

FISCAL NOTE
Requested by Legislative Council
02/23/2015

Amendment to: SB 2368

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill as amended creates a number of provisions pertaining to transportation network company services.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill as amended will have no substantial fiscal impact on state agencies or political subdivisions.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-4375

Date Prepared: 02/24/2015

FISCAL NOTE
Requested by Legislative Council
02/23/2015

Amendment to: SB 2368

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
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Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill as amended creates a number of provisions pertaining to transportation network company services.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill as amended will have no substantial fiscal impact on state agencies or political subdivisions.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-4375

Date Prepared: 02/24/2015

FISCAL NOTE
Requested by Legislative Council
01/26/2015

Bill/Resolution No.: SB 2368

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill creates a number of provisions pertaining to transportation network company services including a permit requirement and a related fee.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill requires a transportation network company to obtain a permit from the NDDOT at an annual fee of \$5,000. We currently have no way to determine the number of permits that might be issued under this provision or any related administrative costs; therefore we have no reliable way to determine the fiscal impacts associated with this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Shannon L. Sauer

Agency: NDDOT

Telephone: 328-4375

Date Prepared: 01/28/2015

2015 SENATE TRANSPORTATION

SB 2368

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Lewis and Clark Room, State Capitol

SB 2368

2/6/2015

Recording job number 23388

☐ Subcommittee ☐ Conference Committee

Committee Clerk Signature

Doris E. Pérez

Explanation or reason for introduction of bill/resolution:

To create and enact chapter 39-34 of the North Dakota Century Code, relating to transportation network company services. (TNCS)

Minutes:

Attachments:

Vice Chairman Casper opened the hearing on SB 2368 (Chairman Oehlke absent momentarily) and introduced the bill. TNCS thru the use of technology would offer services to underserved communities and offer opportunities for people to earn extra income during their free time. This bill will ensure clarity regarding things like insurance and driver's background. Offered amendment 15.1011.0100 (attachment #1), and explained it. (00:00-09:35)

Rep Thomas Beadle, District 27, co-sponsor, in support of this kind of services and that they should be regulated (9:37-10:12)

Sagar Shah, General Manager, Uber Technologies, in favor of this bill, they favor balanced regulation that would allow free markets to bring on-demand transportation while providing safety for its users, see attachment # 2 (10:41-20:98)

Mike Seminary, Mayor, Bismarck, It is important to embrace new technology and services that would improve quality of life for people (21:16 -25:33) Answered questions from committee members regarding his experience with this kind of transportation in Denver Colorado. (25: 35- 32:00)

Jason Loos, Fargo Assistant City Attorney in favor of this bill with the amendments (32:05-33:48)

Joe Burgum, Fargo resident, customer of Transportation Network Companies (TNCS), favors this bill, attachment #3 (34:00-38:12)

Dale A Haake, Director, Casualty Claims, Nodak Mutual Insurance Company, opposing this bill, specifically the disclosure requirements and the obligations of insurers regarding accidents involving TNC drivers, see attachment #4 (39: 30 to 43:06) referenced HB 1144 and answered questions from the committee (49:42 -1:02:51)

Pat Ward, Property and Casualty Insurance Association of America and the Association of North Dakota Insurers, opposing this bill, urged the committee to gut the insurance requirements and pass it as a TNC regulation statute, thus leaving HB 1144, as the insurance regulation statute, see attachment #5 (49:54-58:14). Distributed copies of HB 1144 (attachment #6); copies of letters from Uber and Lift regarding excessive insurance requirements in California (attachment #7); and proposed amendment as alternative to Do Not Pass (attachment #8). We want legislation that will address the insurance issues to make sure the requirements are consistent across the board. Among our concerns is the insurance aspect of the employer- employee situation; if a taxi driver has commercial insurance your company is ultimately responsible for what you do within the scope of your employment. Uber and Lift have maintained that their drivers are not employees but independent contractors (distributed attachment #9, news report about a California ruling that Lift drivers are employees). The business model is a good idea we encourage this innovation but there are insurance issues that need to be worked out. (49:54-1:04:40)

David Boeck, Director of Legal Services, North Dakota Protection & Advocacy Project for the disabled; sees potential legal problems in some of the wording in this bill, i.e. "will comply with all applicable laws" which ones? There are issues regarding accessibility for the disabled: wheelchairs, scooters, walkers. I will be happy to offer amendments. (1:04:42- 1:08:30)

Jeffrey Ubben, General Counsel and Director, ND Insurance Dept. Legal Division, neutral our concerns align with Mr. Wards concerns, this bill does not require a transportation network company to be the primary insurance carrier which could leave a gap in insurance coverage for personal injury protection, underinsured insurance, uninsured insurance, liability bodily injury, when the app is in the "on" stage and when there is no passenger in the car. Uber said their coverage would drop down and cover that. It is important to remember that this bill will deal with all transportation network companies. If Lift came in and didn't want to agree to what Uber agrees to, there would be nothing in the law requiring them to. Similarly there would be nothing in the law requiring Uber to keep this coverage; if they decide to not provide it. This could create burdens and confusion for consumers to determine who is primary in this situation, it could likely lead to the courts to decide, which means the expenses of litigation, attorney's fees expenses, additional burden on district courts which are already extremely burdened. This bill creates ambiguity as to who the primary insurer is; we don't think this is good for consumers. We are working on HB 1144; it was the first bill that came up. We offered amendments, we feel confident these gaps will be closed and that bill will provide vital consumer protections that are lacking in this one. These gaps are small gaps. (1:08:47- 1:12:05) Yes, **Chairman Oehlke** we often get complaints for coverage denial and sometimes companies take advantage. Yes, **Senator Axness**: we have tried to find a middle ground, there are certain areas we are not willing to yield and primary coverage issue is one of them. There have been areas in the House Bill where we have agreed on. **Senator Sinner** issue is if app in on, Uber should be covering that driver and that car. The question if the app was accidentally left on (or when it is on), will lead to disagreement between Uber and personal auto insurers and will end up in court trying to figure out who was acting in the scope of his employment when he was driving, was he monitoring the app? Should uber have any liability at all? Making it primary would make it crystal clear. (1:12:17- 1:15:25)

Linda Sitz, Director of the Motor Vehicle Division of the North Dakota Department of Transportation (DOT) (1:15:27 relaying message from Director Grant Levi, that DOT is not opposed to the concept of Uber we are confused as to why under Title 39. How is DOT supposed to regulate what is being presented in this section of law? Are we flagging our motor vehicle records, driver's license records? Currently if there is a situation where law enforcement is involved they have the ability to get into our records and run anything on a driver based on the driver's license information or the motor vehicle information. What is the expectation on DOT? It's possible the better place for this would be through local government rather than the state. Tulsa, OK, the city regulates it through their secretary of state office; maybe chapter 8, where it talks about the carriage of persons would be a better spot for this. (1:15:30-1:17:22)

Being there no additional testimony **Chairman Oehlke** closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Lewis and Clark Room, State Capitol

SB 2368

2/12/2015

Recording job number 23704

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

Doris E. Pérez

Explanation or reason for introduction of bill/resolution:

To create and enact chapter 39-34 of the North Dakota Century Code, relating to transportation network company services.

Minutes:

Attachment: 0

Chairman Oehlke opened the discussion on SB 2368, all committee members were present. He said that the insurance end of this has a lot going on in the House right now. The insurance department has problems with the bill, starting with who has control, who is responsible.

Vice Chairman Casper My understanding is they haven't resolved their position in the House yet. The bill has been amended to take out all the regulatory language. If they do this today I will have amendments tomorrow, we are waiting to see what they will do before we take any action.

Chairman Oehlke and Senator Axness agreed that one of the options would be to eliminate the whole insurance aspect and focus on the regulation. The bill in the House deals with the insurance let them address that part and then see us in conference committee if necessary.

Senator Sinner even if we passed it with an insurance provision we are going to have to reconcile with their bill anyway, unless they don't do anything. We want a bill to come out of here that gives a chance for setting these companies up.

Vice Chairman Casper I have a sense if this bill stays like it is it will be "dead on arrival" at the House.

Chairman Oehlke if we did that and the House bill got killed, this one gets sent over and everything will start over because there would be no insurance regulation. Tomorrow we might have more information, and maybe someone from the Insurance Department can explain to us the critical issues.

Meeting adjourned.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Lewis and Clark Room, State Capitol

SB 2368
2/13/2015

Recording job number 23814

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

Doris E. Perez

Explanation or reason for introduction of bill/resolution:

To create and enact chapter 39-34 of the North Dakota Century Code, relating to transportation network company services.

Minutes:

Attachment:1

Chairman Oehlke opened the discussion on SB 2368, all committee members present. The House committee chairman said they are taking pretty much of the legislation we have on our bill and endorsing it into theirs. We will see the House bill here. Most of the concerns are not if TNCS are a good or bad idea, but with the insurance aspect. It has to do with people understanding what they have to do with their own insurance in order to be safe in case of an accident. It is one thing for another company to say we got your liability covered from the time you pick somebody up until you drop them off. Liability means they are covering the guy I am running into, what about my car? We need to address collision damage to my vehicle. My insurance company could say they don't cover taxi cab or livery operations unless I talk to them about it and have a special policy or a special endorsement. People need to understand that if they are going to sign up with a TNCS they need to be informed by that TNC to make sure they get the proper insurance endorsements and make sure they get proof of it. I asked Paul to put together a study (read from document titled Legislative Management Study- Transportation Network Company Services, attachment #1) The House might embrace this,

Senator Sinner: we can put a requirement in, that the TNC must notify the primary insurer on the vehicle. I don't want to wait two years to allow Uber to come here, we need to work on this bill, pass it to the House and let them fix this. I don't support the study.

Senator Campbell doesn't support the idea of the study either.

Chrystal A. Bartuska, Product Filing Group, North Dakota Insurance Department, Chairman Oehlke we have the same concern you do, we want to ensure that the insurance provisions cover all the people involved. If an amendment that makes this bill a copy of the House bill, is the easiest way to do it, I don't know that we would have a problem with that. Both bills are so different, now the House is pulling chunks of the Senate bill over, I don't know the logistics of how that works, I would have to defer to your committee. Yes, I could meet with Senator Sinner and Senator Campbell and work this out. The insurance

department is always willing to answer questions and work with you guys on anything, either now or once it crosses over.

Senator Sinner: my preference is to eliminate the insurance portion of the bill, allow the House bill to be amended to fit what they want instead of having two versions going back and forth and figuring it all out later.

Vice Chairman Casper I was going to have an amendment drafted for today to make the two bills match each other. Their bill is being drafted. There are two paths, wait until we get the bill from them and amend it or we accept the study. My sense is their bill is going to pass the House. The risk is we do the study, the House bill is killed and we are left only with a study. Let's see what has gone on in the House and then act.

Senator Axness I do not favor waiting for what they do and then go with that. We have separation of chambers we take what they did and make it better.

Mark Nelson Deputy Director, Department of Transportation, our concern is 39-34-03 on page 2. DOT is not understanding how we are pulled into this as a regulatory agency. We are not opposed to the transportation network; we do not regulate this type of private business.

Jeff Ubben, General Counsel, ND Insurance Department, This language was stricken from the House bill, instead they required TNCs to register with the Secretary of State. Uber is not an insurance company and we don't have regulatory guidelines.

No further discussion, meeting adjourned.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Lewis and Clark Room, State Capitol

SB 2368

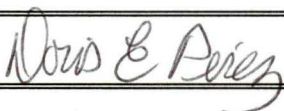
2/19/2015

Recording job number 24115

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

To create and enact chapter 39-34 of the North Dakota Century Code, relating to transportation network company services.

Minutes:

Attachments: 3

Chairman Oehlke opened the discussion on SB 2368. All committee members were present.

Vice Chairman Casper the amendments I have here regulation will go to the Secretary of State not to Transportation. Distributed amendment 15.1011.01004, Attachment #1 this amendment would maintain original insurance section in the bill and align regulatory section with the one in the current House bill section. Walked the committee thru the amendment (00:23- 12:23)

Chairman Oehlke is there a tax on this service? If there is part would go back to political subdivisions where ride came from.

No one in the committee knew if there is a tax on this service or not.

Senator Axness my preference has been always to separate insurance from regulatory

Vice Chairman Casper distributed amendment 15.1011.01003, Attachment # 2, page 3 remove lines 1-31, gets rid of the insurance thing. Walked the committee thru the amendment (13:14- 16:40)

Chairman Oehlke but it leaves transportation drivers requirements in.

Senator Axness: I think the insurance we removed was the TNCS coverage in relation to the individual. It would still require the individual to have insurance

Chairman Oehlke read segments of driver's agreement with Uber. (16:48- 18:22) This is a huge disclaimer basically putting all the responsibility on the driver and none on the TNC.

Committee continued discussion about the level of regulation other states are undertaking. In some states regulation is left up to the cities and municipalities. In some there is no regulation.

Pat Ward, Insurance Industry, concern continues to be the situation where the driver would be left with no insurance or underinsured. Most states have no legislation regulating them, in some it is the cities doing the regulation. These situations may lead to lengthy and costly litigation. (Spoke about the problem with many noncommercial insurance policies that have livery service exclusions). (28:29 -33:07)

Senator Axness: after this discussion we still have more to think and talk about.

