



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4637 (Substitute H-3 as passed by the House)
House Bill 4639 (Substitute H-2 as passed by the House)
House Bill 4640 (Substitute H-1 as passed by the House)
House Bill 4641 (Substitute H-1 as passed by the House)
Sponsor: Representative Tim Kelly (H.B. 4637)
Representative Brandt Iden (H.B. 4639)
Representative Tom Barrett (H.B. 4640)
Representative Phil Phelps (H.B. 4641)
House Committee: Commerce and Trade
Senate Committee: Regulatory Reform

Date Completed: 10-19-16

CONTENT

House Bill 4637 (H-3) would enact the "Transportation Network Company Act" to regulate transportation network companies (TNCs) and TNC drivers. Specifically, the bill would do the following:

- Require a TNC to receive a permit from the Michigan Department of Transportation (MDOT) before operating in the State, and prescribe the fees and application information an applicant would have to provide to MDOT.
- Allow a TNC, on behalf of a TNC driver, to charge and collect a fare for services provided to a TNC rider if certain criteria were satisfied.
- Specify that a TNC or a TNC driver would not be considered a common carrier, motor carrier, or contract carrier, or provide taxicab or commercial vehicle services.
- State that a TNC driver would not be required to register his or her personal vehicle as a commercial or for-hire vehicle.
- Allow MDOT to audit a TNC's records.
- Require a TNC's software application or website to display a picture of the TNC driver and the registration plate number of the personal vehicle to be used for a prearranged ride before a TNC rider entered the driver's vehicle.
- Require a TNC to transmit an electronic receipt to the TNC rider within a reasonable period of time after a prearranged ride was completed.
- Require a TNC driver, or a TNC on a driver's behalf, to maintain primary automobile insurance that recognized that the driver used the vehicle as a TNC driver or otherwise used a vehicle to transport passengers for compensation and covered the driver while he or she was logged onto the TNC's digital network or engaged in a prearranged ride.
- Describe the automobile insurance that would be required for a TNC driver while he or she was logged onto the TNC's digital network and was available to receive transportation requests but was not engaged in a prearranged ride, or while the driver was engaged in a prearranged ride.
- Specify the information a TNC driver would have to give certain parties if an accident occurred when the driver was using a vehicle in connection with a TNC's digital network.

- Require a TNC to disclose certain information to a TNC driver before the driver could accept a request for a prearranged ride on the TNC's digital network.
- Require a TNC to disclose certain information on an annual basis and in the event of a material reduction in insurance coverage maintained by the TNC on behalf of each driver providing transportation services for the TNC.
- State that a TNC driver would be considered an independent contractor and not an employee of the TNC if certain conditions were met.
- Require a TNC to develop and implement a zero-tolerance policy regarding a TNC driver's activities, including the use of drugs or alcohol.
- Require an individual to apply to a TNC before he or she could accept prearranged ride requests, and require the TNC conduct criminal history checks.
- Prohibit a TNC from allowing an individual to accept prearranged ride requests as a TNC driver using its digital network if certain conditions applied to the driver.
- Prohibit a TNC from allowing a TNC driver to accept trip requests through the TNC's digital platform unless the driver's vehicle had undergone a safety inspection conducted annually by a licensed mechanic.
- Prohibit a TNC driver from soliciting or accepting a street hail or using a taxi stand or other area designated for use solely by taxis.
- Require that all prearranged ride payments be made electronically using a TNC's digital network or software application.
- Require a TNC to adopt a policy of nondiscrimination with respect to TNC riders and potential riders.
- Require all TNC drivers to comply with all applicable laws regarding nondiscrimination as well as the accommodation of service animals.
- Prohibit a TNC driver from using a vehicle provided by a car rental company to provide a prearranged ride.
- Require a personal vehicle to display signage or an emblem approved by MDOT at all times while the TNC driver was engaged in a prearranged ride.
- Require a TNC to comply with the Michigan Consumer Protection Act.
- Require a TNC to maintain certain rider and driver records.
- Prohibit local units of government from imposing a tax on or requiring a license for a TNC, TNC driver, or personal vehicle, if it were related to prearranged rides.
- Provide that an airport could not prohibit a TNC driver from picking up or dropping off a rider on airport property.
- Allow MDOT to impose fines on a TNC or TNC driver who violated the proposed Act, and prescribe other penalties, including suspension of a permit, for noncompliance.

