

1 State of Arkansas
2 90th General Assembly
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4

As Engrossed: S3/24/15

A Bill

SENATE BILL 800

5 By: Senator Rapert
6 By: Representative Davis
7

For An Act To Be Entitled

9 AN ACT TO ENSURE THE SAFETY, RELIABILITY, AND COST-
10 EFFECTIVENESS OF TRANSPORTATION NETWORK COMPANY
11 SERVICES; TO PRESERVE AND ENHANCE ACCESS TO
12 TRANSPORTATION OPTIONS FOR THE STATE'S RESIDENTS AND
13 VISITORS; AND FOR OTHER PURPOSES.
14

Subtitle

15
16 TO ENSURE THE SAFETY, RELIABILITY, AND
17 COST-EFFECTIVENESS OF TRANSPORTATION
18 NETWORK COMPANY SERVICES; AND TO PRESERVE
19 AND ENHANCE ACCESS TO TRANSPORTATION
20 OPTIONS FOR THE STATE'S RESIDENTS AND
21 VISITORS.
22
23
24

25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code Title 23, Chapter 13, is amended to add an
28 additional subchapter to read as follows:
29

30 Subchapter 7 – Transportation Network Company Services Act

31 23-13-701. Title.

32 This subchapter shall be known and may be cited as the "Transportation
33 Network Company Services Act".
34

35 23-13-702. Definitions.
36



1 As used in this subchapter:

2 (1)(A) "Transportation network company" means an individual or
3 entity licensed under this subchapter that operates in this state and uses a
4 website, digital network, or software application to connect passengers to
5 transportation network company services provided by transportation network
6 company drivers.

7 (B) "Transportation network company" does not mean:

8 (i) A broker, common carrier, contract carrier, or
9 motor carrier, as defined in § 23-13-203;

10 (ii) A taxicab, taxicab association, for-hire
11 vehicle owner, or for-hire motor vehicle service; or

12 (iii) An individual or entity that owns, controls,
13 operates, or manages a motor vehicle used by a transportation network company
14 driver;

15 (2) "Transportation network company driver" means an individual
16 who operates a motor vehicle that is:

17 (A) Owned, leased, or otherwise authorized for use by the
18 individual;

19 (B) Not a taxicab or a for-hire motor vehicle; and

20 (C) Used to provide transportation network company
21 services; and

22 (3)(A) "Transportation network company services" means
23 transporting a passenger between points chosen by the passenger and
24 prearranged with a transportation network company driver through the use of a
25 transportation network company website, digital network, or software
26 application that:

27 (i) Begins when a transportation network company
28 driver accepts a request for transportation received through the
29 transportation network company's website, digital network, or software
30 application;

31 (ii) Continues while:

32 (a) En route to the requesting passenger; and

33 (b) The transportation network company driver
34 transports the passenger in the transportation network company driver's motor
35 vehicle; and

36 (iii) Ends when the passenger exits the

1 transportation network company driver's motor vehicle.

2 (B) "Transportation network company services" does not
3 mean:

4 (i) Taxicab service as defined in § 14-57-301 et
5 seq.;

6 (ii) Motor carrier service under § 23-13-201 et
7 seq.; or

8 (iii) Street hail service.

9
10 23-13-703. Commercial vehicle registration not required.

11 A transportation network company driver:

12 (1) Is not required to register the motor vehicle used for
13 transportation network company services as a commercial or for-hire motor
14 vehicle; and

15 (2) May conduct transportation network company services with
16 a standard, noncommercial driver's license and is not required to obtain a P
17 endorsement or any other endorsement on the transportation network company
18 driver's license.

19
20 23-13-704. Transportation network company permit required.

21 (a) An individual or entity shall not operate a transportation network
22 company in this state without first having obtained a permit to operate a
23 transportation network company from the Arkansas Public Service Commission.

24 (b) The commission shall:

25 (1) Issue forms for a transportation network company to
26 demonstrate that it meets all requirements of this subchapter to obtain a
27 permit; and

28 (2) Issue a transportation network company permit to an
29 applicant that:

30 (A) Meets all qualifications of this subchapter; and

31 (B) Pays an annual permit fee of fifteen thousand dollars
32 (\$15,000) to the commission.

33
34 23-13-705. Agent for service of process.