The other committee members agreed.

Attachment #3 was distributed: Proposed Amendment to Senate Bill 2368 prepared by the North Dakota Insurance Department, 2/17/15

Chairman Oehlke adjourned the meeting.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2368
2/19/2015
Recording job 24173

☐ Subcommittee ☐ Conference Committee

Committee Clerk Signature

Doris E Perez

Explanation or reason for introduction of bill/resolution:

To create and enact chapter 39-34 of the North Dakota Century Code, relating to transportation network company services.

Minutes:

Attachments: *1*

Chairman Oehlke called the meeting to order. All committee members were present. The three "pieces of that pie": the Department of Transportation information, the Insurance Department part of it and the emergency clause. Cole took all of that to Tim Dawson, Legislative Council. We should have all of that back, late today or early tomorrow.

Senator Sinner: we would be willing to put the Colorado plan in play. *Attachment #1*

Vice Chairman Casper I reviewed the applicable parts for Colorado and Virginia legislation. Do we want to leave the insurance provision in or not? If we are going to leave it in where do we want to go with it? Right now my gut would be to something similar to Colorado and Virginia would be a middle ground, if we want to leave the insurance in.

Senator Sinner everybody agrees the primary coverage of the driver should be provided to Uber. Part of the agreement should be that the primary provider is notified that this person is engaging in Uber business that was in most of these.

Vice Chairman Casper it is not in the House version, which just passed.

Chairman Oehlke closed the discussion, meeting adjourned.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee Lewis and Clark Room, State Capitol

SB 2368
2/20/2015
Recording job number 24198

☐ Subcommittee ☐ Conference Committee

Committee Clerk Signature

Osiris E. Pérez

Explanation or reason for introduction of bill/resolution:

To create and enact chapter 39-34 of the North Dakota Century Code, relating to transportation network company services.

Minutes:

Attachments: 0

Chairman Oehlke opened the discussion on SB 2368. Commercial insurance auto policies usually cost twice what personal auto policy. That is a random off the wall guess. That rate will come down if automated vehicles don't come down over uber. If the automated vehicle is stopped does the driver get a DUI?

Senator Sinner who will stop it?

Chairman Oehlke it will be a fun committee, the interim study on automated vehicles. We still don't have the amendments down, meeting adjourned.

2015 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

SB 2368
2/20/2015
Recording job number 24222

☐ Subcommittee ☐ Conference Committee

Committee Clerk Signature

Doris E. Pérez

Explanation or reason for introduction of bill/resolution:

To create and enact chapter 39-34 of the North Dakota Century Code, relating to transportation network company services.

Minutes:

Attachments: 0

Chairman Oehlke opened the discussion on SB 2368. All committee members were present. We have amendment 15.1011.01005. The first parts, items 1 thru 7, are definitions; required disclosures, insurance limits. Keep in mind TNCS doesn't necessarily mean Uber it could be anybody. Coverage required when the network application is engaged, whose liability coverage is going to be primary. May be satisfied by anyone of the following: page 3 section 26.1-40.1-04 If I have the app on and am waiting to pick somebody up then my insurance will be primary, must include underinsured, insured and PIP.

Senator Sinner if app is engaged with rider in the car, section 2 applies; section 3 is app on with no passengers.

Chairman Oehlke page 4, Liability of transportation network company beyond required liability limits. Continued highlighting the changes, stressed that the capacity of the vehicles will be limited, the higher capacity vehicle (number of passengers) the higher the insurance premium; duty to cooperate, financial responsibility, proof of insurance. Certificate of insurance language is important.

Senator Sinner moved do pass on amendment 15.1011.01005

Vice Chairman Casper seconded the motion

Voice vote: all committee members in favor

Vice Chairman Casper moved **do pass as amended**

Senator Campbell seconded the motion

Roll call vote was taken: Yes 6 No 0 Absent 0

Senate Transportation Committee

SB 2368

2/20/2015

Page 2

Carrier: Vice Chairman Casper

February 20, 2015

2/20/15
JWC
1/5

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

Page 1, line 1, replace "chapter" with "chapters 26.1-40.1 and"

Page 1, after line 3, insert:

"**SECTION 1.** Chapter 26.1-40.1 of the North Dakota Century Code is created and enacted as follows:

26.1-40.1-01. Definitions.

As used in this chapter and chapter 39-34, unless the context otherwise requires:

1. "Application off stage" of operation means the time period when the driver is operating the vehicle for personal noncommercial reasons and not engaged in any manner or operation for the transportation network company.
2. "Application on stage" means the time period the driver is logged onto the online-enabled application of a transportation network company and available for hire but not engaged and there is no passenger on board.
3. "Engaged stage" means the time period from the moment a participating driver accepts a ride request on the transportation network company online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the ride is complete, whichever is later.
4. "Participating driver" or "driver" means any individual who uses a vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers.
5. "Passengers on-board stage" means the time period when there are passengers in the vehicle pursuant to the driver's participation in a transportation network company.
6. "Transportation network company" means a person operating in this state which provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.
7. "Transportation network company insurance" means an insurance policy that covers a driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform.

26.1-40.1-02. Required disclosures.

1. A transportation network company shall disclose in writing or electronic form to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the transportation network

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company provides while the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform and shall advise a participating driver that the driver's personal automobile insurance policy may not provide coverage under the agreement.

2. A transportation network company shall disclose in writing or electronic form to participating drivers, as part of its agreement with those drivers, of when the driver's personal automobile insurance policy may not provide collision or comprehensive coverage, under the agreement.
3. A transportation network company shall provide notice in writing or electronically to the driver instructing the driver to notify the driver's personal automobile insurer of the driver's participation in the transportation network.

26.1-40.1-03. Coverage required when transportation network company application is engaged until completion of ride when the passenger has exited the vehicle.

1. A transportation network company and any participating driver shall maintain transportation network company insurance that provides for the following requirements that apply to transportation network company insurance during the engaged stage and during the passenger on-board stage.
2. Transportation network company liability insurance is primary and in the amount of one million dollars for death, bodily injury, and property damage. The requirements for the coverage required by this subdivision may be satisfied by any of the following:
 - a. Transportation network company insurance maintained by a participating driver.
 - b. Transportation network company insurance maintained by a transportation network company.
 - c. Any combination of subdivisions a and b.
3. Transportation network company insurance coverage provided under this section also provides for uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars anytime the driver has transportation network company passengers on board.
4. Transportation network company insurance coverage must provide personal injury protection to drivers, passengers, and pedestrians when required under chapter 26.1-41.
5. The primary insurer, in the case of insurance coverage provided under subdivision a, has the sole duty to defend and indemnify the insured.
6. Coverage under a transportation network company insurance policy may neither be dependent on a driver's personal automobile insurance policy carrier first denying a claim nor a personal automobile insurance policy carrier being required to first deny a claim.

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7. In every instance in which transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has excluded coverage according to its policy or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

26.1-40.1-04. Insurance coverage during the application on stage with no passengers in vehicle.

1. During the application on stage, the transportation network company insurance must include:
 - a. Motor vehicle liability coverage and the coverage is secondary. The coverage must include at least fifty thousand dollars per person and one hundred fifty thousand dollars per incident for death and bodily injury and at least fifty thousand dollars for property damage.
 - b. Uninsured motorist coverage under subsection 3 of section 26.1-40-15.1 and the coverage is secondary.
 - c. Underinsured motorist coverage under subsection 2 of section 26.1-40-15.1 and the coverage is secondary.
 - d. Personal injury protection under chapter 26.1-41 and the coverage is secondary.
2. The requirements for coverage required by this section may be satisfied by any of the following:
 - a. Transportation network company insurance maintained by a participating driver.
 - b. Transportation network company insurance maintained by a transportation network company that provides coverage in the event that a participating driver's insurance policy under subsection a has ceased to exist or has been canceled or in the event the participating driver does not otherwise maintain transportation network company insurance.
 - c. Any combination of subsections a and b.
3. A transportation network company may meet its obligations under this section through a policy obtained by a participating driver pursuant to subsection a or c only if the transportation network company verifies that the policy is maintained by the participating driver and is specifically written to cover the participating driver's use of a vehicle in connection with a transportation network company's digital platform.
4. If the participating driver's vehicle is insured under a personal automobile insurance policy that does not exclude coverage, then such policy must provide primary coverage and an insurance policy maintained by the transportation network company under subdivision c of subsection 2 must provide excess coverage up to at least the limits required by subsection 1.
5. In every instance in which transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this

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section has lapsed or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

26.1-40.1-05. Liability of transportation network company beyond required limits.

This chapter does not limit the liability of a transportation network company arising out of an automobile accident involving a participating driver in any action for damages against a transportation network company for an amount above the required insurance coverage.

26.1-40.1-06. Discretionary personal insurance where offered by personal automobile insurer.

A personal automobile insurer may offer an automobile liability insurance policy, or an amendment or endorsement to an existing policy that covers a private passenger vehicle or similar type of vehicle with a passenger capacity of fewer than nine passengers, including the driver, while used in connection with a transportation network company's online-enabled application or platform.

26.1-40.1-07. Duty to cooperate.

In a claims coverage investigation involving a participating driver, a transportation network company or its insurer shall cooperate with insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of dates and times at which an accident occurred involving a participating driver and the precise times that the participating driver logged on and off the transportation network company's online-enabled application or platform.

26.1-40.1-08. Financial responsibility.

Transportation network company insurance that meets the requirements of this chapter is deemed to satisfy the financial responsibility requirements of chapter 39-16.

26.1-40.1-09. Proof of insurance.

1. A participating driver of a transportation network company shall carry proof of transportation network company insurance coverage at all times during the driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform. In the event of an accident, a participating driver shall provide this insurance coverage information to any other party involved in the accident, and to a police officer, upon request.
2. Before the transportation network company driver is permitted to accept a request for transportation network company services on the transportation network company's digital network, a transportation network company driver shall provide a certificate of insurance to any affiliated transportation network company.

26.1-40.1-10. Authorized or eligible carrier.

Transportation network company insurance required by this chapter may be placed with an insurer authorized to do business in the state or with a surplus lines insurer eligible under section 26.1-44-03."

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 13

Page 2, line 14, replace "**39-34-04**" with "**39-34-01**"

Page 2, line 15, after "agent" insert "with the secretary of state"

Page 2, line 17, replace "**39-34-05**" with "**39-34-02**"

Page 2, line 18, remove lines 18 through 20

Page 2, remove lines 24 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 31

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Page 7, remove lines 14 through 31

Page 8, remove lines 1 through 15

Page 8, line 16, replace "**39-34-16**" with "**39-34-04**"

Page 8, line 19, replace "one" with "six"

Page 8, line 21, replace "**39-34-17**" with "**39-34-05**"

Page 8, replace lines 22 through 29 with "A transportation network company may not disclose any personally identifiable information of a transportation network company passenger except under a legal obligation or for payment processing. For any other disclosure, the transportation network company must obtain the passenger's written consent on a separate form specifically addressing passenger personal information before the company may disclose the passenger's personally identifiable information."

Page 9, line 1, replace "**39-34-18**" with "**39-34-06**"

Page 9, line 4, replace "municipality or other local entity" with "political subdivision"

Page 9, line 7, replace "municipality's or other local entity's" with "political subdivision's"

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
SB BILL NO. 2368**

Senate TRANSPORTATION Committee

☐ Subcommittee

Amendment LC# or Description: 15.1011.01005

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Sinner Seconded By Vice Chairman Casper

Senators	Yes	No	Senators	Yes	No
Chairman Oehlke			Senator Axness		
Vice Chairman Casper			Senator Sinner		
Senator Campbell					
Senator Rust					
VOICE VOTE:			ALL IN FAVOR		

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

To consolidate the Department of Transportation information, the Insurance Department part of it and the emergency clause

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
SB BILL NO. 2368**

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Recommendation: ☐ Adopt Amendment
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Motion Made By Vice Chairman Casper Seconded By Senator Campbell

Senators	Yes	No	Senators	Yes	No
Chairman Oehlke	x		Senator Axness	x	
Vice Chairman Casper	x		Senator Sinner	x	
Senator Campbell	x				
Senator Rust	x				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Vice Chairman Casper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2368: Transportation Committee (Sen. Oehlke, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2368 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "chapter" with "chapters 26.1-40.1 and"

Page 1, after line 3, insert:

"SECTION 1. Chapter 26.1-40.1 of the North Dakota Century Code is created and enacted as follows:

26.1-40.1-01. Definitions.

As used in this chapter and chapter 39-34, unless the context otherwise requires:

1. "Application off stage" of operation means the time period when the driver is operating the vehicle for personal noncommercial reasons and not engaged in any manner or operation for the transportation network company.
2. "Application on stage" means the time period the driver is logged onto the online-enabled application of a transportation network company and available for hire but not engaged and there is no passenger on board.
3. "Engaged stage" means the time period from the moment a participating driver accepts a ride request on the transportation network company online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the ride is complete, whichever is later.
4. "Participating driver" or "driver" means any individual who uses a vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers.
5. "Passengers on-board stage" means the time period when there are passengers in the vehicle pursuant to the driver's participation in a transportation network company.
6. "Transportation network company" means a person operating in this state which provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.
7. "Transportation network company insurance" means an insurance policy that covers a driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform.

