

1 SPECIAL SESSION

2 H.10

3 Introduced by Representative O’Sullivan of Burlington

4 Referred to Committee on

5 Date:

6 Subject: Insurance; transportation network companies; State regulations

7 Statement of purpose of bill as introduced: This bill proposes to regulate
8 transportation network companies.

9 An act relating to transportation network companies

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 Sec. 1. LEGISLATIVE INTENT

12 It is the intent of the General Assembly that this act be a step toward
13 uniform regulation of all vehicle for hire companies and vehicle for hire
14 drivers in Vermont.

15 Sec. 2. 23 V.S.A. chapter 10 is added to read:

16 CHAPTER 10. TRANSPORTATION NETWORK COMPANIES

17 § 750. DEFINITIONS; INSURANCE REQUIREMENTS

18 (a) Definitions. As used in this chapter:

19 (1) “Digital network” or “network” means any online-enabled
20 application, software, website, or system offered or used by a transportation

1 network company that enables the prearrangement of rides with transportation
2 network company drivers.

3 (2) “Personal vehicle” means a vehicle that is:

4 (A) used by a driver to provide a prearranged ride;

5 (B) owned, leased, or otherwise authorized for use by the driver; and

6 (C) not a taxicab, limousine, or other for-hire vehicle.

7 (3) “Prearranged ride” or “ride” means the transportation provided by a
8 driver to a transportation network company rider, beginning when a driver
9 accepts the rider’s request for a ride through a digital network controlled by a
10 company; continuing while the driver transports the rider; and ending when the
11 last rider departs from the vehicle. The term does not include:

12 (A) shared-expense carpool or vanpool arrangements;

13 (B) use of a taxicab, limousine, or other for-hire vehicle;

14 (C) use of a public or private regional transportation company that
15 operates along a fixed route; or

16 (D) a ride furnished through a broker using a publicly funded
17 network to connect riders to drivers through the Elders and Persons with
18 Disabilities Program, Medicaid Non-Emergency Medical Transportation
19 Program, or other similar governmental transportation program.

1 (4) “Transportation network company” or “company” means a person
2 that uses a digital network to connect riders to drivers who provide prearranged
3 rides.

4 (5) “Transportation network company driver” or “driver” means an
5 individual who:

6 (A) receives connections to potential riders and related services from
7 a transportation network company in exchange for payment of a fee to the
8 company; and

9 (B) uses a personal vehicle to offer or provide a prearranged ride to
10 riders upon connection through a digital network controlled by a transportation
11 network company in exchange for compensation or payment of a fee.

12 (6) “Transportation network company rider” or “rider” means an
13 individual who uses a company’s digital network to connect with a driver who
14 provides rides in his or her personal vehicle between points chosen by the
15 rider.

16 (b) Company’s financial responsibility.

17 (1) Beginning on July 1, 2018, a driver, or a company on the driver’s
18 behalf, shall maintain primary automobile insurance that recognizes that the
19 driver is a company driver or otherwise uses a vehicle to transport passengers
20 for compensation and covers the driver while the driver is logged on to the
21 company’s digital network or while the driver is engaged in a prearranged ride.

1 (2)(A) The following automobile insurance requirements shall apply
2 while a participating driver is logged on to the transportation network
3 company's digital network and is available to receive transportation requests
4 but is not engaged in a prearranged ride:

5 (i) primary automobile liability insurance in the amount of at least
6 \$50,000.00 for death and bodily injury per person, \$100,000.00 for death and
7 bodily injury per incident, and \$25,000.00 for property damage; and

8 (ii) any other State-mandated coverage under section 941 of this
9 title.

10 (B) The coverage requirements of this subdivision (2) may be
11 satisfied by any of the following:

12 (i) automobile insurance maintained by the driver;

13 (ii) automobile insurance maintained by the company; or

14 (iii) any combination of subdivisions (i) and (ii) of this
15 subdivision (2)(B).

16 (3)(A) The following automobile insurance requirements shall apply
17 while a driver is engaged in a prearranged ride:

18 (i) primary automobile liability insurance that provides at least
19 \$1,000,000.00 for death, bodily injury, and property damage;

20 (ii) uninsured and underinsured motorist coverage that provides at
21 least \$1,000,000.00 for death, bodily injury, and property damage; and

1 (iii) \$5,000.00 in medical payments coverage (Med Pay).