House Bill 4639 (H-2) would amend the Insurance Code to do the following:

- Allow an authorized insurer that issued an insurance policy insuring a personal vehicle to exclude all coverage under a policy for loss or injury occurring while a TNC driver was logged onto a TNC's digital network or while the TNC driver was providing a prearranged ride.
- Require a TNC and any insurer that potentially provided coverage under the proposed Act, during an investigation of whether a claim was covered under an insurance policy, to cooperate to facilitate the exchange of information with people directly involved and any insurer of the TNC driver.

House Bill 4640 (H-1) would amend a provision of the Insurance Code under which a person suffering accidental bodily injury while an operator or a passenger of a motor vehicle operated in the business of transporting passengers must receive the personal protection insurance benefits to which he or she is entitled from the insurer of the vehicle. This provision does not apply to a person who was a passenger in one of the types of vehicles listed in the Code (including a school bus,

a taxicab, and a bus operated by a common carrier of passengers), unless the passenger is not entitled to benefits under any other policy. The bill would include in this list of vehicles a motor vehicle being operated by a TNC driver while the driver was logged onto the TNC's digital network or was engaged in a prearranged ride.

House Bill 4641 (H-1) would amend the Michigan Vehicle Code to do the following:

- Identify types of automobile insurance that would satisfy the financial responsibility requirements of the Code when a TNC driver was logged onto a TNC's digital network and was available to receive transportation requests but was not engaged in a prearranged ride, and when the driver was engaged in a prearranged ride.**
- Specify that "chauffeur" would not include a TNC driver, and "commercial vehicle" would not include a personal vehicle operated by a TNC driver.**

House Bill 4637 (H-3) would define "transportation network company" as a person operating in the State that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. The term would not include a taxi service, transportation service arranged through a transportation broker, ridesharing arrangement, or transportation service using fixed routes at regular intervals. The other bills would adopt this definition.

Each bill would take effect 90 days after enactment. House Bill 4637 (H-3) is tie-barred to House Bill 4639, while House Bills 4639 (H-2), 4640 (H-1), and 4641 (H-1) are tie-barred to House Bill 4637.

House Bill 4637 (H-3) is described below in further detail.

TNC Permits, Permit Fees, & Application Requirements

A TNC would be prohibited from operating in the State without first having obtained a permit from MDOT. The Department would have to issue a permit to an applicant that met the requirements of the proposed Act and paid a permit fee based on the number of personal vehicles that had been approved for the provision of prearranged rides through the TNC's digital network, as shown in Table 1.

Table 1

Number of Personal Vehicles Approved	Permit Fee
100 or fewer	\$1,000
101-1,000	\$10,000
More than 1,000	\$30,000

("Prearranged ride" would mean the provision of transportation by a TNC driver to a TNC rider, beginning when a TNC driver accepted a ride requested by a TC rider through a digital network controlled by a TNC, continuing while the TNC driver transported the requesting TNC rider, and ending when the last requesting TNC rider departed from the personal vehicle. The term would not include a shared-expense carpooling or vanpooling arrangement or transportation provided using a taxicab, limousine, or other commercial vehicle.)

The Department would have to spend money received from permit fees to defray the costs of enforcing the proposed Act.

To obtain a permit, a TNC would have to submit to MDOT an application that included information listed in the proposed Act, including proof that the TNC had satisfied the insurance requirements, and the number of personal vehicles approved for prearranged rides.

A TNC operating under a permit issued under the proposed Act would have to maintain an agent authorized to receive service of process in the State.