26.1-40.1-02. Required disclosures.

1. A transportation network company shall disclose in writing or electronic form to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the transportation network company provides while the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform and shall advise a participating driver that the driver's personal automobile insurance policy may not provide coverage under the agreement.

2. A transportation network company shall disclose in writing or electronic form to participating drivers, as part of its agreement with those drivers, of when the driver's personal automobile insurance policy may not provide collision or comprehensive coverage, under the agreement.
3. A transportation network company shall provide notice in writing or electronically to the driver instructing the driver to notify the driver's personal automobile insurer of the driver's participation in the transportation network.

26.1-40.1-03. Coverage required when transportation network company application is engaged until completion of ride when the passenger has exited the vehicle.

1. A transportation network company and any participating driver shall maintain transportation network company insurance that provides for the following requirements that apply to transportation network company insurance during the engaged stage and during the passenger on-board stage.
2. Transportation network company liability insurance is primary and in the amount of one million dollars for death, bodily injury, and property damage. The requirements for the coverage required by this subdivision may be satisfied by any of the following:
 - a. Transportation network company insurance maintained by a participating driver.
 - b. Transportation network company insurance maintained by a transportation network company.
 - c. Any combination of subdivisions a and b.
3. Transportation network company insurance coverage provided under this section also provides for uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars anytime the driver has transportation network company passengers on board.
4. Transportation network company insurance coverage must provide personal injury protection to drivers, passengers, and pedestrians when required under chapter 26.1-41.
5. The primary insurer, in the case of insurance coverage provided under subdivision a, has the sole duty to defend and indemnify the insured.
6. Coverage under a transportation network company insurance policy may neither be dependent on a driver's personal automobile insurance policy carrier first denying a claim nor a personal automobile insurance policy carrier being required to first deny a claim.
7. In every instance in which transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has excluded coverage according to its policy or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

26.1-40.1-04. Insurance coverage during the application on stage with no passengers in vehicle.

1. During the application on stage, the transportation network company insurance must include:

- a. Motor vehicle liability coverage and the coverage is secondary. The coverage must include at least fifty thousand dollars per person and one hundred fifty thousand dollars per incident for death and bodily injury and at least fifty thousand dollars for property damage.
 - b. Uninsured motorist coverage under subsection 3 of section 26.1-40-15.1 and the coverage is secondary.
 - c. Underinsured motorist coverage under subsection 2 of section 26.1-40-15.1 and the coverage is secondary.
 - d. Personal injury protection under chapter 26.1-41 and the coverage is secondary.
2. The requirements for coverage required by this section may be satisfied by any of the following:
 - a. Transportation network company insurance maintained by a participating driver.
 - b. Transportation network company insurance maintained by a transportation network company that provides coverage in the event that a participating driver's insurance policy under subsection a has ceased to exist or has been canceled or in the event the participating driver does not otherwise maintain transportation network company insurance.
 - c. Any combination of subsections a and b.
 3. A transportation network company may meet its obligations under this section through a policy obtained by a participating driver pursuant to subsection a or c only if the transportation network company verifies that the policy is maintained by the participating driver and is specifically written to cover the participating driver's use of a vehicle in connection with a transportation network company's digital platform.
 4. If the participating driver's vehicle is insured under a personal automobile insurance policy that does not exclude coverage, then such policy must provide primary coverage and an insurance policy maintained by the transportation network company under subdivision c of subsection 2 must provide excess coverage up to at least the limits required by subsection 1.
 5. In every instance in which transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has lapsed or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

26.1-40.1-05. Liability of transportation network company beyond required limits.

This chapter does not limit the liability of a transportation network company arising out of an automobile accident involving a participating driver in any action for damages against a transportation network company for an amount above the required insurance coverage.

26.1-40.1-06. Discretionary personal insurance where offered by personal automobile insurer.

A personal automobile insurer may offer an automobile liability insurance policy, or an amendment or endorsement to an existing policy that covers a private passenger vehicle or similar type of vehicle with a passenger capacity of fewer than nine passengers, including the driver, while used in connection with a transportation network company's online-enabled application or platform.

26.1-40.1-07. Duty to cooperate.

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2015 HOUSE TRANSPORTATION

SB 2368

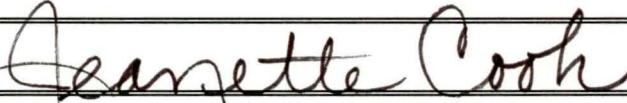
2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

SB 2368
3/19/2015
#25166

☐ Subcommittee
Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to transportation network company services.

Minutes:

Attachment #1-7

Chairman Dan Ruby opened the hearing on SB 2368.

Senator Casper, District 27, introduced SB 2368. He explained that the bill is about Transportation Network Companies (TNC). This is allowing technology using an application on a smartphone to allow a relationship to be formed between yourself and a person who owns a vehicle to provide a ride. The use of this transportation is expanding throughout the country, and they want to come to North Dakota. I am interested in representing Fargo, because I think that there is a need for more transportation in the bigger communities in the state, especially on the week-ends. It allows people to start their own little business by being a driver for a TNC. I think it will meet a demand.

He stated that the Senate really focused on the period of time from when the driver has their App. (Application) on to the period of time and is available for a ride, but has not yet or engaged with a purchaser or picked someone up. The App. on, phase 1 has had a lot of discussion to make sure that there is proper insurance coverage in place. The conclusion of the Senate Transportation Committee was that the driver would have the primary insurance in the first phase, and then the TNC, Uber for instance, would have secondary coverage in that stage.

Representative Ben Hanson: Can you summarize the reasons for the amendments?

Senator Casper: There were two main issues. The first was the Phase one coverage, as I stated before. We also wanted the TNC to give the driver notice that **they are responsible**, and that they have to have primary insurance once they decide to engage in this activity. The driver needs to talk to their insurance agent and provide the correct coverage for the activities that they are going to be involved in.

Chairman Dan Ruby: Why was the change made from age 18 to 21?

Senator Casper: The general feeling was that folks that are age 21 would have more personal responsibility with regard to their insurance.

Chairman Dan Ruby: There was a lot of discussion on the App. On stage in the IBL Committee. This bill specifies in several areas that the coverage is secondary. Under the proof of insurance, do we need all of the information in two places?

Senator Casper: I do think there is potential to clean those two areas up. This is very new, and we are one of the first states to put legislation in place. It is the committee's viewpoint that we should look at language from other states to make sure that the responsibility for insurance is taken care of.

Chairman Dan Ruby: On the provisions to the additional language to Title 39, who is supposed to enforce or regulate that? Is it the Department of Transportation?

Senator Casper: The way that it is in there now, it would be up to the Department of Transportation how they choose to do that. I would see it being some responsibility for them. The Secretary of State would be issuing the certificate, and the \$5000 fee. The Department of Transportation would have the regulatory responsibility.

Chairman Dan Ruby: It looks like the Department of Transportation would be required to verify the driver requirements and records. We will have to figure out what they can, and what they want to do, and also, whether other states are actually taking that on, rather than cities. Usually it is a political subdivision.

Senator Casper: We would be happy to discuss that as we move forward.

Chairman Dan Ruby: Do you see reason for areas of confidentiality to be put into the bill?

Senator Casper: Yes, I think having some level of confidentiality is important.

Joe Burgum, citizen of Fargo, spoke to support SB 2368 and provided written testimony. See attachment #1.

Representative Ben Hanson: What aspect of public safety would this affect?

Joe Burgum: As an adult who goes out in downtown Fargo and enjoys the night life, currently you can spend an hour and a half waiting for a cab. There are places (bars) that have hundreds of cars in the parking lots that are being driven home by people that have enjoyed themselves that evening. It might not be in the best interest of public safety.

Sagar Shah, General Manager with Uber Technologies, spoke on behalf of Uber to support SB 2368. This bill will provide a framework for TNCs to operate in North Dakota and codify safety requirements in an appropriate manner to give TNCs a home here. This has been a topic of meaningful discussion this session and with a few exceptions the language in this bill is really quite similar to HB 1144 that was passed in the House last month.

Uber is a technology company. We have built a smartphone App. that allows you to push a button and get a ride. It has transformed the way that people have been able to move around their cities. One objective that we see is to improve cities. We have done that by connecting riders with drivers who use their person vehicles and provide the safest and most reliable rides on the road. At the same time we create an economic opportunity for these drivers who are on the Uber platform. Companies that offer this sort of ride sharing technology have become known as Transportation Network Companies (TNCs). There are several, other than Uber, in the market. Uber's TNC product, Uber X, is 40% cheaper than a taxi in many of the markets that we operate. This really speaks to *the ability to create transportation as reliable as running water, everywhere for everyone*. We are able to do that and, at the same time, provide an economic opportunity for the drivers to earn a living while also using an existing asset, their car. We often see teachers, nurses, military veterans, and retirees, all as typical part time Uber X drivers on our platform. We are in ninety cities around the world, and cities like Fargo and Bismarck will be able to benefit from the reliability and convenience that a service like Uber X and TNCs offer. In recent months over 6000 people have open up the Uber App. just in North Dakota to see if there is Uber service here. A little over 1500 of those actually had a North Dakota area code.

In addition to creating this economic opportunities there are also a lot of community level improvements. One of the biggest ones is a reduction in drunk driving. Cities such as Seattle lack transportation options because of that people would typically drive home drunk late at night. After ride sharing has entered the markets, we have actually seen DUI arrests reduced by over 10% a month. Consequently, groups like Mothers Against Drunk Driving, have embraced the ride sharing community. As a company, safety is Uber's number one concern. We pride ourselves with connecting passengers with the safest rides on the road.

As this bill relates to insurance, it would require TNCs to provide a \$1,000,000 commercial liability policy during the time in which a driver was on route to pick up a passenger or when the passenger is in the vehicle. During the time in which a driver has their Uber App on, this bill would say that that time would fall on the driver's personal insurance to be primary. If that personal insurance excludes coverage for this activity, or is unavailable for any reason, the TNC must maintain a secondary policy that would kick in. It is important to note that it is set up this way because this actually helps avoid a very big moral hazard issue. If the TNC were providing primary insurance, then the Uber driver could just turn on an Uber App and have primary coverage all of the time. It is easy to do; you just push a button. That would be stage one, App on.

Chairman Dan Ruby: On Page 1 Line 18, you are redefining the "participating driver" a little bit. You use the word person, and in North Dakota law a person could mean a person, corporation, etc. It is a broad term. Do you mean individual?

Sagar Shah: Yes, individual would be fine, and that is the intent.

Written proposed amendments were provided by Sagar Shah. See attachment #2. (24:00 minutes) Amendments were reviewed.

Chairman Dan Ruby: Your company's privacy policy could change, and this is pretty open to where we would just have to accept whatever **your company's privacy policy is**. The

House version made sure that you could continue will all of the necessary transactions to conduct business, but couldn't share any information that was used for marketing. Would you be comfortable with that language put back in? I don't remember that being an issue.

Sagar Shah: That language is actually the same as is in here now.

Chairman Dan Ruby: No, if that policy changes because you publish it, it means that you could do whatever you want.

Sagar Shah: This is reflective of what was passed in the House Bill. It is a way that technology industry operates (Google, Amazon, Apple). There are no state or federal requirements to say what they can and can't provide. It is tied to their privacy policies which the consumers should know to read and review before signing up with the platform. It is important to put the onus on that. If anyone ever sees anything that is problematic, that can be raised to the Company.

I would like to close by saying that with these changes made, we believe we have a very strong bill that supports the free market, promotes innovation, and would have a home for TNCs here in North Dakota. We would look forward to bringing services to this state and providing the safest rides on the road.

Representative Rick C. Becker: What is the age requirement in Minnesota?

Sagar Shah: I'm not sure; it might be 19. I can check on that.

Representative Rick C. Becker: Is it common, as these laws are passed that the age requirements vary from 18 to 21?

Sagar Shah: Yes, it is. Different states and cities have adopted different age requirements, depending on where they are comfortable.

Representative Rick C. Becker: If you have a driver in Moorhead, MN that was 19, how would you address that if someone in Fargo wanted a ride?

Sagar Shaw: If the driver is ever in an area where the regulations are different from their area of origination, we program it so they are not able to pick up rides in those areas.

Chairman Dan Ruby: Are you working with any states that are regulating any part of this, or is it always cities?

Sagar Shah: We are typically working with states. In Illinois, for example, the Secretary of State would issue a permit for the TNC. Then they would review things like: who is the background check provider, what type of background check do they conduct, does that meet our standards, who is the insurance provider, do the policies meet our standards in this state, and things like that. Once those things meet the requirement in the law, then they would grant the TNC a license.

Chairman Dan Ruby: That is just basically like licensing through the Secretary of State for normal business practices?

Sagar Shah: Correct.

Chairman Dan Ruby: So, there would be nothing through the state Department of Transportations?

Sagar Shah: That is correct. I think that a lot of the DOTs are welcoming their regular practices, and regulate this new industry. In other states they are used to the status quo which is regulating things like trucks and highway vehicles. In those cases they do not participate in that. One addition option, which is not in this bill, would give the city the ability to enforce laws themselves as they see fit through their local authorities. It can be regulated at that level, as well.