35 A transportation network company shall maintain an agent for service of
36 process under the Model Registered Agents Act, § 4-20-101 et seq.

1
2 23-13-706. Fare charged for transportation network company services.

3 (a) A transportation network company may charge a fare for
4 transportation network company services.

5 (b) If a fare is charged, the transportation network company shall
6 disclose to passengers on the transportation network company's website,
7 digital network, or within its software application:

8 (1) The fare calculation method for transportation network
9 company services;

10 (2) Applicable rates charged for transportation network company
11 services; and

12 (3) The option to receive an estimated fare before the passenger
13 enters the transportation network company driver's motor vehicle.

14
15 23-13-707. Identification of transportation network company drivers
16 and motor vehicles.

17 Before a passenger enters the transportation network company driver's
18 motor vehicle, the transportation network company website, digital network,
19 or software application used by the transportation network company to arrange
20 the transportation network company service shall display:

21 (1) A picture of the transportation network company driver; and

22 (2) The license plate number of the motor vehicle the
23 transportation network company driver will use to provide the transportation
24 network company service.

25
26 23-13-708. Electronic receipt.

27 Within a reasonable time after transportation network company services
28 end, a transportation network company shall transmit an electronic receipt to
29 the passenger that lists:

30 (1) The origin and destination of the trip;

31 (2) The total time and distance of the trip; and

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

33
34 23-13-709. Insurance requirements.

35 (a) No later than ninety (90) days after the effective date of this
36 subchapter, a transportation network company and transportation network

1 company drivers shall comply with the motor vehicle liability insurance
2 coverage requirements of this section.

3 (b)(1) While a transportation network company driver is logged into
4 the transportation network company's website, digital network, or software
5 application and available to receive requests for transportation but is not
6 providing transportation network company services, motor vehicle liability
7 insurance coverage that meets the minimum coverage requirements under § 27-
8 22-104(b) shall be maintained by the transportation network company that
9 provides coverage beginning with the first dollar of a claim in the event a
10 transportation network company driver's own motor vehicle liability insurance
11 policy:

12 (A) Excludes coverage under the terms of the policy; or

13 (B) Does not provide the minimum coverage required by §
14 27-22-104(b).

15 (2) With the exception of a factual dispute regarding when a
16 transportation network company driver is logged into the transportation
17 network company's website, digital network, or software application, a
18 transportation network company and its insurer shall not:

19 (A) Challenge a private passenger motor vehicle liability
20 insurer's denial of a claim based on a proper exclusion pursuant to § 23-13-
21 711(b); or

22 (B) Seek reimbursement or contribution from a private
23 passenger motor vehicle liability insurer.

24 (c)(1) While a transportation network company driver is providing
25 transportation network company services, the transportation network company
26 shall:

27 (A) Provide primary motor vehicle liability insurance that
28 expressly recognizes the transportation network company driver's provision of
29 transportation network company services or other for-hire motor vehicle
30 services; and

31 (B) Provide primary motor vehicle liability insurance of
32 at least one million dollars (\$1,000,000) for death, personal injury, and
33 property damage.

34 (2) The motor vehicle liability insurance coverage required by
35 subdivision (c)(1) of this section may be satisfied by any combination of:

36 (A) Motor vehicle liability insurance coverage maintained

1 by the transportation network company driver; or

2 (B) Motor vehicle liability insurance coverage maintained
3 by the transportation network company.

4 (d) If the motor vehicle liability insurance coverage maintained by a
5 transportation network company driver to fulfill the insurance requirements
6 of this section has lapsed, is denied, is nonexistent, or the transportation
7 network company driver has failed to provide the required coverage, the motor
8 vehicle liability insurance coverage maintained by the transportation network
9 company shall provide the coverage required by this section, beginning with
10 the first dollar of a claim.

11 (e) The motor vehicle liability insurance coverage required by this
12 section may be placed with an insurer authorized to do business in this state
13 or with a surplus lines insurer eligible under § 23-65-305.

14 (f) Compliance with the motor vehicle liability insurance coverage
15 required by this section satisfies all financial responsibility requirements
16 for a motor vehicle under § 27-22-101 et seq.

17
18 23-13-710 Insurer disclosure requirements.

