

Legislative Analysis



REGULATION OF TRANSPORTATION NETWORK COMPANIES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4637 as introduced
Sponsor: Rep. Tim Kelly

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4638 as introduced
Sponsor: Rep. Aric Nesbitt

House Bill 4641 as introduced
Sponsor: Rep. Phil Phelps

Committee: Commerce & Trade
Complete to 6-10-15

REVISED SUMMARY:

House Bill 4637 would create a new act, the Transportation Network Company Act. The act would regulate the operation of transportation network companies (TNCs) and their drivers. (This applies to such companies as Uber and Lyft.)

House Bill 4638 would exempt such companies from the Limousine Transportation Act. House Bill 4641 would amend the Michigan Vehicle Code to exempt drivers for transportation network companies from obtaining a chauffeur's license and to delineate the kind of insurance that satisfies the financial responsibility requirements of the code. Those requirements parallel insurance requirements found in House Bill 4637.

Two related bills would amend the Insurance Code and apply to vehicles being operated by a transportation network company driver. Those bills, House Bill 4639 and 4640, are explained in a separate summary.

HB 4637 is tie-barred to HB 4639, meaning that neither can go into effect unless both go into effect. HB 4637 and HB 4641 would each go into effect 90 days following the date they are respectively enacted into law.

A more detailed summary of House Bill 4637 and House Bill 4641 follow.

House Bill 4637

HB 4637 would create a new act, the Transportation Network Company Act. The act would regulate the operation of transportation network companies (TNCs) and their drivers.

Definitions

A TNC would be defined as a person operating in this state that uses a digital network to connect transportation network company riders to transportation network company drivers who provide prearranged rides. A TNC does not include a taxi service, transportation

service arranged through a transportation broker, ridesharing arrangement, or transportation service using fixed routes at regular intervals.

A TNC driver would be defined as an individual who satisfies all of the following:

- 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.
- Uses a personal vehicle to offer or provide prearranged rides to transportation network company riders upon connection through a digital network controlled by a transportation network company in return for compensation or payment of a fee.

A TNC rider would be defined as an individual who uses a transportation network company's digital network to connect with a transportation network company driver who provides a prearranged ride to the transportation network company rider in the transportation network company driver's personal vehicle between points chosen by the transportation network company rider.

A digital network would be defined as an online-enabled application, software, website, or system offered or utilized by a transportation network company that enables the prearrangement of rides with transportation network company drivers.

A personal vehicle would be defined as a motor vehicle that is used by a transportation network company driver that satisfies both of the following:

- The vehicle is owned, leased, or otherwise authorized for use by the transportation network company driver.
- The vehicle is not a taxicab, limousine, or commercial vehicle.

A prearranged ride would be defined as the provision of transportation by a TNC driver to a TNC rider, beginning when a TNC driver accepts a ride requested by a TNC rider through a digital network controlled by a TNC, continuing while the TNC driver transports the requesting TNC rider, and ending when the last requesting TNC rider departs from the personal vehicle. Prearranged ride does not include transportation provided using a taxicab, limousine, or other commercial vehicle.

Difference from other motor vehicle services

The bill specifically states that neither a TNC nor TNC driver would be considered a common carrier, motor carrier, or contract carrier, or to provide taxicab or commercial vehicle service. Additionally, a TNC driver would not be required to register a personal vehicle as a commercial or for-hire vehicle.

TNC permit process

A TNC would be required to obtain a permit from the Department of Transportation (MDOT) before it could operate in Michigan. The department would be required to issue a permit to an applicant that meets the requirements of this act and pays an annual permit fee of \$5,000 to the department.

MDOT, or a third party agreed upon by the department and the TNC, would be able to audit that TNC's records, including a random sample of records related to drivers, in accordance with all of the following:

- The department may not conduct this audit more than twice per year.
- The audit takes place at a third-party location agreed upon by the department and the TNC.
- In addition to the audits, the department may, within a reasonable timeframe, investigate a complaint related to public safety or a violation of this act, if the department has received details of the nature of the complaint before the investigation takes place.

A TNC operating under a permit would be required to maintain an agent authorized to receive service of process in Michigan.

Fees charged by a TNC

A TNC would be allowed to charge and collect fares on behalf of a TNC driver if it does all of the following:

- The TNC discloses the fare calculation method on its website or within the software application service.
- The TNC provides the transportation network company rider with the applicable rate being charged and the option to receive an estimated fare before the TNC rider enters the TNC driver's personal vehicle.