Chairman Dan Ruby: Is there some language that limits cities abilities to regulate rates and things like that?

Sagar Shah: Yes, the reason for that is for consistency, but at the same time it makes sense to allow the individual cities to enforce as they see fit if something wrong is going on.

Representative Robin Weisz: Is there anything now in state law that prohibits you from operating in North Dakota?

Sagar Shah: There are no laws prohibiting TNCs specifically. There have been regulations around things like limo and taxi, that haven't been updated for 50 to 60 years. We have worked with cities in different states to change those regulations to create a framework for TNCs. Fargo was very open to doing that as well. Since, we moved at a state level, they welcomed the fact that it would be taken care of at that level.

Representative Robin Weisz: But, if you wanted to, you could be operating in Bismarck today?

Sagar Shah: That is correct, but we would obviously talk to the city first to see if we met its requirements.

Representative Gary Paur: As far as the uniformity, if there is a big concert event in Fargo with a lot of attendees, would other Uber drivers from surrounding towns head to the event to provide services?

Sagar Shah: Yes, and an example of that is in Michigan. Ann Arbor, Michigan is a huge college town that has huge football games on the week-ends. We might inform the drivers on our platform in Detroit, for example, that there will be a big week-end in Ann Arbor. That's where we benefit from consistency.

Representative Gary Paur: So, having the uniformity statewide would be important in such events.

Representative Lois Delmore: Can you give us a short snapshot of how my insurance and your insurance will work? If something happens, how will I know which insurance will cover me?

Sagar Shah: We make our insurance policy extremely clear to the driver during the time of sign up. We recommend that they speak with their insurance company before they come on the platform. The way that it would work, based on this bill, is if you are a driver, and you flip the App. on but are not connected with anyone, the case would fall on your personal auto insurance. If for any reason, your personal auto excludes coverage, then you would work with Uber to pay that claim. Once you are connected with a passenger, are on your way to pick the person up, and when you pick them up to the end of the trip, that is when Uber's primary \$1,000,000 policy will kick in. If you have an accident, you call Uber, and we will walk you through the process in an event of an accident. The driver will have an electronic insurance card on their App at all time.

Representative Lois Delmore: Have you had conflicts of who should be paying in other states, and how have they been handled?

Sagar Shah: There have been NO acts of litigation, to our knowledge, regarding the applicability of Period One for the primary auto. You might hear from the insurance representatives that this will cause a lot of litigation and ambiguity, but there has been zero litigation over this.

Chairman Dan Ruby: Has there been litigation over the other stages?

Sagar Shah: Regarding that, there has been some litigation toward Uber saying we want more than the one million dollars of coverage that Uber has provided. But, there has been no litigation over who should be paying for this moment.

45:30

Pat Ward, Property and Casualty Insurance Association of America and the Association of North Dakota Insurers, spoke in support of SB 2368. Written testimony was provided. See attachment #3.

48:50

A marked up bill and proposed amendments were offered and reviewed. See attachments #4-5.

Chairman Dan Ruby: When reading this, what does the word "specifically" add to that?

Pat Ward: The term we are describing is transportation network company insurance. It means an insurance policy that **specifically** covers the driver's use of a vehicle. It means a policy that does not **exclude** the coverage, or a policy that is designed to provide this type of coverage.

A copy of the **Transcript of How to Use the Uber Partner App. Video** is also provided. See attachment #6.

Representative Chris Olson: I still don't understand the use of specifically. It says that it covers it, which means that it does not exclude it.

Pat Ward: Our concern is that this will become an issue, and that a TNC will come along and will dispute the primary coverage, arguing that the driver has a personal auto policy that may have been a vague exclusion. The company may take the position that there is an exclusion that applies. They would then argue and litigate an insurance coverage dispute over whose coverage is primary. We want to make absolutely sure that that their (TNC's) coverage is primary unless the person actually goes out and buys **Transportation Network Company Insurance coverage**. In paragraph 2a on the bottom of Page 2 Line 27, you will see different ways that the policies can combine to create Transportation Network Company Insurance. A, B, C policies listed. We don't have a problem with a driver going out and getting a TNC rider on his personal auto policy. We want to make it clear that is what we are talking about, not a personal auto policy. The exclusions in all of these personal auto policies are worded differently in the App on phase, in particular, we have a concern about coverages, and whether there will be any coverage. Most insurance policies are going to exclude that coverage. Some companies will exclude all coverages if operating for a TNC. The word **specifically** is important to have in there.

Representative Chris Olson: The Transportation Network Company in this language would be required to have some type of policy to cover the driver when that driver is engaged with a passenger or going to pick up a passenger. So, couldn't we assume that they would follow the law and have insurance that actually would cover the driver?

Pat Ward: I wouldn't assume that they will follow the law. The phrase that I heard Mr. Shah use was "*a moral hazard*". So, even though they are doing background checks on their drivers, they don't necessarily trust them to turn the App on or off at the appropriate times. I do think there are going to be problems. In addition, there are many jurisdictions that have issued cease and desist orders against Uber, and they keep doing business. I believe that Ann Arbor, Michigan is one. There are cities and countries that have banned them, and they still do business. It is partly because of this attitude that they are above the law. We just want to make sure that whoever is doing this activity has the right coverage and the right kind of policy. It is important to have clarity in this bill. We are all on the same page here, I think, of wanting to have legislation that will provide consistency within the state. I would like to see legislation that avoids insurance coverage lawsuits and avoids putting the insurance company in a position of having to surprise their drivers by telling them that they do not have coverage. There may be instances where the back-up coverage isn't there.

Representative Lois Delmore: If I am going to use my car part time for personal business, and part time for Uber, will I need two policies?

Pat Ward: That will depend on how you write this law, because we are asking that Uber be primary in all phases when someone is working for a TNC, not just in certain phases. No personal auto policy provides commercial coverage.

Representative Lois Delmore: Could you offer the type of policy that we are talking about right now, and what would be the extra cost?

Pat Ward: They have a policy right now with a million dollars of coverage. It is essentially an excess policy, which means that if the other policy comes up short or doesn't exist, then they have coverage. We believe that their coverage should be primary, when their drivers are working. I'm not sure how much the policies are costing. I believe the ones being offered in Colorado (not sure on limits) are being offered for between \$100 and \$200.

Representative Lois Delmore: You are looking out for your company on the liability as much as you are looking out for the citizen who wants that insurance, correct?

Pat Ward: Yes, we are, but we are also looking out for the potential victims that could be the victims of these drivers.

Pat Ward: One thing that isn't in the bill that I think should be in the bill is what I would call a back-up collision coverage. That would be on Page 3 Line 11.

1:06:00 Continued discussion of amendments.

Representative Rick C. Becker: You have indicated that during the App. on phase, the driver is working. If I have a free afternoon, and I decide that I am going to pick up my dry cleaning, stop at the grocery store, and stop downtown and say hi to my cousin Vinney and after that I am going to sit at the park and feed the pigeons and turn my App on. You would agree that the App off during my errands is not to be primary? Then when I am at the park with my App on, you would like that to be primary?

Pat Ward: Yes, we would.

Representative Rick C. Becker: What difference could it possibly make if I say it is much more efficient while I am running my errands? That way I have a greater opportunity to conduct business, but if the App is just on in the background and no one is engaging me, I can continue my chores with no greater risk to the public, as far as liability. Where do you remedy this theoretical problem that I am working for Uber the moment my App is on, even though I am actually working for me doing other things?

Pat Ward: If your plan is just to do other things, why would you log in? The reason you would log in and turn your App on is because you are now looking for business. I believe that Uber with their technologies can police these drivers and have them log out after a certain number of minutes. But, if you are running errands with your App on with the intention of going to get someone, we believe you are going to be distracted by your phone. Then during that phase you should be on their policy, and it should be primary.

Chairman Dan Ruby: If they are driving around wanting to be engaged, why should they have to be distracted to turn their App on again, because it times out every so often?

Pat Ward: They should be able to pull over and log in again. I'm not talking about it timing out in 5 or 10 minutes. It should be a reasonable amount of time, like 20 minutes or a half hour.

Chairman Dan Ruby: Do you have data that shows that there is a higher incidence of accidents in the App On stage?

Pat Ward: We don't have at this time because it is too early. It started in California in 2010. The state of Colorado did a study for their bill, and the conclusion was that there wasn't enough data to be conclusive.

Representative Chris Olson: It seems like there would be some ambiguity if a driver is logged in to 4 or 5 TNCs waiting to engage. Whose coverage would he be under then?

Pat Ward: That is a good question.

Continued review of mark up and amendments.

Chairman Dan Ruby: Is the six year language consistent with 1144?

Pat Ward: Yes, I believe it is.

1:15:11

End of amendment discussion.

Chairman Dan Ruby: Can you elaborate on Page 4 Lines 18-22, why would you remove that?

Pat Ward: The reason it would be removed is because it is our position that the TNC should be primary in all phases.

Representative Rick C. Becker: Do you have an opinion on the age if it were to be changed?

Pat Ward: My personal opinion is that 21 would be a good idea.

Chairman Dan Ruby: What is your opinion about having all of this in Title 39? There are no other states that do this, generally it is through municipalities.

Pat Ward: I don't care, but I think that someone should regulate it. I do believe that it is the Department of Transportation in Colorado, but I'm not sure.

Dan Ruby: If we address the insurance requirements and make sure the passengers are protected and the other motorists, do we really care about the rest of the regulation?

Pat Ward: I don't; I think that is up to you, the policy makers.

Representative Gary Paur: What is your concern with having the TNC carry collision insurance when they have the App on?

Pat Ward: The way the amendment is worded this is only for drivers that do have collision insurance. It is to make sure that the TNC policy is primary during that phase because there

are some policies that would exclude collision coverage if the driver is engaged in a commercial activity. We believe that when Uber hires a driver **they** should notify the driver's insurance company to **make sure** that the insurance company knows, so they can talk with the driver about the coverage he/she may or may not have.

Representative Chris Olson: If there is more than one transportation network that a driver is participating in, how would you decide which company is primary?

Pat Ward: I would have no problem in that situation you added a sentence in here to require those companies that the driver is logged into, would split the cost if the driver is in an accident.

Representative Chris Olson: Along those same lines, would we also be justified in writing in his personal coverage as well?

Pat Ward: If you did that, you would be rewriting insurance policies that have been on the books for a long time.

Chairman Dan Ruby: On the suggestion for the insurance amounts, is it because it is common to buy insurance at those levels?

Pat Ward: No, 50-150-25 or 50-150-50, the 150 is the unusual part. The 50 is per person, the 100 is per accident. That would give three people \$50,000 coverage as opposed to two. As you know, we think it should be even more.

Chairman Dan Ruby: Can they readily find 50-150-50?

Pat Ward: With the size of Uber, I think that they can get whatever policy they need. Remember, what Uber is doing is using someone else's car to provide a ride to someone else. They are not bearing any of the expense. The only thing they have is this App. They are hiring drivers and putting them and the passengers at risk, and they should have to pay something to play the game.

1:26

Representative Chris Olson: Right now, if there were an Uber driver in North Dakota and there was no law passed, and the driver was signed into the application and waiting for a call, but didn't have a fare yet, and he had an accident. Would the driver's personal insurance cover that accident, right now, in the absence of this legislation?

Pat Ward: That would depend on his insurance policy. All of the insurance policies have exclusions that are worded differently.

Jeff Ubben, General Counsel and Director of the legal division at the North Dakota Insurance Department, spoke to support SB 2368. He provided written proposed amendments. See attachment #7. The amendments are mostly technical amendments. We have brought this bill to a place where we feel comfortable with it. (The amendments were reviewed.)

Jeff Ubben: One amendment that is not on that sheet, Page 3 Line 27, (50-150-50) we are fine with moving that back from 150 to 100. It is a much more common policy to buy.

Remainder of amendments reviewed. They feel that this language is a fair compromise to the App on stage and believe that Uber is in support of it as well.

Chairman Dan Ruby: On Page 4 line 18 taking out "a personal" and just putting in "an automobile insurance policy", what is the reason for that?

Jeff Ubben: We were hoping to also include commercial auto policies as well.

Representative Rick C. Becker: Where did the age change come from?

Jeff Ubben: It was mostly just from the Senators. The Insurance Department didn't take a position on that.

Representative Rick C. Becker: I am assuming that the actuarial risk for a 21 year old male is much higher than a 19 year old female. Is that true?

Jeff Ubben: When it comes to auto insurance, I don't know that that is always true. I don't think it is.

Rep. Mark Owens: What are the insurance requirements for taxi companies?

Jeff Ubben: We don't regulate that; it is regulated by the city or municipality. It is not in state law.

Chairman Dan Ruby: It is generally a commercial policy, isn't it?

Jeff Ubben: Yes.

Representative Lois Delmore: If you have nothing to do with the regulation of taxi companies, why is it so important for us to have the regulation set in place statewide for Uber?

Jeff Ubben: This is a new industry that is unique. Traditionally taxis and limos have been regulated by the city. Fargo tried to regulate the TNCs, and the industry came to the legislature with a bill thinking it would be a good idea to have the state be involved so there is uniformity in the regulation. We are not opposed to that.