19 Before a transportation network company driver is allowed to accept a
20 request for transportation network company services on the transportation
21 network company's website, digital network, or software application, the
22 transportation network company shall disclose in writing to the
23 transportation network company drivers:

24 (1) The motor vehicle liability insurance coverage and limits of
25 liability that the transportation network company provides while the
26 transportation network company driver uses a personal motor vehicle in
27 connection with a transportation network company's website, digital network,
28 or software application; and

29 (2) That the transportation network company driver's own motor
30 vehicle liability insurance policy may not provide coverage while the
31 transportation network company driver uses a motor vehicle for transportation
32 network company services.

33
34 23-13-711. Exclusions—Claim investigations.

35 (a)(1) A private passenger motor vehicle liability insurance policy
36 may exclude coverage against all loss from liability imposed by law for

1 damages arising out of the ownership, maintenance, or use of a motor vehicle:

2 (A) While the motor vehicle is being used to provide
3 transportation network company services; and

4 (B) While a transportation network company driver is
5 logged on to the transportation network company's website, digital network,
6 or software application.

7 (2) An exclusion of coverage under subdivision (a)(1) of this
8 section may apply to any coverage included in a private passenger motor
9 vehicle liability insurance policy, including without limitation:

10 (A) Liability coverage for bodily injury and property
11 damage;

12 (B) Uninsured and underinsured motorist coverage;

13 (C) Medical payments coverage;

14 (D) Comprehensive physical damage coverage;

15 (E) Collision physical damage coverage; and

16 (F) Coverage under § 23-89-202.

17 (b) A private passenger motor vehicle liability insurer that properly
18 excludes coverage under subsection (a) of this section does not have a duty
19 to defend or indemnify a loss.

20 (c) The failure to pay or receive a suggested donation set by a
21 transportation network company does not constitute the charitable carrying or
22 transportation of persons.

23 (d) In a claims coverage investigation, a transportation network
24 company and its insurer shall:

25 (1) Cooperate with the private passenger motor vehicle liability
26 insurer that insures the motor vehicle that the transportation company
27 network driver uses to provide transportation network company services; and

28 (2) Within ten (10) business days of receiving a request for
29 information from a private passenger motor vehicle liability insurer, provide
30 to the private passenger motor vehicle liability insurer information,
31 including the precise times that a transportation network company driver
32 logged on and off of the transportation network company's website, digital
33 network, or software application within the twenty-four (24) hours
34 immediately preceding the accident being investigated.

35
36 23-13-712. Drug or alcohol use prohibited.

1 (a) A transportation network company shall:

2 (1) Implement a zero-tolerance policy prohibiting the use of
3 drugs or alcohol while a transportation network company driver is providing
4 transportation network company services or is logged into the transportation
5 network company's website, digital network, or software application, but is
6 not providing transportation network company services; and

7 (2) Provide notice on its website, digital network, and software
8 application of the zero-tolerance policy and its procedures to report a
9 complaint about a transportation network company driver with whom a passenger
10 was matched and whom the passenger reasonably suspects was under the
11 influence of drugs or alcohol during the time that transportation network
12 company services were provided.

13 (b)(1) Upon receipt of a passenger complaint under this section, the
14 transportation network company shall immediately suspend the transportation
15 network company driver's access to the transportation network company's
16 website, digital network, and software application, and shall conduct an
17 investigation into the reported incident.

18 (2) The suspension shall last until the investigation is
19 completed.

20 (c) The transportation network company shall maintain records relevant
21 to a complaint under this section for at least two (2) years from the date
22 the complaint is received by the transportation network company.

23
24 23-13-713. Driver requirements.

25 (a) Before permitting an individual to act as a transportation network
26 company driver on its website, digital network, or software application, a
27 transportation network company shall:

28 (1) Require the individual to submit an application to the
29 transportation network company that includes information regarding the
30 individual's address, age, driver's license, driving history, motor vehicle
31 registration, motor vehicle liability insurance coverage, and other
32 information required by the transportation network company;

33 (2) Conduct, or have a third party conduct, a state and national
34 criminal background check for each applicant that includes searching:

35 (A) A multistate and multijurisdictional criminal records
36 locator or other similar commercial nationwide database with validation of

1 primary source searches; and

2 (B) The National Sex Offender Registry database; and

3 (3) Obtain and review the individual's driving history.