A TNC software application or website would be required to display a picture of the TNC driver and registration plate number of the personal vehicle to be used for the prearranged ride before the TNC rider enters the TNC driver's personal vehicle.

With a "reasonable period of time" following the completion of a prearranged ride, the TNC would be required to submit to the rider an electronic receipt with the following information:

- The origin and destination of the trip
- The total time and distance of the trip
- An itemization of total fare paid, if any

Required insurance

As of the date the bill goes into effect, a TNC driver, or the TNC acting on the driver's behalf, must maintain primary automobile insurance that recognizes the driver uses the vehicle as a TNC driver or to otherwise transport passengers for compensation, and that the policy covers the TNC driver while logged on to the TNC's digital network and while engaged in a prearranged ride.

While logged on to a TNC's digital network and not engaged in a prearranged ride, both of the following types of auto insurance are required:

- Residual third party automobile liability insurance as required under Chapter 31 of the Insurance Code of 1956, in the amount of at least \$50,000 per person for death

or bodily injury, \$100,000 per incident for death or bodily injury, and \$25,000 for property damage.

- Personal protection insurance and property protection insurance in the amounts and of the types of coverage required by Chapter 31 of the Insurance Code of 1956, which is the No-Fault Act.

While logged on to a TNC's digital network and engaged in a prearranged ride, both of the following types of auto insurance are required:

- Residual third party automobile liability insurance with a minimum combined single limit of \$1,000,000 for all bodily injury or property damage.
- Personal protection insurance and property protection insurance in the amounts and of the types of coverage required by Chapter 31 of the insurance code of 1956.

These insurance requirements may be satisfied by auto insurance maintained by a TNC or a TNC driver, or a combination of both. The required policy could be placed with an insurance company licensed under Chapter 4 of the Insurance Code of 1956, or, if the insurance is maintained by a TNC, a surplus lines insurer eligible under Chapter 19 of the Insurance Code of 1956.

The insurance policy would satisfy the financial responsibility requirements described in Chapter V of the Michigan Vehicle Code.

If either of these required policies lapses or does not provide the required coverage, insurance maintained by a TNC must provide the coverage required by this section, beginning with the first dollar (\$1.00) of a claim. The TNC would also be required to defend the claim. Coverage provided under an automobile insurance policy maintained by a TNC could not be dependent upon a personal automobile insurer denying the claim first and cannot require a personal automobile insurer to deny the claim first. [Note: House Bills 4639 and 4640 contain changes to the Insurance Code relating to the relationship between an insurance company and a policyholder who is a TNC or a TNC driver.]

A TNC driver would be required to carry proof of the required insurance at all times during the use of his or her vehicle in connection with a TNC's digital network. An electronic or paper copy of a driver's certificate of insurance would satisfy this requirement. If an accident occurs during the time that a driver is using a vehicle in connection with a TNC's digital network, the driver would be required to provide all of the following upon request to directly interested parties, automobile insurers, and investigating law enforcement officers, as required under Section 328 of the Michigan Vehicle Code:

- Insurance coverage information.
- Whether he or she was logged on to the TNC's digital network or on a prearranged ride at the time of the accident.

If a TNC's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the insurer must issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the vehicle.

A TNC would be required to disclose all of the following information in writing to a TNC driver before that driver may accept a request for a prearranged ride on that TNC's digital network:

- The insurance coverage, including the types of coverage and limits for each type of coverage the transportation network company provides while the driver uses a personal vehicle in connection with the TNC's digital network.
- That, depending on the terms of the policy, the driver's personal automobile insurance policy might not provide coverage while the driver is logged on to the TNC's digital network and available to receive transportation requests or is engaged in a prearranged ride.

Relationship between TNC and a driver

A TNC driver would be considered an independent contractor, and not an employee of a TNC, as long as the TNC:

- Does not prescribe the specific hours during which the transportation network company driver is required to be logged in to that TNC's digital network.
- Does not impose any restrictions on a driver's ability to use the digital networks of other TNCs.
- Does not assign a driver a particular territory within this state in which to provide prearranged rides.
- Does not restrict a driver from engaging in any other occupation or business.
- Reaches a written agreement with the TNC driver that the driver is an independent contractor.

A TNC would not be deemed to control, direct, or manage a personal vehicle or a driver who connects to its digital network, unless the parties have agreed otherwise in a written contract.

Zero-tolerance on drug and alcohol

A TNC would be required to develop and implement a zero-tolerance policy regarding a driver's activities while accessing the TNC's digital network. This policy must address the use of drugs or alcohol while a driver is providing a prearranged ride or is logged in to the TNC's digital network.