2 (B) The coverage requirements of this subdivision (3) may be
3 satisfied by any of the following:

4 (i) automobile insurance maintained by the driver;

5 (ii) automobile insurance maintained by the company; or

6 (iii) any combination of subdivisions (i) and (ii) of this
7 subdivision (3)(B).

8 (4) If insurance maintained by a driver under subdivision (2) or (3) of
9 this subsection has lapsed or does not provide the required coverage, insurance
10 maintained by the company shall provide such coverage beginning with the
11 first dollar of a claim and shall have the duty to defend such claim.

12 (5) Coverage under an automobile insurance policy maintained by the
13 company shall not be dependent on a personal automobile insurer's first
14 denying a claim nor shall a personal automobile insurance policy be required
15 to first deny a claim.

16 (6) Insurance required by this subsection may be placed with an insurer
17 licensed under chapter 101 (insurance companies generally) or 138 (surplus
18 lines insurance) of this title.

19 (7) Insurance satisfying the requirements of this subsection shall be
20 deemed to satisfy the financial responsibility requirement for a motor vehicle
21 under section 800 of this title.

1 (8) A driver shall carry proof of coverage satisfying this section at all
2 times during use of a vehicle in connection with a company's digital network.
3 In the event of an accident or a traffic violation, a driver shall provide this
4 insurance coverage information to the directly interested parties, automobile
5 insurers, and law enforcement, upon request. Upon such request, a driver shall
6 also disclose whether he or she was logged on to the network or was on a
7 prearranged ride at the time of an accident or traffic violation.

8 (9) A person who fails to maintain primary automobile insurance as
9 required in subdivisions (2) and (3) of this subsection (b) shall be assessed a
10 civil penalty consistent with subsection 800(b) of this title, and such violation
11 shall be a traffic violation within the meaning of chapter 24 of this title. A
12 person who fails to carry proof of insurance as required under subdivision (8)
13 of this subsection (b) shall be subject to a civil penalty consistent with
14 subsection 800(d) of this title. Notwithstanding any provision of law to the
15 contrary, a person who operates a vehicle without financial responsibility as
16 required by this subsection (b) is subject to administrative action as set forth in
17 chapter 11 of this title.

18 (c) Disclosures. A transportation network company shall disclose in
19 writing to its drivers the following before they are allowed to accept a request
20 for a prearranged ride on the company's digital network:

1 (1) the insurance coverage, including the types of coverage and the
2 limits for each coverage, that the company provides while the driver uses a
3 personal vehicle in connection with the company's network; and

4 (2) that the driver's own automobile insurance policy, depending on its
5 terms, might not provide any coverage while the driver is logged on to the
6 company's network and available to receive transportation requests or engaged
7 in a prearranged ride.

8 (d)(1) Automobile insurers. Notwithstanding any other provision of law to
9 the contrary, insurers that write automobile insurance in Vermont may exclude
10 any and all coverage afforded under a policy issued to an owner or operator of
11 a personal vehicle for any loss or injury that occurs while a driver is logged on
12 to a transportation network company's digital network or while a driver
13 provides a prearranged ride. This right to exclude all coverage may apply to
14 any coverage in an automobile insurance policy, including:

15 (A) liability coverage for bodily injury and property damage;

16 (B) personal injury protection coverage;

17 (C) uninsured and underinsured motorist coverage;

18 (D) medical payments coverage;

19 (E) comprehensive physical damage coverage; and

20 (F) collision physical damage coverage.

1 (2) Nothing in this subsection implies or requires that a personal
2 automobile insurance policy provide coverage while the driver is logged on to
3 a company's digital network, while the driver is engaged in a prearranged ride,
4 or while the driver otherwise uses a vehicle to transport passengers for
5 compensation.

6 (3) Nothing in this section shall be construed to require an insurer to use
7 any particular policy language or reference to this section in order to exclude
8 any and all coverage for any loss or injury that occurs while a driver is logged
9 on to a company's digital network or while a driver provides a prearranged
10 ride.

11 (4) Nothing in this subsection is deemed to preclude an insurer from
12 providing primary or excess coverage for the driver's vehicle, if it chooses to
13 do so by contract or endorsement.

14 (5) Insurers that exclude the coverage described under subsection (b) of
15 this section shall have no duty to defend or indemnify any claim expressly
16 excluded thereunder.