Fares

On behalf of a TNC driver, a TNC could charge and collect a fare for services provided to a TNC rider, if both of the following were satisfied:

- The TNC disclosed the fare calculation method on its website or within the software application device.
- The TNC provided the rider with the applicable rate being charged and the option to receive an estimated fare before the rider entered the driver's personal vehicle.

MDOT Audits

The Department could audit the records of a TNC, including a random sample of the TNC's records related to drivers, according to the following:

- The audit could be conducted not more than two times per year.
- The audit could take place at a third-party location agreed upon by MDOT and the TNC.
- Notwithstanding the limit of two audits per year, MDOT could within a reasonable time frame investigate a complaint related to public safety or a violation of the proposed Act, if MDOT had received details of the nature of the complaint before the investigation took place.

Electronic Receipts

Within a reasonable period of time after a prearranged ride was completed, a TNC would have to transmit an electronic receipt to the TNC rider listing all of the following information:

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

Insurance Requirements

A TNC driver, or a TNC on a driver's behalf, would have to maintain primary automobile insurance that recognized that the TNC driver used the vehicle as a TNC driver or otherwise used a vehicle to transport passengers for compensation, and covered the driver while he or she was logged onto the TNC's digital network or engaged in a prearranged ride.

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

- Residual third-party automobile liability insurance 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.

During the time that a TNC driver was engaged in a prearranged ride, all of the following types of automobile insurance would be required:

- Residual third-party automobile liability insurance with a minimum combined single limit of \$1.0 million for all bodily injury or property damage.

- Personal protection insurance and property protection insurance in amounts and of the types of coverage required by Chapter 31 of the Insurance Code.

The insurance could be placed with an insurer licensed under the Insurance Code or, if the insurance were maintained by a TNC, a surplus lines insurer eligible under the Code. Also, the insurance policy would satisfy the financial responsibility requirements described in the Michigan Vehicle Code.

A TNC driver would have to carry proof of the required insurance with him or her at all times during his or her use of a vehicle in connection with a TNC's digital network. The TNC driver could provide proof of insurance by a paper or electronic copy of the insurance certificate. If an accident occurred when a TNC driver was using a vehicle in connection with a TNC's digital network, he or she would have to provide the following information upon request to directly interested parties, automobile insurers, and investigating law enforcement officers as required under 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.

A TNC's insurer would be required to issue a payment directly to the business repairing a vehicle or jointly to the owner of a vehicle and the primary lienholder on the vehicle if a TNC's insurer made a payment for a claim covered under comprehensive or collision coverage.

If the insurance required under the proposed Act lapsed or did not provide the required coverage, the insurance maintained by a TNC would have to provide the required coverage, beginning with the first \$1 of a claim, and the TNC's insurer would have to defend a 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 could not require a personal automobile insurer to deny the claim first.

A TNC driver would have to carry proof of the required insurance with him or her at all times during his or her use of a vehicle in connection with a TNC's digital network.

Insurance & Other Information Disclosure

A TNC would have to disclose all of the following information in writing to a TNC driver before the driver could 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, that the TNC provided while the driver used 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 was logged onto the TNC's digital network or was engaged in a prearranged ride.

A TNC would have to disclose on an annual basis and in the event of a material reduction in insurance coverage maintained by the TNC on behalf of each TNC driver providing transportation services for that TNC all of the following information:

- The automobile insurance coverage, including the types of coverage and limits for each type, that the TNC maintained on behalf of each TNC while he or she used a personal vehicle in connection with the TNC's digital network.
- Whether the TNC maintained comprehensive and collision insurance that covered a TNC driver's personal vehicle and, if such coverage were maintained by the TNC, the limits of

coverage, applicable deductible, and conditions under which the coverage applied to a vehicle operated by a TNC driver.

A TNC would have to disclose prominently, and with a separate acknowledgement of acceptance, to a prospective TNC driver in the driver's written terms of service certain statements pertaining to insurance and liability before the driver could accept a request for a prearranged ride on the TNC's digital network.