4 (b) A transportation network company shall not permit an individual to
5 act as a transportation network company driver on its website, digital
6 network, or software application who at the time of submitting an
7 application:

8 (1) Has had more than three (3) moving violations or has had one
9 (1) major violation within the previous three (3) years including without
10 limitation attempting to evade the police, reckless driving, or driving on a
11 suspended or revoked license;

12 (2) Has been convicted within the past seven (7) years of
13 driving under the influence of drugs or alcohol, fraud, a sexual offense,
14 using a motor vehicle to commit a felony, or a crime involving property
15 damage, theft, acts of violence, or acts of terror;

16 (3) Is a match in the National Sex Offender Registry database;

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

18 (5) Does not possess proof of registration for the motor vehicle
19 or motor vehicles to be used to provide transportation network company
20 services;

21 (6) Does not possess proof of motor vehicle liability insurance
22 coverage for the motor vehicle or motor vehicles to be used to provide
23 transportation network company services; or

24 (7) Is not at least nineteen (19) years of age.

25
26 23-13-714. Compliance with motor vehicle safety and emissions
27 requirements.

28 (a) A transportation network company shall not allow a transportation
29 network company driver to accept trip requests through the transportation
30 network company's website, digital network, or software application unless
31 the motor vehicle that the transportation network company driver will use to
32 provide transportation network company services meets the state's motor
33 vehicle safety and emissions requirements for a private motor vehicle or the
34 safety and emissions requirements for a private motor vehicle of the state in
35 which the motor vehicle is registered.

36 (b)(1) A transportation network company shall verify that an initial

1 safety inspection of a motor vehicle used as a transportation network company
2 motor vehicle is conducted by a mechanic within ninety (90) days of beginning
3 service.

4 (2) The inspection shall be performed or supervised by a
5 mechanic certified by the National Institute for Automotive Service
6 Excellence.

7 (3) A safety inspection conducted under this subsection shall
8 include a check of the following motor vehicle equipment to ensure that the
9 equipment is safe and in proper operating condition:

10 (A) Foot brakes;

11 (B) Emergency parking brake;

12 (C) Suspension and steering mechanisms;

13 (D) Windshield;

14 (E) Rear window and other glass;

15 (F) Windshield wipers;

16 (G) Headlights;

17 (H) Taillights;

18 (I) Turn indicator lights;

19 (J) Brake lights;

20 (K) Front seat adjustment mechanism;

21 (L) Doors, including the opening, closing, and locking
22 mechanisms;

23 (M) Horn;

24 (N) Speedometer;

25 (O) Bumpers;

26 (P) Muffler and exhaust system;

27 (Q) Tires, including their condition and tread depth;

28 (R) Interior and exterior rear view mirrors; and

29 (S) Safety belts for driver and passengers.

30
31 23-13-715. Street hails prohibited.

32 A transportation network company driver shall not solicit or accept a
33 passenger who hails the transportation network company driver from the
34 street.

35
36 23-13-716. Cash trips prohibited.

1 (a) A transportation network company shall adopt a policy prohibiting
2 solicitation or acceptance of cash payments from passengers and notify
3 transportation network company drivers of the policy.

4 (b) Transportation network company drivers shall not solicit or accept
5 cash payments from passengers.

6 (c) A payment for transportation network company services shall be
7 made only electronically using the transportation network company's digital
8 network or software application.

9
10 23-13-717. No discrimination – Accessibility.

11 (a) A transportation network company shall adopt a policy of
12 nondiscrimination with respect to passengers and potential passengers and
13 notify transportation network company drivers of its policy.

14 (b) Transportation network company drivers shall comply with all
15 applicable laws regarding nondiscrimination against passengers or potential
16 passengers.

17 (c) Transportation network company drivers shall comply with all
18 applicable laws to accommodate service animals.

19 (d) A transportation network company shall not impose additional
20 charges for providing services to a person with a physical disability because
21 of the disability.

22 (e)(1) A transportation network company shall provide a passenger an
23 opportunity to indicate whether he or she requires a wheelchair-accessible
24 motor vehicle.

25 (2) If a transportation network company cannot arrange
26 wheelchair-accessible transportation network company service in any instance,
27 it shall direct the passenger to an alternate provider of wheelchair-
28 accessible service, if available.

29
30 23-13-718. Records – Inspection.