17 (6) Nothing in this section is deemed to invalidate or limit an exclusion
18 contained in a policy, including any policy in use or approved for use in
19 Vermont prior to the enactment of this section, that excludes coverage for
20 vehicles used to carry persons or property for a charge or available for hire by
21 the public.

1 (7) An insurer that defends or indemnifies a claim against a driver that is
2 excluded under the terms of its policy shall have a right of contribution against
3 other insurers that provide automobile insurance to the same driver in
4 satisfaction of the coverage requirements of subsection (b) of this section at the
5 time of loss.

6 (8) In a claims coverage investigation, transportation network
7 companies shall immediately provide, upon request by directly involved
8 parties or any insurer of the transportation network company driver, if
9 applicable, the precise times that a transportation network company driver
10 logged on and off the transportation network company's digital network in the
11 12-hour period immediately preceding and in the 12-hour period immediately
12 following the accident. Insurers providing coverage under subsection (b) of
13 this section shall disclose, upon request by any other insurer involved in the
14 particular claim, the applicable charges, exclusions, and limits provided under
15 any automobile insurance maintained in order to satisfy the requirements of
16 subsection (b) of this section.

17 § 751. DRIVER REQUIREMENTS; BACKGROUND CHECKS

18 (a) A company shall not allow an individual to act as a driver on the
19 company's network without requiring the individual to submit to the company
20 an application that includes:

21 (1) the individual's name, address, and date of birth;

1 (2) a copy of the individual's driver's license;

2 (3) a copy of the registration for the personal vehicle that the individual
3 will use to provide prearranged rides; and

4 (4) proof of financial responsibility for the personal vehicle described in
5 subdivision (3) of this subsection of a type and in the amounts required by the
6 company.

7 (b)(1) A company shall not allow an individual to act as a driver on the
8 company's network unless, with respect to the driver, the company:

9 (A) contracts with an accredited entity to conduct a local, State, and
10 national background check of the individual, including the multistate-
11 multijurisdiction criminal records locator or other similar national database,
12 the U.S. Department of Justice national sex offender public website, and the
13 Vermont sex offender public website;

14 (B) confirms that the individual is at least 18 years of age and, if the
15 individual is 18 years of age, that he or she has at least one year of driving
16 experience or has been issued a commercial driver license; and

17 (C) confirms that the individual possesses proof of registration,
18 automobile liability insurance, and proof of inspection if required by the state
19 of vehicle registration for the vehicle to be used to provide prearranged rides.

20 (2) The background checks required by this subsection shall be
21 conducted annually by the company.

1 (3) With respect to a person who is a driver as of the effective date of
2 this act, the requirements of subdivision (1)(A) of this subsection (b) shall be
3 deemed satisfied if the background check is completed within 30 days of the
4 effective date of this act or if a background check that satisfies the
5 requirements of subdivision (1)(A) of this subsection (b) was conducted by the
6 company on or after July 1, 2017. This subdivision shall not be construed to
7 exempt drivers from undergoing an annual background check as required
8 under subdivision (2) of this subsection (b).

9 (c) A company shall not allow an individual to act as a driver on the
10 company's network if the company knows or should know that the individual:

11 (1) has been convicted within the last seven years of:

12 (A) a listed crime as defined in 13 V.S.A. § 5301(7);

13 (B) a felony level violation of 18 V.S.A. chapter 84 for selling,
14 dispensing, or trafficking a regulated drug;

15 (C) a violation of section 1201 (operating a vehicle while under the
16 influence of alcohol or drugs) of this title;

17 (D) a felony violation of 13 V.S.A. chapter 47 (frauds) or 57 (larceny
18 and embezzlement); or

19 (E) a comparable offense in another jurisdiction;

1 (2) has been convicted within the last three years of:

2 (A) more than three moving violations as defined in subdivision
3 4(44) of this title;

4 (B) grossly negligent operation of a motor vehicle in violation of
5 section 1091 of this title or operating with a suspended or revoked license in
6 violation of section 674 of this title; or

7 (C) a comparable offense in another jurisdiction;

8 (3) has been subject to a civil suspension within the last five years under
9 section 1205 (operating a vehicle while under the influence of alcohol or
10 drugs) of this title; or

11 (4) is listed on the U.S. Department of Justice national sex offender
12 public website or the Vermont sex offender public website or has been
13 convicted of homicide, manslaughter, kidnapping, or an offense involving
14 sexual exploitation of children in violation of 13 V.S.A. chapter 64.