1:34:55

There was no further support for SB 2368.

There was no testimony in opposition to SB 2368.

Chairman Dan Ruby called for neutral testimony on SB 2368.

Linda Sitz, Department of Transportation, explained that the Department is at the hearing for clarity. The Director is questioning the purpose for TNC under Title 39, on Page 7 Lines 26 - 30 and the controlling authority. Our question is what are we developing rules over,

what are we trying to control, and what type of regulations are supposed to be followed? It doesn't appear like there is anything in this bill that talks about any penalties or any type of infraction if there something that goes wrong. When we met with Uber on 2368 when it was in front of the Senate, Sager indicated that there were other states that this was underneath, so we asked for an example from another state. The example that he sent us was the city of Tulsa, OK. So, it wasn't really guidelines for how another state is monitoring this. The Department of Transportation is questioning the reason why it is under Title 39. We are not opposed to Uber, but are just wondering why.

Chairman Dan Ruby: Mr. Ward thought that maybe Colorado had it. That could be checked. I am wondering if the Department of Transportation would even have the ability to verify the driver requirements, and make sure that the fare is being given to the passenger. You are not set up to do that kind of enforcement, are you?

Linda Sitz: No, we're not, so if that were a requirement we would have to create something. Right now we wouldn't know how to even get that. Would we have access to the Uber App, somehow, to gain that information?

Chairman Dan Ruby: Was it the Department of Transportation that prepared the fiscal note that showed no fiscal effect? If you are going to do that, you would have some expense.

Linda Sitz: Correct. At the time that we looked at this as a whole, there was a section with a \$5000 for the Department of Transportation, and we were supposed to do something with that dollar amount. We didn't know how to write a fiscal note on this because we don't know what we are being asked to do.

Representative Chris Olson: The population of Tulsa is over 50% of the population of North Dakota, so maybe we could take a cue from the cities and just look at what they do and use it for our state.

Linda Sitz: In Tulsa the director is considered to be the mayor or his designee. To me that sounds like it is underneath the city. There is still not clarity if something happens. What are the rules and regulations that we are supposed to write?

Chairman Dan Ruby: If there is a minimal amount of registration for a business with the Secretary of State's Office and verifying some insurance requirements that is what they have do. That would probably be as far as we could go with that.

Linda Sitz: We are not sure of the best fit for that section.

Representative Gary Paur: Can you see any short comings to eliminating most of the section, Title 39?

Linda Sitz: I think the attorney that you brought over here, said that might not be a bad idea to take that section out. You would think that there would have to be some kind of guidelines for this type of company.

Chairman Dan Ruby: Initially, the way that this bill started out before amendments, we took out a bunch of what we thought were useless regulations, and what seemed, in some cases, to almost be Uber's policies being put into state law that all other companies would have to comply with. We didn't want something that was that specific. Were all of the regulation requirements put in under Title 39 in the original bill?

Linda Sitz: When 1144 came out, we didn't even come to testify on it because we didn't catch the section in Title 39 that it would have some sort of regulation on the Department of Transportation.

Chairman Dan Ruby: I don't think that it was originally in there.

Linda Sitz: It may not have been **originally** in it, but when the \$5000 was on 2368 on the original bill, the Department of Transportation would get the \$5000 to be distributed to the Highway Tax Distribution Fund. We started questioning why are we collecting \$5000, and what are we going to do with it. There was more confusion than clarity when we were reading the bill, just on our section.

Representative Gary Paur: Mr. Shah, have you seen the amendments that were provided by the Department of Insurance, and do you feel comfortable with them?

Sagar Shah: I have not seen them in written form yet, but I understand them. We are not comfortable with them. I can speak to that.

We are actively opposed to the addition about collision, for the reason that collision and comprehensive are not required by any state for any type of vehicle. This would make North Dakota the first to do that for any vehicle. We don't see this as a public safety issue either. This would be covering a driver's personal vehicle if they hit a stop sign or get hail damage. Finally, requiring TNCs to offer collision and comprehensive is going to limit innovation in the insurance market as well. We want to create room for the existing companies to offer these extra policies that would offer these new products. If the TNC is providing everything, there is not really any incentive for that to happen.

The second point, which is the word "specifically" is also very problematic for us. There is court precedent, Johnson vs Center Mutual Insurance Company, from 1995. It basically says that insurance law is written as adhesion contracts, and in any instance in which there is ambiguity whether or not insurance applies, it falls on the responsibility of the insurance company to provide that coverage. So, auto insurance is written as exclusion. They are written to exclude certain types of activity; they are not written to specifically **include anything**. These people have existing policies and adding the word "specifically" would nullify those existing contracts. Using state law to change existing contracts is something that we see as very problematic from a consumer protection point of view.

Chairman Dan Ruby: On the issue with 50-150-25, do you envision that to be an additional amount on top, or do you envision that your insurance would be secondary within those levels.

Sagar Shah: It would be within those levels. If a driver has the state minimums, and their personal insurance only covers up to \$50,000, then the TNC would cover the remaining amount up to \$100,000. This would be during a time when there are no passengers in the car. That is already twice the state minimums.

Representative Lois Delmore: Are your drivers full time drivers?

Sagar Shah: Most of them are part time drivers. We look at them as customers that are running their own operation, and they pay Uber a fee to use the App to connect them with passengers. Many of them are teachers or stay at home parents who have some extra time.

Representative Lois Delmore: But, if I am taking my kids to school, I want to make sure that I have coverage in case something happens. So, the limited amount might not be the best choice for me to make.

Sagar Shah: That is correct. If you are a parent and you constantly have children in your car, in those cases you might choose to have higher limits on your personal auto. But, remember, those will be when you are App off.

Representative Hanson: Was the 1995 case that you mentioned a Supreme Court case?

Sagar Shah: It was a North Dakota court case.

David Boeik, lawyer for the Protection and Advocacy Project, spoke in a neutral capacity. The bill as introduced has a section on discrimination. It had a shortcoming that was already mentioned. It required that they adopt policies to do this or policies to do that. I suggested to the Senate Committee that if it is going to be in there, then we should make them follow that law and not have a policy about it. I submitted an amendment for that purpose. The committee decided that the provision was not needed at all. I just want to make it clear that these companies would not be immune from discrimination laws. They would still be subject to the state Human Rights Act and Federal Americans with Disabilities Act that prescribe discrimination on numerous bases, just to avoid controversy, none of which address sexual orientation.

Steve Becker, Professional Insurance Agents of North Dakota: I would like to provide some clarification for some things that I was hearing. When we are talking about the 50-150 limit that has nothing to do with the people in your car. Liability insurance is for the other people on the road. It is bodily injury and property damage for the other potential people that the driver would run into. The people that are in your car are covered under personal injury protection (PIP), and they are also covered under the uninsured and underinsured motorist if someone would injure the people in that car.

Chairman Dan Ruby: What is our minimum?

Steve Becker: Our minimums are 25-50-25 for the other people on the road.

Representative Lois Delmore: What do most people carry then for their own liability?

Steve Becker: That is a personal choice that they make. The state requires you to carry 25-50-25, but the vast majority of our agents sell 100-300-100 or higher. Our agents are trying to protect your assets, so if you are sued by another party, you want to make sure you have enough protection so that they won't get into your personal assets.

Pat Ward: I want to clarify one thing. I said Colorado, but it was actually Virginia that is the newest one, that just went into effect and has it in the Department of Transportation. Colorado has it in what is called the Public Utilities Commission. When we were looking for a home for our bill, we asked the Public Service Commission, and they didn't want it.

Crystal Bartuska, North Dakota Insurance Department: I have been on this from the beginning and can provide some history on how 26.1 and 39 got melded together. HB 1144 was originally just the insurance component. The Senate bill was strictly just the Department of Transportation Section 39 component. Then one day in IBL on the House side, some of the components from the Senate Bill came in. That is how it melded and we got 1144. The Senate side then did something similar and brought components over. That is how we got where we are.

The hearing was closed on SB 2368!

2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

SB 2368
3/26/2015
25460

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to transportation network company services.

Minutes:

No attachments

Chairman Dan Ruby brought SB 2368 back before the committee. I was thinking about taking all the references to title 39 out because DOT expressed that they really didn't know what to do with all of that and how they would oversee and regulate the requirements under that. As of yesterday Pat Ward sent me a model legislation that the insurance industry has worked with Uber and they came to an agreement. One of the key things is to have Uber's insurance be primary during that time of the application (app) on stage. It doesn't include the compensation and collision. Uber has given us some amendments that will hopefully put our bill in line closer. They would be in favor of moving in those directions as long as they get everything that's in there.

Representative Chris Olson: Do you know if Uber is actually agreeable to the drafted legislation?

Chairman Dan Ruby: Yes, I talked to Sager Shah from Uber. He said their industry has met and they've been working on this. We are working off of his amendments right now.

Representative Chris Olson: I sent everyone some minutes from the various meetings with the National Association of Insurance Commissioners. State insurance commissioners across the country have a special task force that has been addressing this specific issue. They are just about to release a white paper that discussed their findings. There are only three states that have enacted legislation concerning TNCs; California, Colorado, and Washington and 12 cities. We now have a patchwork of regulations.

Chairman Dan Ruby: That is why they are agreeing to this legislation because it will eliminate the patchwork and bring something that is consistent for their business model.

Representative Chris Olson: My concern now is that we are specifically dealing with Uber and they are agreeable to this; they've got a lot of money and are very big. How will this affect the other sharing economy companies that exist?

Chairman Dan Ruby: In IBL we talked about the difference between pizza delivery people using their own vehicles and whose insurance applies in those situations. In most cases it's the company that is directing them to do it otherwise they just pay them mileage and it's their personal insurance. They don't really have too many problems overall; the company is insuring their drivers. They have a real problem when it's dealing with picking up other passengers and that process.

Representative Chris Olson: If we were to take these amendments that have been crafted into this bill would the app on primary insurance stipulations apply to other types of sharing economy arrangements?

Chairman Dan Ruby: I don't believe so. This is the transportation network companies, not those other types.

Representative Chris Olson: We'll probably want to consider companies that may not be able to afford to provide primary insurance just because a person has an app on.

Chairman Dan Ruby: If you fell under the TNC driver then your Uber insurance would be primary.

Representative Robin Weisz: The big issue seems to be insurance. Do we really care about all of the rest of this? It is really a fight between insurance companies and TNCs.

Representative Rick C. Becker: Having been in on all of the discussions in this committee and in IBL, I wonder if we are just acting on this prematurely. Currently, without a law, Uber can come in to North Dakota. There are only three states that have a law. We're on the ground floor that may be resolved within the industry. Maybe we should come back in two years.

Representative Ben Hanson: There has been price gouging with these TNCs. I'm not married to the idea of putting it into state law. If there is uniform legislation coming forward I don't know how we can trust or guarantee that it is going to come forward. I don't think they would send an individual to come in and ask for the bill because they need new standards since they are a new technology so they need new insurance for it. I see the necessity for the insurance aspect of it. I don't think they would spend all this money on plane tickets and spend hours out here working on this if they didn't want it. I would like the insurance aspect to be in this; I think it's a positive thing to have.

Representative Gary Paur: We require liability insurance for everyone in this state. If there is a possible gap in the insurance, I think we are obligated to take care of it.

Representative Chris Olson: I don't think there is a gap. Insurance companies would like us to believe that there is a gap. Right now they are on the hook because their policies don't specifically exclude people who happen to have an app on their smart phone. Personal coverage is in place in period one; the app on stage, and that's why the insurance companies are lobbying us to use the force of law to say that Uber covers it or some other TNC. This is because if you're an insurance adjuster or an actuary you want to do

everything you can in the world of statistics to lower your risk and this type of legislation would dramatically lower their risks. Right now their risks are higher statistically because people who are app on may be more active. Who should bare that risk? If you have multiple TNCs that you're logged in to should Uber bare the risk for a person who's logged in to four or five TNCs or should the private insurance? This is an issue that doesn't have a clean answer right now and they are asking us to make a clean and clear cut decision on what the answer should be.

Key Point: The Illinois Department of Insurance has also approved new private market products that help fill coverage gaps in period one.

Representative Robin Weisz: If someone is driving today and has an accident, how will the insurance company know that I had an app on? They could try and subpoena my phone. I don't want to go down that road.

Chairman Dan Ruby: In the bill there are requirements that the companies such as Uber would require that you let your insurance company know you've become a driver.

Representative Robin Weisz: If I don't?

Chairman Dan Ruby: This was our fight in IBL with the app on stage; I was on the side that Uber should be primary. There was a big disagreement between the insurance industry and our chairman in IBL. If there is a risk then they should show us the actuarial data. It was a big surprise for me to see that they have moved to accept that time. If you get in an accident and you know that your app is on then you're going to make sure that Uber's insurance pays because you don't want it on your own personal policy. There are instances where once you pick up a rider for a fare your personal insurance right now will not cover. All it takes is a notice that the policy has changed for the app on stage and your policy won't cover it. You can get a rider where they can buy that. There is TNC insurance where you can get a rider to put on your personal insurance to cover you and if you do that then you're preventing the parent company from having to be the primary but they will be a supplemental insurance to cover additional amounts. In the app on stage they agree to cover what the state has right now. On the transportation part of it they are saying the department may audit the records of a transportation network company by means of a random sample of the transportation network company's records related to transportation network drivers; two times per year or fewer, at a third party location agreed by the division and the transportation network company, and notwithstanding subsection? in a reasonable timeframe to investigate a complaint related to public safety or violations of this bill provided the authority has first provided details of the nature of the complaint.