A TNC also must provide notice of this zero-tolerance policy on its website as well as provide on its website a procedure for a TNC rider to report a complaint about a driver with whom the rider was matched and who that rider reasonably suspects was under the influence of drugs or alcohol during a prearranged ride.

Upon receipt of such a complaint, a TNC must immediately suspend the named driver's access to its digital network and investigate the incident. The TNC driver's suspension would be required to last for the duration of the investigation. A TNC also must maintain records of a rider complaint for at least two years after the date the complaint was received by the TNC.

Requirements for TNC drivers

Before an individual may accept prearranged ride requests as a TNC driver using a TNC's digital network, he or she would be required to submit an application to that TNC. The application required under this subsection must include the applicant's name, address, age, operator's license number, driving history, motor vehicle registration information, and automobile liability insurance information. A TNC may also require additional information to be provided.

A transportation network company receiving an application under this subsection shall do both of the following before allowing the applicant to accept prearranged ride requests as a TNC driver using the TNC's digital network:

- Conduct, or use a third party to conduct, a local and national criminal background check of the applicant. The background checks must include a search of all of the following:
 - A multistate or multi-jurisdiction criminal records locator or similar commercial nationwide database with validation.
 - The national sex offender registry database.
- Obtain and review a driving history research report for the applicant.

A TNC would be prohibited from allowing an individual to accept prearranged ride requests as a TNC driver using its digital network if any of the following apply:

- The individual has had more than three moving violations or one major violation in the three-year period before the date of the application. As used in this subdivision, "major violation" includes, but is not limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license.
- The individual was convicted within seven years before the date of the application of any of the following:
 - Driving under the influence of drugs or alcohol.
 - Fraud.
 - A sexual offense.
 - Use of a motor vehicle to commit a felony.
 - A crime involving property damage.
 - Theft.
 - An act of violence.
 - An act of terror.
- The individual is listed on the national sex offender registry database.
- The individual does not possess a valid operator's license issued under the Michigan Vehicle Code.
- The individual does not possess proof of registration issued under the Michigan Vehicle Code for each personal vehicle that he or she intends to use to provide prearranged rides.
- The individual does not possess proof of automobile liability insurance for each personal vehicle he or she intends to use to provide prearranged rides.
- The individual is under 19 years of age.

Safety requirements for vehicles

A TNC would be barred from allowing a TNC driver to accept trip requests through its digital platform unless the driver's vehicle has undergone an annual safety inspection conducted by a mechanic licensed by this state before being used to provide transportation services. Each driver must provide the TNC with documentation of the required inspection showing that the following vehicle components were inspected:

- Foot brakes
- Parking brakes
- Steering mechanism
- Windshield
- Rear window and other glass
- Windshield wipers
- Headlights
- Taillights
- Brake lights
- Front seat adjustment mechanism
- Doors
- Turn signal lights
- Horn
- Speedometer
- Bumpers
- Muffler and exhaust system
- Tires, including tread depth
- Interior and exterior mirrors
- Safety belts
- Defrosting system

Payment and prohibited actions

A TNC driver would be prohibited from soliciting or accepting a street hail, and would also be prohibited from soliciting or accepting cash payments from TNC riders for prearranged rides. Payment for prearranged rides could only be made electronically using a TNC's digital network or software application. A TNC would be required to adopt a policy prohibiting a driver from soliciting or accepting cash payments from riders. The TNC then must notify drivers of this policy using its digital network.

A TNC also must adopt a policy prohibiting a TNC driver from soliciting or accepting cash payments from transportation network company riders, and shall notify drivers using its digital platform of the policy. Transportation network companies also must adopt policy of nondiscrimination with respect to TNC riders and potential riders and shall notify transportation network company drivers of the policy adopted under this subsection.

A TNC also must:

- Comply with all applicable laws regarding nondiscrimination against a TNC rider or potential rider.
- Comply with all applicable laws regarding accommodation of service animals.

- Not impose an additional charge for providing services to a TNC rider with a physical disability because of his or her disability.

Distinctive signage

A personal vehicle would be required to display consistent and distinctive signage or emblem, which may be removable, that is approved by the department at all times while the TNC driver is engaged in a prearranged ride. The signage or emblem shall satisfy all of the following:

- The signage or emblem must be sufficiently large and color-contrasted to be readable during daylight hours from a distance of at least 50 feet.
- The signage or emblem shall be reflective.
- The signage or emblem shall sufficiently identify the TNC with which the vehicle is affiliated.

