digital Network or while a TNC Driver provides a Prearranged Ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:

- (1) Liability coverage for bodily injury and property damage;
- (2) Personal injury protection benefits as required by §2118 of Title 21 of the Delaware Code and §3902 of Title 18 of the Delaware Code;
- (3) Uninsured and underinsured motorist;
- (4) Medical payments coverage;
- (5) Comprehensive physical damage coverage; and
- (6) Collision physical damage coverage.

Such exclusions shall apply notwithstanding any requirement under Chapters 21 and 29 of Title 21 of the Delaware Code.

Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the TNC Driver is logged on to the Transportation Network Company's Digital Network, while the TNC Driver is engaged in a Prearranged Ride or while the TNC Driver otherwise uses a vehicle to transport passengers for compensation.

Nothing in this Chapter shall be construed as to require an insurer to use any particular policy language or reference to this Section in order to exclude any and all coverage for any loss or injury that occurs while a TNC Driver is logged on to a Transportation Network Company's Digital Network or while a TNC Driver provides a Prearranged Ride.

Nothing shall be deemed to preclude an insurer from providing primary or excess coverage for the Transportation Network Company Driver's vehicle, if it so chose to do so by contract or endorsement.

(b) Automobile insurers that exclude the coverage described in § 1908 shall have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this Chapter shall be deemed to invalidate or limit an exclusion contained in a policy including any policy in use or approved for use in Delaware prior to the enactment of this Chapter that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public.

An automobile insurer that defends or indemnifies a claim against a TNC Driver that is excluded under the terms of its policy, shall have a right of contribution against other insurers that provide automobile insurance to the same TNC Driver in satisfaction of the coverage requirements of § 1908 at the time of loss.

(c) In a claims coverage investigation, Transportation Network Companies shall immediately provide upon request by directly involved parties or any insurer of the Transportation Network Company Driver if applicable, the precise times that a Transportation Network Company Driver logged on and off of the Transportation Network Company's Digital Network in the twelve hour period immediately preceding and in the twelve hour period immediately following the accident. Insurers providing coverage set forth under § 1908 shall disclose upon request by any other such insurer involved in the particular claim, the applicable coverages, exclusions and limits provided under any automobile insurance maintained under § 1908 in order to satisfy the requirements.

(d) If a lender or a secured party has a secured interest in a TNC Driver's vehicle and a transportation network company's insurer makes a payment for a claim for damage to the TNC Driver's vehicle that is covered under comprehensive or collision damage coverage held by the transportation network company, the insurer shall

issue the payment directly to the vehicle repair shop or jointly to the owner of the vehicle and the primary lender or secured party on the covered vehicle.

(e) Nothing in this section shall limit the right of a lender or secured party of a TNC Driver's vehicle to require a TNC Driver to maintain comprehensive, collision damage coverage, or both for a TNC Driver's vehicle, or to show evidence of such coverage to the lender or secured party, that would cover the period when the TNC Driver is logged on to the transportation network company's digital network but is not engaged in a prearranged ride or when the TNC Driver is engaged in a prearranged ride. If the TNC Driver fails to maintain the required comprehensive or collision damage coverage, or to show evidence to the lender or secured party of the coverage upon reasonable request by the lender or secured party, the lender or secured party may obtain the coverage at the expense of the TNC Driver

§ 1911. Limitation on TNCs.

Notwithstanding any other provision of law, TNC Drivers shall be independent contractors and not employees of the TNC if all of the following conditions are met:

(a) The TNC does not prescribe specific hours during which a TNC Driver must be logged into the TNC's digital platform;

(b) The TNC imposes no restrictions on the TNC Driver's ability to utilize digital platforms from other TNCs;

(c) The TNC does not assign a TNC Driver a particular territory in which to operate;

(d) The TNC does not restrict a TNC Driver from engaging in any other occupation or business; and

(e) The TNC and TNC Driver agree in writing that the TNC Driver is an independent contractor of the TNC.

§ 1912. Zero tolerance for drug or alcohol use.