Independent Contractor

A TNC driver would have to be considered an independent contractor, and not an employee of a TNC, if all of the following conditions were met:

- The TNC did not prescribe the specific hours during which the TNC driver was required to be logged in to the TNC's digital network.
- The TNC did not impose any restrictions on the TNC driver's ability to use other TNCs' digital networks.
- The TNC did not assign a TNC driver a particular territory within the State in which he or she could provide prearranged rides.
- The TNC did not restrict a TNC driver from engaging in any other occupation or business.
- The TNC and the TNC driver agreed in writing that the TNC driver was an independent contractor.

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

Zero-Tolerance Policy

A TNC would have to develop and implement a zero-tolerance policy regarding a TNC driver's activities while accessing the TNC's digital network. The zero-tolerance policy would have to address the use of drugs or alcohol while a TNC driver was providing a prearranged ride or was logged onto the TNC's digital network and available to receive a transportation request.

A TNC would have to provide notice of the zero-tolerance policy on its website, and also would have to provide on its website a procedure for a TNC rider to report a complaint about a TNC driver with whom the rider was matched and who the rider reasonably suspected was under the influence of drugs or alcohol during a prearranged ride.

Upon receiving a complaint, a TNC would have to immediately suspend the TNC driver's access to the TNC's digital network, and investigate the incident. The driver's suspension would have to last for the duration of the investigation. A TNC would have to maintain records of a TNC rider complaint for at least two years after the date the TNC received the complaint.

Driver Application Submission & Prohibitions

Before an individual could accept prearranged ride requests as a TNC driver using a TNC's digital network, he or she would have to submit an application to the TNC. The application would have to include the applicant's name, address, age, operator's license number, driving history, motor vehicle registration information, and automobile liability insurance information.

A TNC receiving an application would have to do both of the following before allowing the applicant to accept prearranged ride requests as a TNC driver using the TNC's digital network:

- Annually conduct, or use a third-party to annually conduct, a local and national criminal background check of the applicant, which would have to include a multistate or

multijurisdiction criminal records locator or similar commercial nationwide database with validation, and the National Sex Offender Registry database.

- Obtain and review a driving history research report for the applicant.

A TNC could not allow an individual to accept prearranged ride requests as a TNC driver using its digital network if any of the following applied:

- The individual had had more than three moving violations or one major violation in the three-year period before the date of the application.
- The individual was convicted within seven years before the date of the application for 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, or an act of terror.
- The individual was listed on the National Sex Offender Registry database.
- The individual did not possess a valid operator's license issued under the Michigan Vehicle Code.
- The individual did not possess proof of automobile liability insurance for each personal vehicle that he or she intended to use to provide prearranged rides.
- The individual was under 19 years of age.

As used above, "major violation" would include, but not be limited to, attempting to evade the police, reckless driving, or driving on a suspended or revoked license.

Safety Inspection

A TNC could not allow a TNC driver to accept trip requests through that TNC's digital platform unless the driver's vehicle had undergone a safety inspection conducted annually by a mechanic licensed by the State before being used to provide transportation services. Each TNC driver would have to provide to the TNC documentation of the inspection by showing that all of 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, and defrosting system.

Soliciting & Accepting Cash Payment Policy

A TNC driver could not solicit or accept a street hail and could not use a taxi stand or other area designated for use solely by taxis. A TNC driver could not solicit or accept cash payments from TNC riders for rearranged rides.

A payment for a prearranged ride could only be made electronically using a TNC's digital network or software application.

A transportation network company would have to adopt a policy prohibiting a TNC driver from soliciting or accepting cash payments from TNC riders, and would have to notify drivers using its digital platform of the policy required.

Nondiscrimination

A TNC would have to adopt a policy of nondiscrimination with respect to TNC riders and potential TNC riders and would have to notify TNC drivers of the policy. A TNC driver would have to comply with all applicable laws regarding nondiscrimination against a rider or potential rider. A TNC driver also would have to comply with all applicable laws regarding accommodation of service animals. A TNC could not impose an additional charge for providing services to a TNC rider with a physical disability because of his or her disability.