Required recordkeeping

A TNC would be required to keep and maintain all of the following records:

- Individual trip records of TNC riders. An individual trip record shall be maintained for at least one year after the date the trip was provided.
- Individual records of TNC drivers. An individual TNC driver record must be maintained for a period of at least one year after that driver ceases to provide prearranged rides using the TNC's digital network.

Local government regulation of TNCs

Apart from the bill's requirement that a TNC comply with the Michigan Consumer Protection Act, and any other provision of law, TNCs and TNC drivers operating in this state would be governed exclusively by this new act and rules promulgated by the MDOT to administer this act. A local unit of government would be prohibited from imposing a tax upon, or requiring a license for, a transportation network company, a transportation network company driver, or a personal vehicle, if the tax or license is related to the provision of prearranged rides. Except for certain provisions of the bill stated below, a local unit of government would be barred from enacting or enforcing an ordinance regulating a TNC.

A local unit of government may issue a civil infraction to a transportation network company driver for a violation of:

- Section 17(8): Failure of a TNC driver to carry proof of insurance
- Section 27: Soliciting or accepting a street hail
- Section 31: Discrimination against riders or potential riders
- Section 33: No visible signage or emblem

House Bill 4641

HB 4641 would amend Sections 6 and 7 of the Michigan Vehicle Code, and add a new section to the code, by excluding a transportation network company (TNC) driver from the definition of chauffeur, specifying that a personal vehicle operated by a TNC driver is not a commercial vehicle, outlining what types of automobile insurance satisfy the financial responsibility requirements of the code, and by adding definitions.

All of the following types of auto insurance would satisfy the financial responsibility requirements, though only for automobile insurance obtained by a TNC or TNC driver.

During the time that a transportation network company driver is logged on to the TNC's digital network and is available to receive transportation requests but is not engaged in a prearranged ride, all of the following types of automobile insurance:

- Residual third party automobile liability insurance as required under Chapter 31 of the Insurance Code of 1956, in the amount of at least \$50,000.00 per person for death or bodily injury, \$100,000.00 per incident for death or bodily injury, and \$25,000.00 for property damage.
- Personal protection insurance and property protection insurance in the amounts and of the types of coverage required by Chapter 31 of the Insurance Code of 1956.

During the time that a transportation network company driver is engaged in a prearranged ride, all of the following types of automobile insurance:

- Residual third party automobile liability insurance with a minimum combined single limit of \$1,000,000.00 for all bodily injury or property damage.
- Personal protection insurance and property protection insurance in the amounts and of the types of coverage required by Chapter 31 of the Insurance Code of 1956.

The terms and definitions added to the code would mirror those created in HB 4637.

The bill would take effect 90 days after the date it is enacted into law.

FISCAL IMPACT:

House Bills 4638 and 4641 would exempt TNCs from the Limousine Transportation Act, and certain provisions of the Michigan Vehicle Code, respectively. These two bills do not appear to have a direct fiscal impact on the state or local units of government.

As noted above, House Bill 4637 would create a new act, the Transportation Network Company Act. The act would establish a new regulatory framework for TNCs and TNC drivers and would give to the Michigan Department of Transportation regulatory authority under the act. Specifically, a TNC would be required to obtain a permit from the department before it could operate in Michigan. The department would be required to issue a permit to an applicant that met the requirements of this act and paid an annual permit fee of \$5,000 to the department.

The bill does not establish a detailed regulatory program for the department. The bill simply authorizes the department, or a third party agreed upon by the department and the TNC, to audit that TNC's records – presumably for compliance with the act's requirements. In addition to the audits, the department may, within a reasonable timeframe, investigate a complaint related to public safety or a violation of this act, if the department has received details of the nature of the complaint before the investigation takes place.

In Section 39, the bill indirectly authorizes the department to promulgate rules to administer the act.

Because the regulatory activities authority established under the bill are new, and not clearly defined, the cost of administering the act cannot be readily estimated at this time. The bill does establish paid an annual permit fee of \$5,000; it is not clear at this time how many TNC's would apply for permits and thus pay the annual fee.

The department currently has authority for the regulation of limousines under the Limousine Transportation Act, and for motor coaches under the Motor Bus Transportation Act. It's not clear if the department could perform regulatory functions established under House Bill 4637 with existing resources.

As noted in the summary above, a local unit of government would be prohibited from imposing a tax upon, or requiring a license for, a transportation network company, a transportation network company driver, or a personal vehicle, if the tax or license is related to the provision of prearranged rides. This could have an impact on local units currently regulating these ride-sharing arrangements.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.