(a) The TNC shall implement a zero tolerance policy regarding a TNC Driver's activities while accessing the TNC's digital platform. The zero tolerance policy shall address the use of drugs or alcohol while a TNC Driver is providing Prearranged Rides or is logged into the TNC's Digital Network but is not providing Prearranged Rides, and the TNC shall provide notice of this policy on its website, as well as procedures to report a complaint about a TNC Driver with whom a rider was matched and whom the rider reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of such rider complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend such TNC Driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last, at a minimum, the duration of the investigation.

(c) The TNC shall maintain records relevant to the enforcement of this requirement for a period of at least two (2) years from the date that a rider complaint is received by the TNC.

§ 1913. TNC Driver requirements.

(a) Before allowing an individual to accept trip requests through a TNC's digital platform:

(1) The individual shall submit to the TNC information or documents from which a TNC can verify that the individual satisfies the requirements set forth in paragraphs (b)(5)-(8) of this section.

(2) The TNC shall conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

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

b. U.S. Department of Justice National Sex Offender Public Website;

(3) The TNC shall review, or have a third party review, a driving history research report for such individual.

(b) The TNC must disqualify any prospective TNC Driver whose background check or driving history reveals that he or she:

(1) Within the prior three year period was convicted of:

a. More than three moving violations,

b. Driving while license is suspended or revoked under § 2756 of Title 21 of the Delaware Code,

c. Attempting to flee or elude a police officer under § 4103 of Title 21 of the Delaware Code, or

d. Offenses which caused his or her license to be suspended, revoked, or disqualified for moving violations.

(2) Has been convicted, within the past seven years, of:

a. Any felony; or

b. Misdemeanor driving under the influence, reckless driving or hit and run, or any misdemeanor violent offense or sexual offense; or

c. Speeding more than 100 miles per hour.

(3) Has ever been convicted, within the maximum allowable time period for which convictions may be reviewed under applicable state law, of:

a. An offense classified as a Class A or violent Class B felony;

b. Any crime against a child

c. Any crime constituting a felony sexual offense

d. Any crime constituting a felony homicide, including, but not limited to, murder, manslaughter, and vehicular homicide;

(4) Is a match in the U.S. Department of Justice National Sex Offender Public Website;

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

(6) Does not possess proof of registration for the motor vehicle(s) used to provide prearranged rides;

(7) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide prearranged rides; or

(8) Is not at least 18 years of age.

(c) A TNC or a third party must check, at least annually, the driving record of every TNC Driver operating on the TNC's platform in order to verify that the TNC Driver has not accrued any moving violations that would require disqualification under subsection (b)(1) of this section.

§ 1914. Vehicle safety.

The TNC shall verify on an annual basis that:

(a) each TNC Vehicle registered in Delaware that is required to pass a safety inspection for registration has a valid vehicle registration, which serves as proof that the vehicle passed its most recent safety inspection; and

(b) each TNC Vehicle with over 10,000 miles that is registered in another state has passed a motor vehicle safety inspection authorized or approved by a state government agency for personal vehicles; provided that, the initial safety inspection for a vehicle used by a new TNC Driver may be conducted within 90 days of beginning service.

§ 1915. No street hails.

A TNC Driver shall not solicit or accept street hails.

§ 1916. No cash trips.

The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from riders and notify TNC Drivers of such policy. TNC Drivers shall not solicit or accept cash payments from riders for fares. Any payment for Prearranged Rides shall be made only electronically using the TNC's Digital Network or online-enabled technology application service.

§ 1917. No discrimination; accessibility.

(a) The TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to riders and potential riders and notify TNC Drivers of such policy.

(b) TNC Drivers shall comply with all applicable laws regarding non-discrimination against riders or potential riders on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.

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

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

§ 1918. Records.

A TNC, or a third party on the TNC's behalf, shall maintain the following customer records:

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

(b) individual records of TNC Driver customers at least until the one year anniversary of the date on which a TNC

Driver's customer relationship with the TNC has ended;

(c) The TNC Driver's driver license number and state of licensure;

(d) The vehicle registration number, license plate number, and state of vehicle registration for each vehicle that the TNC Driver will use to provide prearranged rides;

(e) Documentation showing that the vehicle has been inspected in accordance with Section 1914 of this Chapter and that the TNC Driver has passed a criminal history record check and driving record check as required under Section 1913.