Representative Robin Weisz: What are we auditing?

Chairman Dan Ruby: The records.

Representative Robin Weisz: What's the point? What is the DOT supposed to be doing with that?

Chairman Dan Ruby: Is that your question too, Linda?

Linda Sitz, Department of Transportation: Looking at the information that you gave me that would be our question as well. We don't have anything currently set up; we don't have any information to audit. We are still unclear what our role is. If we have to put in rules and regulations then are there penalties involved with it besides the \$500 it's talking about in this amendment? I don't think it's a good fit for this to be underneath the department. If you look at other states it's under the SOS or the PSC.

Chairman Dan Ruby: If we get rid of that then it's just dealing with the insurance issues and it's under the Department of Insurance to regulate that.

Linda Sitz: That's correct.

Representative Gary Paur moved to delete section two of the bill.
Representative Rick C. Becker seconded the motion.

A voice vote was taken. The motion carried.

Chairman Dan Ruby: We will meet again this afternoon.

Representative Rick C. Becker: Is it really that much of a quandary when the majority of states and cities don't have legislation? It seems that this is a theoretical problem but we actually have real life going on all around us in these cities and states that don't have legislation and Uber is working just fine.

Representative Robin Weisz: We had a bill before where we found out that we've been operating for the last ten years without any coverage on the highway. The world didn't end there.

Chairman Dan Ruby: The senate put a provision on that bill.

Representative Robin Weisz: Ultimately it was my responsibility and my agent should have informed me that I didn't have any coverage on the highway. If you own a vehicle we say you have to have coverage.

Representative Chris Olson: Maybe the compromise is to have the Uber insurance be secondary in the event that the primary insurance of the individual fails to cover a particular accident. That way the coverage gap will be eliminated.

Chairman Dan Ruby: They are willing to give on that but they want other areas. They said industry wanted a lot more nationwide in that model legislation.

Representative Gary Paur: I looked at Seattle and council fully agrees that drivers be covered whenever active on a system including between rides. There aren't many states that require insurance but the cities do.

Representative Robin Weisz: The fact that Uber has agreed to these provisions doesn't make it good.

Rep. Mark Owens: What happens right now if I turn on the app and drive somebody somewhere? Who would be liable right now if I got into an accident?

Chairman Dan Ruby: When you sign up as a driver they give you a form showing what they cover and when they cover you. Right now they cover you primary when you're engaged to pick up a ride and when you're carrying a ride. You're covered with a \$1 million policy.

Representative Robin Weisz: I guarantee you that when your app is on and you have an accident you're going to call your personal insurance company and they're going to pay.

Rep. Mark Owens: If you were in an accident and you called them your insurance company may not cover you.

Representative Chris Olson: If you're on call for an agency should their insurance cover you? That is the same as an app on stage.

Representative Robin Weisz: That's the same for a doctor on call during the weekend.

Representative Gary Sukut: My question has been since day one, why do you turn the app on? It's to go to work.

Chairman Dan Ruby: We will work on this later today.

2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee Fort Totten Room, State Capitol

SB 2368
3/26/2015
25518

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to transportation network company services.

Minutes:

Attachment #1-2

Chairman Dan Ruby brought SB 2368 back before the committee.

Amendments were provided. See attachment #1.

Sagar Shah, Uber Technologies, explained the process that led up to the amendments and explained the amendments. There were a number of insurance companies that were involved in this. A deal was struck about 36 hours ago between Uber and the insurance companies. It was understood that North Dakota would be exempt from this deal but for the sake of compromise we are happy to work with you to get that language adopted. Our goal is to clearly state the difference between the driver who is providing the transportation with the vehicle and the Transportation Network Company (TNC) who is using software to connect the two parties. This was adopted previously when the bill was previously discussed but currently this is mandating \$1 million of uninsured/underinsured motorist coverage during this time. Per the compromise language we would tie this to the state requirements for vehicles. (Mr. Shah continued reviewing the attached amendment.) One piece that is extremely important to us is the personal identifiable information piece that we discussed last week but as it stands this language doesn't work for us operationally. If we operated tomorrow we would be violating this section so we couldn't operate the way this is currently worded. The language currently asks for written consent anytime there is a disclosure of personal information. If a driver sees the rider's name, phone number, and picture that is sharing personal information so we can't have somebody provide written consent every single time. There are other examples I could list that are problematic from an implementation standpoint. We ask for that language to either be taken out or modified with respect to the amendment that I had shared last week.

Chairman Dan Ruby: Challis, you didn't include this because it showed up under title 39 correct?

Challis Williams, Legal Intern: I didn't include that because it was amended in the bill removing section two.

Chairman Dan Ruby: Yes. In the house version we had our confidentiality language in 26.1-40.1-07 and in the title 39 so that it would be seen no matter which section you were looking in for this area. We could still put it back in the 26.1-40.1-07 with the language they are proposing. Are there any questions about the confidentiality? The language they have is identical to what we had on the house side. The language for confidentiality information is very strict and very tight.

Representative Ben Hanson: It's also unprecedented that level of restriction on confidentiality. There are currently no other states that have a problem.

Representative Rick C. Becker: Did I understand correctly that you do want the transportation driver requirements taken out?

Sagar Shah: We would like to keep them in there.

Representative Rick C. Becker: Why don't you just do that yourself?

Sagar Shah: I think it's important from a public safety issue to have some requirements for background checks. It's also important to have the controlling authority section which says that this controls at the state level otherwise we would work in a patchwork format with different cities that may propose different regulations when it comes to licensing or background checks or how drivers are brought into the system.

Chairman Dan Ruby: Is that the language on page six line fourteen of the bill?

Sagar Shah: Yes and also page seven line 26; that section is important to us as well.

Vice Chairman Lisa Meier: For the states that don't have legislation do you require background checks?

Sagar Shah: We do. We background check all our drivers regardless of whether or not it's required by regulation. A lot of the city level ordinances have ordinances for background checks as well.

Vice Chairman Lisa Meier: So, you just want this in the bill in case another competitor moves into the state?

Sagar Shah: Yes. Generally from a public safety issue it's important that there are some requirements in terms of who can be brought on to the system.

Representative Chris Olson: In the 12 or 13 cities you have operations in are the requirements for the drivers widely divergent as far as background checks or other qualifications?

Sagar Shah: In some places they are. In Michigan it is somewhat problematic as they have different city level ordinances and they are pretty close to each other. If there's a

Michigan football game and a Detroit driver wants to drive over it could be confusing and difficult to deal with.

Chairman Dan Ruby: My concern with the language is who is going to make sure that it is regulated? Our discussions up to this point have determined that DOT doesn't feel they're qualified to do it nor are they set up to do it and are uncomfortable of the position that puts them in. We spoke with the Secretary of State today and he doesn't have any ability to audit to make sure background checks are being done or that all this information is being done.

Representative Robin Weisz: You made the statement that this would improve uniformity across the state, but I don't see anything that restricts the cities to be more restrictive.

Chairman Dan Ruby: If it would have been under the Department of Transportation they would have been the regulating body. The political subdivisions could not have imposed tax or require licensure.

Vice Chairman Lisa Meier: In states or cities with no legislation who pays for the background checks?

Sagar Shah: Uber will pay for the background checks.

Crystal Bartuska, State Insurance Department: As far as authority and the insurance department, we are in the same boat and we have been since the beginning of all this. As an insurance department if a TNC company violates something we don't have authority over them; they are not an insurer nor are they a producer/agent. The way the law is right now with insurance requirements is similar to what we have on the books as far as how carriers design their products to meet state laws. But when you start talking about controlling authority we have no authority over TNC companies or the drivers.

Representative Ben Hanson: Is there a precedent for requirement of criminal background checks at a state level in any other state? How many if there are?

Sagar Shah: All the states have had that in their statute. Currently Colorado, Illinois, and California all have background check requirements. In those states the governing body is varied but is most commonly the Public Utilities Commission. We've been trying to work with the DOT to find a good way they could fit into this. The DOT could possibly regulate by having a bi-annual audit; meeting with the TNC in a mutual place in North Dakota, looking through driver records, and making sure there is a background check for everybody. If they don't comply then there is a fine with the TNC. This example has been attractive to other states in how they could enforce some sort of regulatory authority. We're not asking the DOT to conduct background checks or anything like that.

Representative Rick C. Becker: When it comes to replacing secondary and primary, is Lift on board with that?

Sagar Shah: Lift has joined the compromise as well so they are on board with that.

Representative Rick C. Becker: It concerns me that we've spent hours upon hours in IBL understanding the difference between the stages and acknowledging that secondary was the right place to put you for app on. Now you come back and say you don't really care about that. In my opinion I don't think this is good for you but you are the big man on campus so what might hurt you a little bit might hurt the competitors more so you have an advantage. I'm a little suspicious and frustrated with this.

Sagar Shah: I don't know the specifics that went into the compromise that struck the deal. I will say that there were in addition to that forty other things that were problematic in some of the issues that were being proposed by the insurance industry that we couldn't live with. The compromise was also us giving into the issue in order to not have a bunch of other things that we've been discussing. I think this committee and North Dakota in general has been very understanding of our position. We will give on this one issue if we don't have to go forth on the other big forty issues. Unfortunately that's how the compromise worked. Both parties have things we like and don't like.

Chairman Dan Ruby: We have definitions that are in 26.1, we have insurance levels and priorities also in that section so whether there is privacy language in there I don't know if that's the right place for it. I would say that if it's not in here then that's what your policy is. If we don't have that in the bill then your privacy policy is what it is ruled by.

Representative Robin Weisz: Do we require a privacy policy for every business in the state?

Chairman Dan Ruby: No. We do for banking and those kinds of things. We don't necessarily need that. The controlling authority is the place we found to put that in.

Representative Robin Weisz: Exactly. I stand corrected; the bill does eliminate a political subdivision from setting their own criteria.

Chairman Dan Ruby: It relates to the rules adopted by the department which is under chapter thirty nine.

Representative Robin Weisz: No, it says any other provision the companies are governed exclusively by this chapter and any rules. This chapter would override anything a city would do.

Chairman Dan Ruby: It still wouldn't be in title 39 though. This is something we need to discuss as a committee. I think we need to keep it as clear language. The companies would have to register with the Secretary of State like other businesses.

Representative Ben Hanson: The compromise was 36 hours ago so I'm assuming you don't have a policy paper from Uber or any of these folks?

Sagar Shah: We do. I believe there was a document of modeled language that was sent out to the industry.

Representative Ben Hanson: I don't understand the agreement because it's not as if you're able to create a law since its national. Your group came together and wanted one set of bills for all the state legislatures that are currently considering these laws?

Sagar Shah: Generally speaking the bill outlines the types of policies and types of terms of those contracts. There are a few placeholders for nuances in the states.

Representative Ben Hanson: At that point with such a pertinent aspect of what this and the other bill has been compromised with the insurance agencies, would Uber want or need this bill?

Sagar Shah: When this deal was struck I think it was a mutual understanding between the two industries that given how much progress we've made with North Dakota we could continue on the current road. It's favorable to us not to have the primary language but in the interest in creating compromise and getting this done we are accepting of this language.

Representative Ben Hanson: Was North Dakota specifically talked about in this agreement?

Sagar Shah: There were a number of states that were early in the legislative processes.

Representative Chris Olson: In the absence of this legislation would Uber voluntarily offer to give the primary coverage to anybody in the stage one process of your service?

Sagar Shah: It is a difficult question to answer because there are so many other moving pieces.

Representative Chris Olson: It seems odd that you want legislation to do something that you could certainly do of your own free will.

Sagar Shah: We would continue to operate as we have been where Uber is secondary during period one and it falls under the personal insurance. This deal was a compromise amongst different states in order to make this process more efficient.

Representative Chris Olson: You would like us to create a uniform system for allowing TNCs to operate in the state without worrying about what each individual political subdivision might do as far as licensing requirements and background checks. Could we simply put that into law without any talk of the insurance?

Sagar Shah: As long as individual cities wouldn't then go and require their own crazy amounts of insurance or other parameters of insurance for their vehicles. I think they'd have the ability to do that at the municipal level as well.

A written document was provided for the committee, "*Suggested Key Messages for TNC Insurance Compromise Model Bill Supporters*". See attachment #2.

Chairman Dan Ruby: I have some questions for the Insurance Department. Crystal, did you find that we put the privacy language in 26.1 on 1144?

Crystal Bartuska: Yes.

Chairman Dan Ruby: I don't remember that there were any concerns at that time with the language. Do you have concerns this time?

Crystal Bartuska: I think at that point when SB2368 was going through there was so much focus on the stages, the insurance coverages, the limits, and the amounts that we didn't dive into those as we focused more on the insurance components versus the privacy and duty to cooperate. If they don't correlate with the insurance pieces we would like them taken out.