15 (d) A company shall establish and enforce a zero tolerance policy for drug
16 and alcohol use by drivers during any period when a driver is engaged in, or is
17 logged on to the company's network but is not engaged in, a prearranged ride.
18 The policy shall include provisions for investigations of alleged policy
19 violations and the suspension of drivers under investigation.

1 (e) A company shall require that a personal vehicle used to provide
2 prearranged rides comply with all applicable laws and regulations concerning
3 vehicle equipment.

4 § 752. RECORDS; INSPECTION

5 (a) The Commissioner of Motor Vehicles or designee, not more frequently
6 than once per year, shall visually inspect a random sample of up to 25 drivers'
7 records per company demonstrating compliance with the requirements of this
8 chapter. The records inspected pursuant to this section shall pertain to drivers
9 operating in Vermont. A company shall have an ongoing duty to make such
10 records available for inspection under this section during reasonable business
11 hours and in a manner approved by the Commissioner.

12 (b) The Commissioner or designee may visually inspect additional random
13 samples of drivers' records if there is a reasonable basis to suspect that a
14 company is not in compliance with this chapter. The records inspected
15 pursuant to this section shall pertain to drivers operating in Vermont.

16 (c) If the Commissioner receives notice of a complaint against a company
17 or a driver, the company shall cooperate in investigating the complaint,
18 including producing any necessary records.

19 (d) Any records, data, or information disclosed to the Commissioner by a
20 company, including the names, addresses, and any other personally identifiable

1 information regarding drivers, are exempt from inspection and copying under
2 the Public Records Act and shall not be released.

3 § 753. ENFORCEMENT; ADMINISTRATIVE PENALTIES

4 (a) The Commissioner of Motor Vehicles may impose an administrative
5 penalty pursuant to this section if a company violates a provision of this
6 chapter.

7 (b) A violation may be subject to an administrative penalty of not more
8 than \$500.00. Each violation is a separate and distinct offense and, in the case
9 of a continuing violation, each day's continuance may be deemed a separate
10 and distinct offense.

11 (c) The company shall be given notice and opportunity for a hearing for
12 alleged violations under this section. Service of the notice shall be sufficient if
13 sent by first class mail to the applicable address on file with the Secretary of
14 State. The notice shall include the following:

15 (1) a factual description of the alleged violation;

16 (2) a reference to the particular statute allegedly violated;

17 (3) the amount of the proposed administrative penalty; and

18 (4) a warning that the company will be deemed to have waived its right
19 to a hearing and that the penalty will be imposed if no hearing is requested
20 within 15 days from the date of the notice.

1 (d) A company that receives notice under subsection (c) of this section
2 shall be deemed to have waived the right to a hearing unless, within 15 days
3 from the date of the notice, the company requests a hearing in writing. If the
4 company waives the right to a hearing, the Commissioner shall issue a final
5 order finding the company in default and imposing the penalty.

6 (e) The provisions of sections 105, 106, and 107 of this title shall apply to
7 hearings conducted under this section.

8 (f) The Commissioner may collect an unpaid administrative penalty by
9 filing a civil action in Superior Court or through any other means available to
10 State agencies.

11 (g) The remedies authorized by this section shall be in addition to any other
12 civil or criminal remedies provided by law for violation of this chapter.

13 § 754. PREEMPTION; SAVINGS CLAUSE

14 (a) Municipal ordinances, resolutions, or bylaws regulating transportation
15 network companies are preempted to the extent they are inconsistent with the
16 provisions of this chapter.

17 (b) Subsection (a) of this section shall not apply to a municipal ordinance,
18 resolution, or bylaw regulating transportation network companies adopted by a
19 municipality with a population of more than 35,000 residents based on the
20 2010 census and in effect on July 1, 2017. This subsection shall be repealed on
21 July 1, 2020.