Signage or Emblem

A personal vehicle would have to display a consistent and distinctive signage or emblem, which could be removable, that was approved by MDOT at all times while the TNC driver was engaged in a prearranged ride or available to receive a transportation request. The emblem would have to sufficiently identify the TNC with which the vehicle was affiliated, and satisfy other requirements.

Record Maintenance

A TNC would have to maintain individual trip records of TNC riders. An individual trip record would have to be maintained for at least one year after the date the trip was provided. An individual trip record would have to contain pickup and drop-off location, as well as duration of the trip, distance traveled, and fare.

A TNC also would have to maintain individual records of TNC drivers. An individual TNC driver record would have to be maintained for at least one year after the driver ceased to provide prearranged rides using the TNC's digital network. An individual TNC driver record would have to contain all the name and contact information of the driver, as well as the make, model, and registration plate number of the vehicle operated by the driver.

Regulation & Local Enforcement

Except as otherwise provided, notwithstanding any other provision of law, TNC and TNC drivers operating in the State would be governed exclusively by the proposed Act and rules promulgated by MDOT to administer the Act.

A local unit of government could not impose a tax upon or require a license for a TNC, a TNC driver, or a personal vehicle, if the tax or license were related to the provision of prearranged rides. Except as otherwise provided, a local unit of government could not enact or enforce an ordinance regulating a TNC. A local unit could issue a civil infraction to a TNC driver for a violation of certain sections of the proposed Act.

Airports

An airport could not prohibit a TNC driver from picking up or dropping off a TNC rider on airport property. A TNC driver could not be present on property owned by an airport unless one or more of the following applied:

- The TNC driver was engaged in a prearranged ride.
- The TNC driver was in the process of vacating the property immediately after completing a prearranged ride.
- The TNC with which the TNC driver was affiliated had entered into an operating agreement with the airport that allowed the TNC driver to be present on airport property even if the driver were not engaged in a prearranged ride.

MDOT Fines & Permit Suspensions

The Department could impose a maximum fine of \$500 upon a TNC that violated the proposed Act. A fine would have to be paid to MDOT within 60 days after notification of the violation. All of the following would apply to a TNC that was found to be in violation of the proposed Act:

- The TNC would have to take the necessary action to come into compliance with the Act within 60 days after notification of noncompliance and submit proof of compliance as requested by MDOT in its notification of noncompliance.

- The Department would have to suspend the permit of a TNC that failed to come into compliance within 60 days.
- The Department would have to reinstate the permit of a TNC upon receiving proof of compliance from the TNC.

In addition, MDOT could impose a fine of up to \$50 upon a TNC driver who violated the proposed Act. A fine would have to be paid to MDOT within 60 days after notification of the violation.

All fines and fees collected under the proposed Act would have to be deposited in the Comprehensive Transportation Fund.

The Department could alter, suspend, or revoke an issued permit if it determined in a contested case hearing held under the Administrative Procedures Act that a person to whom a permit had been issued had willfully violated or refused to comply with the proposed Act.

MCL 500.3009 et al. (H.B. 4639)
500.3114 (H.B. 4640)
257.6 & 257.7 (H.B. 4641)

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

House Bills 4637 (H-3 and 4639 (H-2)

The bills would not have a direct fiscal impact on the Department of Transportation or the Department of Insurance and Financial Services.

House Bill 4637 (H-3) would not create new costs or revenue for local units of government. It would require the Department of Transportation to issue permits to transportation network companies. It also would authorize the Department to audit those companies to verify that they were compliant with the proposed Transportation Company Network Act; however, these administrative costs potentially could be offset by the permit fees, which would range from \$1,000 to \$30,000 depending upon the size of the permit holder's fleet. Permit holders that violated the Act would be subject to a fine, which, although nominal (\$500), also could offset administrative costs.

House Bill 4639 (H-2) would not create new costs or revenue for the State or local units of government.

House Bills 4640 (H-1) and 4641 (H-1)

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Michael Siracuse

S1516\4637sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.