Chairman Dan Ruby: It kind of got lost in the shuffle?

Crystal Bartuska: Yes it did.

Chairman Dan Ruby: How about any of the language that would limit the insurance requirements, proof, and other areas for municipalities? Would any of that be in the scope of the insurance department?

Crystal Bartuska: We don't have authority over municipalities so if they start doing something above and beyond we wouldn't be able to go after them for anything. I don't foresee companies creating specific policies that are going to be for these types of activities especially on the personal auto side; I think we'll see a lot more of this on the commercial side. The personal auto is excluding this type of activity already. If you decide to become a TNC driver your carrier is already excluding this activity so you would need to contact your agent and either get a commercial policy or see if your company has some sort of an endorsement or rider that pulls this type of activity back into your policy.

Chairman Dan Ruby: In our chapter eight that deals with taxis, limos, and such, is that an area that any limiting language for this towards municipalities would be placed?

Crystal Bartuska: I'm not sure. The highway patrol came in on HB1144 when we were trying to figure out whose home this belongs in and they said chapter eight wouldn't work because of some verbiage that was already in there.

Chairman Dan Ruby: Maybe our intern could see if any of the language would fit into chapter eight. I don't know where company privacy policies would fit with limiting political subdivisions. There were changes to the coverage levels I believe.

Crystal Bartuska: We were also confused about the primary suddenly being okay. We are not upset by that. The largest piece for us is in phases two and three which is Mr. Shah's amendment on page three line six where you're removing the million dollars and just going to the minimums for uninsured or underinsured. That is a big change for us. We understand the individuals would still have coverage; they would have the state minimums of the 25-50-25 but we would prefer the million dollars. We want to make sure the drivers

are covered. We recently found out that in North Dakota with PIP (personal injury protection) coverage or no fault benefits you cannot exclude PIP. Carriers are not allowed to exclude PIP from policies. We have a specific state insurance code law that PIP follows the owner of the vehicle. The owner of the vehicle, the insurance carrier, must cover PIP at primary. Even though we appreciate Uber and those TNC companies offering to be primary because North Dakota has a specific law and that will create ambiguity in the laws. When we met on the senate side on HB1144 we also brought this up to them. In the model that Mr. Shah provided on page four there is the ability for insurers that write this type of coverage to exempt personal injury protection coverage as sited in D1ii. We feel if this verbiage would be adopted then that would get around the PIP challenge. We would like something like this put in so that carriers have the ability to exclude PIP which would then make Uber that primary piece.

Chairman Dan Ruby: With the changes that have been proposed as far as the app on stage page two line three talked about the TNC means the insurance policy that specifically covers would not be necessary at this point?

Crystal Bartuska: I'm going to let one of our attorneys comment on that.

Johnny Paulsgraph, attorney for the Insurance Department: I think we can fix that with some clean-up language. The PIP coverage and the other coverage was to separate out what is TNC insurance versus what is personal auto insurance. Uber is planning on being primary for both PIP coverage and the app on stage as well as liability coverage. I don't think we're going to be fighting over the specific language any longer.

Chairman Dan Ruby: The PIP coverage can't be their primary; it has to be on the personal auto?

Johnny Paulsgraph: Yes. I think we can work that out as Crystal was suggesting. We can include something that allows the personal auto to exclude the coverage from the model language then you're right on track with saying "specifically" would no longer be an issue.

Representative Gary Paur: If we backed up to where Uber was secondary and had the million dollars coverage under the PIP all stages would still be covered with the individual's own policy?

Crystal Bartuska: We found that bump in the road last week before they agreed to be primary. If they would be secondary then the insurance policy that the driver owns would be responsible for the PIP portion.

Representative Gary Paur: In all cases because of the PIP law they would all be covered?

Crystal Bartuska: By the personal auto.

Representative Gary Paur: Then we could go back to the original language of million dollars.

Crystal Bartuska: We would prefer the million dollars but if that would go to the state's limits at least the consumers are getting something versus nothing. That's a policy decision.

Chairman Dan Ruby: If we put together their amendments and what you want there was a mistake on page five line five where it talked about more than eight passengers; I think that had to be eight passengers or less.

Crystal Bartuska: I believe so. I believe Pat Ward had an amendment to that effect.

Chairman Dan Ruby: Are you going to put that into these amendments?

Crystal Bartuska: We can but without knowing if you're going to adopt Sagar's amendments I don't know how our amendment would read. We can address the verbiage from the model law and have that as an amendment ready to go. On bottom of page three line 30 it is an incorrect citation.

Chairman Dan Ruby: Please include that in your amendment as well please. Sagar, in the engaged and passenger stage, it has been stated that you carried a million dollars.

Sagar Shah: Yes, for primary liability insurance.

Chairman Dan Ruby: Under the uninsured and underinsured you don't want to carry the million?

Sagar Shah: Correct.

Chairman Dan Ruby: And you don't now?

Sagar Shah: We do but I don't know if every TNC does. If it's all these things then we are okay with it but as soon as we start deviating away then that is troublesome for us.

Representative Ben Hanson: Sagar, if we still included the previous framework of the app on app off that you desired before would Uber now oppose that bill?

Sagar Shah: We would not oppose that bill.

Chairman Dan Ruby: You stated all or none but your all includes the privacy part and the auditing of the drivers but those definitely wouldn't be in it so is that part of the all you wouldn't support. If we leave it as a clean insurance bill as we discussed would you be okay with that?

Sagar Shah: It sounds like regardless of where the insurance language went you would take it out anyway. That is difficult for us. I will have to continue working with the DOT and see if we can find a place for that.

Chairman Dan Ruby: We just can't find a right fit for it right now. We just don't want to leave anyone exposed. If everything we discussed was in the areas of where you're primary on the app on stage but you get the minimum requirements of the uninsured or underinsured

and the PIP is taken care of. I don't know how you feel on that. We certainly don't want to do anything that will prevent you from operating in the state.

Sagar Shah: We will continue working on that and will get back to you.

Chairman Dan Ruby: We'll discuss this tomorrow morning.

2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

SB 2368
3/27/2015
25552

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to transportation network company services.

Minutes:

Attachment #1-2

Chairman Dan Ruby brought SB 2368 back before the committee. He reviewed progress so far on the bill. Amendments were provided. See attachment #1. We need to instead work off of this amendment rather than the one from yesterday. The insurance department also has an amendment for us with the PIP coverage.

Representative Robin Weisz: The amendments have been cleaned up tremendously. I still struggle with the one spot on Page 3, Line 26; replacing secondary with primary. The only reason Uber likes primary versus secondary is because they are now the big boy and it makes it more difficult for upstarts to come in. Other than that I think this bill cleans up the best you can do with what you have on the amendments.

Chairman Dan Ruby: I would like to hear from the Insurance Department about the PIP coverage.

Crystal Bartuska, North Dakota Insurance Department, provided amendments to SB 2368. She explained the amendments. See attachment #2. Our amendment cleans up some verbiage. If the intent of the committee is to go to the primary level in all stages like the TNC companies would prefer then you're going to see that verbiage in here. The biggest part is the PIP part. On the bottom of our amendment, page 4, after line 26, you have to inset an entirely new section that would allow the insurers that write personal auto insurance to be able to exclude TNC PIP coverage pursuant to the app on no passengers and the app stage two and three levels. That would get around a PIP issue.

Chairman Dan Ruby: The owner of the car that gets insurance is responsible to have PIP insurance, is that right?

Crystal Bartuska: Yes, there is a section in law that specifically says the owner of the motor vehicle is required to have the no fault benefits, aka PIP.

Chairman Dan Ruby: What do you mean when it says to allow them to be conditional?

Crystal Bartuska: That gives the insurance carriers enough room to be able to exclude PIP coverage specific to TNC activity. That would pull in TNC companies to be primary to be responsible to that PIP coverage.

Chairman Dan Ruby: What if the insurance companies exclude it because they are a driver?

Crystal Bartuska: They can't. There's another section of law that says there's four criteria that allows carriers to exclude PIP, such as racecar drivers. If this goes through I envision next session we clean up our code to make it all flow and connect together.

Representative Chris Olson: The law says that the owner must have PIP but then sets up exclusions for when the owner does not need to have PIP. What are all of those exclusions right now?

Crystal Bartuska: Code 26.1-41-07. If this goes through then next session we would add a number five to this section that would say in the capacity of being a TNC driver.

Representative Chris Olson: Couldn't we add that number five right now?

Crystal Bartuska: I don't know if you want to add any more to this. Without knowing how the carriers are going to file these products and what they're going to do I would prefer that our filing department administer it through this channel.

Vice Chairman Lisa Meier: I don't foresee a lot of insurance companies will exclude issuing insurance to TNC vehicle operators. If they would get into an accident going to pick up a passenger then they would have to have the discussion between the two insurance companies.

Crystal Bartuska: We are seeing carriers excluding this coverage now.

Vice Chairman Lisa Meier: So, this would really cover the concerns?

Crystal Bartuska: Yes and because the TNC now want to be primary which will really cover that whole world of any potential gaps.

Chairman Dan Ruby: If they're secondary but the company writes an exclusion which means they won't cover it for their insured which is their vehicle then that secondary policy is in effect.

Crystal Bartuska: Correct. There is a provision saying your insurance company excludes any coverage then the TNC kicks in.

Representative Gary Paur: In your amendment page 3, line 26, you say the coverage is secondary. In the amendment from this morning it says to replace secondary with primary.

Crystal Bartuska: Ours would read better. We are trying to clean up as best we can. Ours would read the motor vehicle coverage must include at least \$50,000 and then it goes into that.

Representative Gary Paur: Would you just leave out the secondary and primary?

Crystal Bartuska: If you go above that on line 24 it adds during the application on stage the TNC insurance is primary and must include... Our version is that we're putting the primary in number one because then it would flow down to a, b, c, and d so then we wouldn't need it in a. We are trying to make the law read as clear as possible.

Representative Gary Paur: On page 3, line 30, replacing the section is identical but then you have removed three of them.

Crystal Bartuska: That has been wrong since IBL committee. The original bill had citations to 15.1. In our law the subsections that are referenced in 15.1 are just definitions. Those aren't the actual statutes of 15.2 and 15.3 which are the actual uninsured and underinsured laws that have that \$30,000 minimum. By referring to just definitions that doesn't get them the 25-50-25. The amendment from Shah was incorrect. Do you have the most recent version of the one he sent us this morning?

Chairman Dan Ruby: They don't. I think we fixed the references in the previous amendment so I think we're good there. The only thing we would be considering is this PIP stuff.

Crystal Bartuska: For us their request to have the provisions for the liability insurance to be 50,000, 100, 50,000, and 50. We are amending that so the department has 50,100, 50 but that is up to you. State requirement is 25-50-25. The first two are higher; the third one would match the state. On page 2 line 23-26, we don't think that paragraph is needed because of the way that it reads. I don't think it reads well.

Chairman Dan Ruby: We trust that they will clean that up.

Crystal Bartuska: We went with our amendments with the thought process that you guys were going to put primary across the board. If that is what you do the top of our amendment, page 2, line 6, we would like that verbiage to be included. That section really gets to any way that a TNC company could challenge that they aren't primary in some way.

Chairman Dan Ruby: I had this fight on the house side but I didn't like the primary and the app on stage. I didn't think it was necessary.

Crystal Bartuska: Yesterday you had asked about the other sections that we have no authority over. I talked to our general counsel and even though it's in our code as a regulator we wouldn't have the ability to go after a TNC company or an Uber driver. But if I'm a passenger and am harmed in some way I could take civil action if we violate those sections in law. We have some thoughts and concerns with Mr. Shah's amendments. Do you want me to bring those up?

Chairman Dan Ruby: I can email everybody a copy of what he sent me and if they decide we want to reconsider this after we act on it because of that then we can have that discussion.

Crystal Bartuska: This is coming from Uber and from the beginning we've said this is for all TNCs so some of the verbiage he proposed in his new amendment narrows it down to how Uber does business.

Chairman Dan Ruby: That's why in the IBL committee I suggested to remove a lot of what was on the amendment that was supposedly for licensing and other areas that was specific to them and their business model. I didn't think we should put their business model in state law. Committee, we have two amendments before us.

Crystal Bartuska: We would also prefer the million stay on the uninsured and the underinsured where they want to go to the state minimums.

Chairman Dan Ruby: I realize that. That might be another discussion for conference.

Representative Robin Weisz: Made a motion to adopt the Insurance Department amendments that Challis prepared with some changes; remove page 3 line 26 to keep it secondary for the app on stage only and add the language suggested by the department on page 4 after line 26. It also includes language on the back page replacing subsections with subdivisions.

Representative Chris Olson: If we add that PIP exclusion from the insurance department's proposed amendments and we also amend the amendment to get rid of that on page 3 line 6 and leave the coverage secondary. Could that cause a gap in PIP?

Chairman Dan Ruby: No, I don't think so. You could ask the department to verify that. I think they are two separate issues. Their insurance is not typical vehicle insurance; it's an excess lines type.

Representative Owens: Second.

Roll call vote: 11 yes 1 no 2 absent

Motion carried.

Chairman Dan Ruby: We have an amended bill before us. What are the committee's wishes?

Representative Lois Delmore: Made a motion for a do pass as amended.