1 Sec. 3. STUDY; STATEWIDE REGULATION OF VEHICLES FOR HIRE

2 (a) The Commissioner of Financial Regulation, in consultation with the
3 Commissioner of Motor Vehicles, the Director of the Office of Professional
4 Regulation, and representatives from other State agencies and departments, as
5 the Commissioner deems necessary, and with input from the Vermont League
6 of Cities and Towns and industry and consumer stakeholders, including
7 representatives of transportation network companies (TNCs) and non-TNC
8 companies and career drivers, shall conduct a study of whether and to what
9 extent vehicles for hire, vehicle for hire drivers, and vehicle for hire companies
10 should be regulated by the State and how State regulations would affect
11 relevant municipal regulations. Among other things, the Commissioner shall
12 consider:

13 (1) issues related to public safety, necessity, and convenience;

14 (2) regulatory models adopted in other state and local jurisdictions,
15 including in both urban and rural municipalities in Vermont, applicable to
16 transportation network companies and other vehicle for hire companies;

17 (3) matters related to passenger safety, including driver background
18 checks, periodic vehicle safety inspections, and signage;

19 (4) matters related to insurance coverage, including minimum liability
20 coverage, disclosure requirements, and claims procedures, generally, and with
21 consideration of other, similarly situated jurisdictions, other commercial

1 automobile policy requirements, enhanced personal liability coverage for
2 drivers, and the costs and benefits of requiring Med Pay coverage;

3 (5) matters related to fares, including the provision of fare estimates to
4 riders, restrictions on “surge pricing,” and payment methods;

5 (6) matters such as the licensing or permitting of companies and drivers;
6 nondiscrimination street hails; the protection of driver and rider information;
7 taxes or fees and, if applicable, recommended amounts; the employment status
8 of drivers; and increased access for persons with disabilities;

9 (7) the extent to which all vehicles for hire, vehicle for hire drivers, and
10 vehicle for hire companies should be treated similarly with respect to statewide
11 regulation; and

12 (8) any other matter deemed relevant by the Commissioner and the
13 Director.

14 (b) For purposes of this section, a “vehicle for hire” is a passenger vehicle
15 transporting passengers for compensation of any kind. Vehicles for hire
16 include taxicabs, transportation network company vehicles, limousines, jitneys,
17 car services, contract vehicles, shuttle vans, and other such vehicles
18 transporting passengers for compensation of any kind except:

19 (1) those that an employer uses to transport employees;

20 (2) those that are used primarily to transport elderly, special needs, and
21 handicapped persons for whom special transportation programs are designed

1 and funded by State, federal, or local authority otherwise exempted pursuant to
2 23 V.S.A. § 4(15):

3 (3) buses, trolleys, trains, or similar mass transit vehicles;

4 (4) courtesy vehicles for which the passenger pays no direct charge,
5 such as hotel or car dealer shuttle vans.

6 (c) On or before December 15, 2018, the Commissioner shall submit a
7 progress report outlining his or her findings and recommendations to the
8 Chairs of the Senate Committees on Transportation, on Judiciary, and on
9 Finance and the House Committees on Transportation, on Judiciary, and on
10 Commerce and Economic Development.

11 (d) On or before January 15, 2019, the Commissioner shall submit a final
12 report of his or her findings and recommendations to the Senate Committees
13 on Transportation, on Judiciary, and on Finance and the House Committees on
14 Transportation, on Judiciary, and on Commerce and Economic Development.

15 Sec. 4. TNC INSURANCE REQUIREMENTS; STUDY

16 (a) The Commissioner of Financial Regulation shall conduct a study
17 regarding the statutory minimum levels of financial responsibility applicable to
18 transportation network companies (TNC) in Vermont, in particular, the
19 minimums required under 23 V.S.A. § 750(b)(2)(A)(i) (the so-called “gap
20 period”). The purpose of the study is to ensure that these requirements
21 correlate with potential liability exposure so that persons are made whole in the

1 event of an automobile accident involving a transportation network company
2 driver.

3 (b) Consistent with the purpose of this section, and in a form and manner
4 prescribed by the Commissioner, each TNC company doing business in
5 Vermont shall submit claims data elements necessary to inform the
6 Commissioner's determination with respect to the appropriateness of the
7 statutory minimum levels of financial responsibility. Any data disclosed to the
8 Commissioner by a company pursuant to this section are exempt from
9 inspection and copying under the Public Records Act and shall not be released.

10 (c) On or before January 15, 2019, the Commissioner shall report his or her
11 aggregated findings and recommendations to the House Committees on
12 Commerce and Economic Development and on Judiciary and the Senate
13 Committees on Judiciary and on Finance.

14 Sec. 5. EFFECTIVE DATE

15 This act shall take effect on July 1, 2018.