31 (a) A transportation network company shall maintain:

32 (1) Individual trip records for at least one (1) year from the
33 date each trip was provided;

34 (2) Transportation network company driver records for at least
35 one (1) year from the date a transportation network company driver was active
36 on the transportation network company's website, digital network, or software

1 application; and

2 (3) Any other records required by this subchapter.

3 (b) In response to a specific complaint, the Arkansas Public Service
4 Commission or its employees or duly authorized agents may inspect records
5 held by a transportation network company that are needed to investigate or
6 resolve the complaint.

7 (c)(1) No more than annually as determined by regulation of the
8 commission, the commission or its employees or duly authorized agents may in
9 a mutually agreed upon setting inspect or, if inspection is not feasible, be
10 provided copies of records required to be maintained by a transportation
11 network company under this subchapter that are necessary to ensure public
12 safety.

13 (2) The inspection of records under subdivision (c)(1) of this
14 section shall be on an audit rather than a comprehensive basis.

15 (d)(1) Records obtained by the commission under this subchapter
16 pertaining to transportation network company services, transportation network
17 company drivers, or transportation network company drivers' motor vehicles:

18 (A) Are not subject to disclosure to a third party by the
19 commission; and

20 (B) Are exempt from the Freedom of Information Act of
21 1967, § 25-19-101 et seq.

22 (2) Nothing in this subsection shall be construed as limiting
23 the applicability of any other exemptions under the Freedom of Information
24 Act of 1967, § 25-19-101 et seq., to any other records obtained by the
25 commission under this subchapter.

26
27 23-13-719. Status of transportation network company drivers – Workers'
28 compensation coverage.

29 (a) Notwithstanding any provision of law to the contrary, a
30 transportation network company driver is an independent contractor and not
31 the employee of the transportation network company if:

32 (1) The transportation network company does not prescribe
33 specific hours during which a transportation network company driver must be
34 logged into the transportation network company's website, digital platform,
35 or software application;

36 (2) The transportation network company imposes no restrictions

1 on the transportation network company driver's ability to utilize a website,
2 digital network, or software application of other transportation network
3 companies;

4 (3) The transportation network company does not assign a
5 transportation network company driver a particular territory in which
6 transportation network company services may be provided;

7 (4) The transportation network company does not restrict a
8 transportation network company driver from engaging in any other occupation
9 or business; and

10 (5) The transportation network company and transportation
11 network company driver agree in writing that the transportation network
12 company driver is an independent contractor of the transportation network
13 company.

14 (b) A transportation network company that complies with subsection (a)
15 of this section is not required to provide workers' compensation coverage for
16 a transportation network company driver that is classified as an independent
17 contractor under this section.

18
19 23-13-720. Exclusive authority.

20 (a)(1) Transportation network companies and transportation network
21 company drivers are governed exclusively by this subchapter and any rules
22 promulgated by the Arkansas Public Service Commission consistent with this
23 subchapter.

24 (2) This subchapter does not limit the Arkansas State Highway
25 and Transportation Department, the Department of Arkansas State Police, the
26 Attorney General, other state agencies, law enforcement, and local
27 governments within this state from enforcing state and federal laws or
28 regulations of general applicability that apply to transportation network
29 companies and transportation network company drivers.

30 (b) A county, municipality, or other local entity shall not tax or
31 license a transportation network company, a transportation network company
32 driver, or a motor vehicle used by a transportation network company driver if
33 the tax or license relates to providing transportation network company
34 services or subjects a transportation network company to any type of rate,
35 entry, operational, or other requirement of the county, municipality, or
36 other local entity.

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23-13-721. Penalties.

(a) The Arkansas Public Service Commission may levy a fine not to exceed:

(1) One thousand dollars (\$1,000) for a violation of this subchapter; and

(2) Five thousand dollars (\$5,000) for a knowing violation of this subchapter.

(b) To determine the amount of the fine, the commission shall consider relevant factors, including without limitation:

(1) The appropriateness of the penalty to the size of the business of the transportation network company charged with the violation;

(2) The severity of the violation;

(3) The good faith of the transportation network company charged with the violation in attempting to achieve compliance with this subchapter after being notified of the violation; and

(4) Any history of previous violations of this subchapter by the transportation network company charged with the violation.

23-13-722. Rules.

The Arkansas Public Service Commission may promulgate rules to implement this subchapter.

/s/Rapert