§ 1919. Audits and inspection of records.

(a) In response to a specific complaint, the Division or its employees or duly authorized agents may inspect those records held by a TNC that are specifically necessary for the investigation and resolution of the complaint.

(b) No more than quarterly, the Division may request that a TNC transmit to the Division records and information that the TNC is required to maintain under Section 1918 for up to fifty (50) TNC Drivers; provided that, the TNC shall undertake best efforts not to share records and information about the same TNC Driver during consecutive reporting periods; and further provided that, the Division shall not retain criminal background check reports. Within ten (10) business days of receiving a request, the TNC shall transmit the records to the Division via a secure delivery method, which may include use of encryption security or hand delivery. If, after this initial review, the Division has a reasonable basis to conclude that the TNC is not in compliance with this Chapter, the Division may, upon reasonable notice, conduct a supplemental audit of records and information for an additional selection of TNC Drivers at a mutually agreed location.

(c) Any records or information that a TNC discloses to the Division pursuant to this Section shall be exempt from disclosure under the Delaware Freedom of Information Act, Del. C. § 10001, et seq.

(d) The Division shall destroy any records it receives from a TNC pursuant to this Section within one hundred and eighty (180) days of receiving such records unless required by law to retain the records for a longer period or the record relates to a TNC Driver who the Division has a reasonable basis to believe is not properly authorized to operate in Delaware.

§ 1920. Compliance with state law and defensive driving course.

A TNC must advise TNC Drivers that they are responsible for complying with all applicable laws, including the State's hands free cell phone law. A TNC must provide to each TNC Driver domiciled in the State information about a defensive driving course approved by the Division.

§ 1921. Penalties.

(a) The Division is authorized to enforce the requirements of this Chapter. The Court of Common Pleas has jurisdiction over contested violations issued under this section.

(b) A TNC or TNC Driver who fails to comply with any requirement contained in this Chapter may be assessed a

civil penalty of up to one hundred dollars (\$100) for a first violation, up to five hundred dollars (\$500) for a second violation, and up to one thousand dollars (\$1,000) for a third violation and subsequent violations. The penalties collected under this Section will be remitted to the Division to be used for enforcement operations. To determine the amount of the fine, the Division shall consider all relevant mitigating factors, including without limitation (1) the severity of the violation, and (2) the good faith of the person or entity charged with the violation in attempting to achieve compliance. A TNC will not be subject to financial penalties under this subsection if, upon notice of the violation, the TNC takes corrective steps to remedy the violation within a reasonable time period, as determined by the Division.

(c) The Division may suspend or revoke a TNC permit if the TNC commits a pattern of violations that evidence the TNC's intentional disregard of public safety.

§ 1922. Controlling authority.

The Division may promulgate rules and regulations consistent with this Chapter that are necessary to ensure compliance with this Chapter or to address new industry developments not addressed explicitly in this Chapter. Notwithstanding any other provision of law, TNCs and TNC Drivers are governed exclusively by this Chapter and any rules promulgated by the Division consistent with this Chapter. A municipality or other local entity may not:

(a) Impose a tax on, or require a license for, a TNC, a TNC Driver, or a vehicle used by a TNC Driver where such tax or licenses relates to providing prearranged rides;

(b) Require a TNC or a TNC Driver to obtain a business license or any other type of similar authorization to operate within the jurisdiction; or

(c) Subject a TNC or a TNC Driver to the municipality or other local entity's rate, entry, operational or other requirements.

Section 2. With the advent of transportation network companies operating in Delaware, the General Assembly directs that the Delaware Department of Transportation review existing statutes and regulations which public carriers currently are subject to, and after consulting with public carriers, recommend to the General Assembly ways in which the "playing field" can be leveled between transportation network companies and public carriers. The recommendations are to be presented to the General Assembly on or before January 15, 2017.

Approved August 10, 2016