Vice Chairman Meier: Second.

Roll call vote: 7 yes 5 no 2 absent

Motion carried for a do pass as amended.

Chairman Dan Ruby: Remember we had a previous amendment that amended out section two so all that information that applied to DOT is out.

Chairman Dan Ruby will carry this bill.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2368

Page 2, line 6, insert section 26.1-40.1-02

“On or before [MONTH, DAY, YEAR] and thereafter, a Transportation Network Company Driver or Transportation Network Company on the driver’s behalf shall maintain primary automobile insurance that recognizes the driver as a Transportation Network Company Driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver.”

Page 2, line 27, remove “liability”

Page 3, line 4, add after section, “is primary and”

Page 3, line 4, remove “also”

Page 3, line 8, after coverage add, “is primary and”

Page 3, line 9, remove “when required”

Page 3, line 24, after insurance add “is primary and”

Page 3, line 26, after coverage remove “and the coverage is secondary. The coverage”

Page 3, line 27, after hundred remove “fifty”

Page 3, line 30, remove “subsection 3 of” and replace “26.1-40-15.1” with “26.1-40-15.2”

Page 3, line 30-31, remove “and the coverage is secondary”

Page 4, line 1, remove “subsection 2 of” and replace “26.1-40-15.1” with “26.1-40-15.3”

Page 4, line 1-2, remove “and the coverage is secondary”

Page 4, line 3, remove “and the coverage is secondary”

Page 4, after line 26, insert section 26.1-40.1-06

Insurers that write personal automobile insurance may allow no fault insurance coverage to be conditional on Transportation Network Company no fault insurance coverage pursuant to 26.1-40.1-03 and 26.1-40.1-04.

Page 4, line 9, replace "subsection" with "subdivision"

Page 4, line 12, replace "subsections" with "subdivisions"

Renumber accordingly

March 27, 2015

JK
3-27-15
100

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2368

Page 1, line 20, replace "connect with" with "transport"

Page 1, line 20, after "passengers" insert "for compensation"

Page 1, line 24, replace "provides" with "enables"

Page 2, line 1, after "with" insert "independent participating"

Page 2, line 3, after "that" insert "specifically"

Page 2, line 24, remove "following"

Page 3, line 6, replace "of one million dollars" with "under subsection 3 of section 26.1-40-15.2"

Page 3, line 27, remove the second "fifty"

Page 3, line 28, replace "fifty" with "twenty-five"

Page 3, line 30, remove "subsection 3 of"

Page 3, line 30, replace "26.1-40-15.1" with "26.1-40-15.2"

Page 4, line 1, remove "subsection 2 of"

Page 4, line 1, replace "26.1-40-15.1" with "26.1-40-15.3"

Page 4, line 9, replace "subsection" with "subdivision"

Page 4, line 12, replace "subsections" with "subdivisions"

Page 4, line 13, remove "A transportation network company may meet its obligations under this section through"

Page 4, remove lines 14 through 22

Page 4, line 23, remove "5."

Page 5, line 4, after "that" insert "specifically"

Page 5, line 5, replace "more" with "fewer"

Page 5, line 19, remove "1."

Page 5, remove lines 25 through 28

Page 6, after line 4, insert:

"26.1-40.1-11. Conditional no fault insurance coverage.

An insurer that writes a personal automobile insurance policy may allow no fault insurance coverage to be conditional on transportation network company no fault insurance coverage pursuant to 26.1-40.1-03 and 26.1-40.1-04."

Page 6, remove lines 5 through 29

Page 7, remove lines 1 through 30

Page 8, remove lines 1 and 2

Renumber accordingly

HA
3-27-15
212

3-26-15
Date: Click here to enter a date.
Roll Call Vote #: "Enter Vote #" /

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. "Enter Bill/Resolution No." 2368

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Paur Seconded By Becker

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby			Rep. Lois Delmore		
Vice Chair. Lisa Meier			Ben Hanson		
Rick C. Becker			Marvin E. Nelson	A	
Robert Frantsvog	A				
Kathy Hawken					
Christopher D. Olson					
Mark S. Owens					
Gary Paur					
Mike Schatz	A				
Gary R. Sukat					
Robin Weisz					

Voice vote
carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

P. 6 - Line 5, all p. 7, + 2 lines on p. 8
Setim 2
All language for chapter 39.

3-27-15
Date: Click here to enter a date.
Roll Call Vote #: "Enter Vote #" 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. "Enter Bill/Resolution No." SB 2368

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: Dated March 27, 2015 from Insurance Department

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Weisz Seconded By Owens

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	X		Rep. Lois Delmore	X	
Vice Chair. Lisa Meier	X		Ben Hanson	A	
Rick C. Becker	X		Marvin E. Nelson	X	
Robert Frantsvog	A				
Kathy Hawken	X				
Christopher D. Olson	X				
Mark S. Owens	X				
Gary Paur	X				
Mike Schatz	X				
Gary R. Sukat		X			
Robin Weisz	X				

Total (Yes) 11 No 1

Absent 2

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

th2 with changes P. 3 Line 26
Add Language - Dept. PIP P4 Line 26
Insert.

3-27-15
Date: Click here to enter a date.
Roll Call Vote #: "Enter Vote #" 4

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. "Enter Bill/Resolution No." SB2368

House Transportation Committee

☐ Subcommittee

Amendment LC# or Description: Amendments dated March 27, 2015 from the Insurance Department

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Delmore Seconded By Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Dan Ruby	X		Rep. Lois Delmore	X	
Vice Chair. Lisa Meier	X		Ben Hanson	A	
Rick C. Becker		X	Marvin E. Nelson	X	
Robert Frantsvog	A				
Kathy Hawken	X				
Christopher D. Olson		X			
Mark S. Owens	X				
Gary Paur	X				
Mike Schatz		X			
Gary R. Sukat		X			
Robin Weisz		X			

Total (Yes) 7 No 5

Absent 2

Floor Assignment Ruby

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2368, as engrossed: Transportation Committee (Rep. Ruby, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2368 was placed on the Sixth order on the calendar.

Page 1, line 20, replace "connect with" with "transport"

Page 1, line 20, after "passengers" insert "for compensation"

Page 1, line 24, replace "provides" with "enables"

Page 2, line 1, after "with" insert "independent participating"

Page 2, line 3, after "that" insert "specifically"

Page 2, line 24, remove "following"

Page 3, line 6, replace "of one million dollars" with "under subsection 3 of section 26.1-40-15.2"

Page 3, line 27, remove the second "fifty"

Page 3, line 28, replace "fifty" with "twenty-five"

Page 3, line 30, remove "subsection 3 of"

Page 3, line 30, replace "26.1-40-15.1" with "26.1-40-15.2"

Page 4, line 1, remove "subsection 2 of"

Page 4, line 1, replace "26.1-40-15.1" with "26.1-40-15.3"

Page 4, line 9, replace "subsection" with "subdivision"

Page 4, line 12, replace "subsections" with "subdivisions"

Page 4, line 13, remove "A transportation network company may meet its obligations under this section through"

Page 4, remove lines 14 through 22

Page 4, line 23, remove "5."

Page 5, line 4, after "that" insert "specifically"

Page 5, line 5, replace "more" with "fewer"

Page 5, line 19, remove "1."

Page 5, remove lines 25 through 28

Page 6, after line 4, insert:

"26.1-40.1-11. Conditional no fault insurance coverage.

An insurer that writes a personal automobile insurance policy may allow no fault insurance coverage to be conditional on transportation network company no fault insurance coverage pursuant to 26.1-40.1-03 and 26.1-40.1-04."

Page 6, remove lines 5 through 29

Page 7, remove lines 1 through 30

Page 8, remove lines 1 and 2

Renumber accordingly

2015 TESTIMONY

SB 2368

February 5, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

Page 2, after line 13, insert:

"39-34-04. Suspension or revocation.

1. The department may revoke or suspend a license upon proof of the violation of this chapter or rules adopted by the department. The department shall provide notice to the licensee and within twenty days of the notice an opportunity for a hearing before any revocation or suspension.
2. An appeal may be made to district court from a decision of the department under this section or for refusing to grant a license. The appeal must be taken in accordance with chapter 28-32."

Page 2, line 14, replace "39-34-04" with "39-34-05"

Page 2, line 17, replace "39-34-05" with "39-34-06"

Page 2, line 24, replace "39-34-06" with "39-34-07"

Page 2, line 29, replace "39-34-07" with "39-34-08"

Page 3, line 3, replace "39-34-08" with "39-34-09"

Page 4, line 15, replace "39-34-09" with "39-34-10"

Page 5, line 22, replace "39-34-08" with "39-34-09"

Page 5, line 28, replace "39-34-10" with "39-34-11"

Page 6, line 14, replace "39-34-11" with "39-34-12"

Page 7, line 14, replace "39-34-12" with "39-34-13"

Page 7, line 18, replace "39-34-13" with "39-34-14"

Page 7, line 22, replace "39-34-14" with "39-34-15"

Page 7, line 29, replace "39-34-15" with "39-34-16"

Page 7, line 30, remove "on the"

Page 7, remove line 31

Page 8, line 1, remove "disability, age, sexual orientation, or gender identity"

Page 8, line 4, remove "nondiscrimination against passengers or potential passengers on the basis"

Page 8, remove line 5

Page 8, line 6, replace "age, sexual orientation, or gender identity" with "nondiscrimination against passengers or potential passengers"

2/06/15 Page 8, line 16, replace "39-34-16" with "39-34-17"

Page 8, line 21, replace "39-34-17" with "39-34-18"

Page 9, line 1, replace "39-34-18" with "39-34-19"

Page 9, line 4, replace "municipality or other local entity" with "political subdivision"

Page 9, line 5, after the second "a" insert "separate"

Page 9, line 6, after "driver" insert "or a vehicle used by a transportation network company driver if the tax or license relates to providing transportation network services."

Page 9, line 7, replace "municipality's or other local entity's" with "political subdivision's"

Page 9, line 7, after the underscored period insert "A political subdivision may enact an ordinance that requires a valid state permit for a transportation network company to operate within the political subdivision."

Renumber accordingly

SB2368 Hearing - February 6, 2015**Testimony by Sagar Shah****Uber Technologies**

Good morning Mr. Chairman, Honorable Members of the Senate Committee on Transportation:

My name is Sagar Shah. I am a General Manager with Uber Technologies, responsible for our potential expansion to North Dakota.

I am here to speak on behalf of Uber and express our support for SB2368. This bill would provide a balanced framework for Transportation Network Companies, like Uber, to operate, codify safety requirements for riders and drivers, and give TNCs a proper home in the State of North Dakota. I want to thank Senator Casper for his support on this issue and ask you all to support this bill as it comes before you today.

Uber is a technology company. We've built a smartphone application that has transformed the way people move around their cities by connecting riders and drivers.

To give you some background, Uber was founded in 2009 on the idea that anyone should be able to order a car and be picked up within 5 minutes of requesting. Back then, we contracted with existing limo companies by bringing them onto the system and allowing riders to request the nearest car at the touch of a button. Since then, we have committed ourselves to also bringing safe, taxpayer free on demand transportation to communities of all sizes, and at a lower price, through our uberX product, which is 40% cheaper than a taxi. UberX offers an economic opportunity for everyday Americans to provide rides with their personal vehicles - teachers, nurses, military veterans, and retirees are examples of the part time drivers we see on uberX.

Companies like this, that match riders with drivers of rideshare vehicles through a digital network have become known as Transportation Network Companies, or TNCs.

Today, Uber operates in over 250 cities around the world and millions of people are relying on Uber as their primary means of transportation. While we are not currently operating in North Dakota, we hope to be here soon in cities like Fargo and Bismarck. These cities can strongly benefit from the convenience and reliability Uber brings. In fact, just last month alone, our app was opened over 6,000 times in North Dakota by people looking for a car. That includes both visitors and over 1,500 people with North Dakota area codes.

In addition to offering more accessible and reliable transportation options, Uber has made several positive social impacts on the cities in which we operate, such as a reduction in DUIs. Cities like Seattle and Philadelphia previously did not have reliable transportation late at night, leading to excessive drunk driving. After Uber's entry, monthly DUI arrests have come down over 10% in these cities. For this reason, organizations like Mothers Against Drunk Driving have publicly embraced ridesharing.

We're creating jobs - By coming to North Dakota, we can create hundreds of income opportunities for the people here and at the same time, provide a safe ride home for many who previously lacked viable safe on demand transportation options. The beauty of the Uber system is that it allows anyone who is properly qualified -- to start earning money by using an existing asset -- their car...and does so in a flexible way that allows drivers to work on their own schedule. This is real American innovation at its best.

Working with former Secretary of Defense Dr. Robert Gates, we've launched an initiative called UberMilitary, which has already created thousands of opportunities for veterans and military spouses by driving with Uber--we want North Dakota veterans and their spouses to have the opportunity to participate as well.

In this process, safety is Uber's number one concern and we pride ourselves with connecting passengers to some of the safest rides on the road in America and around the world.

First - We maintain end-to-end insurance coverage that ensures all parties are protected throughout the entire Uber experience. Every single ride request that is accepted on the Uber platform is covered by a commercial auto liability insurance policy -- maintained by Uber and rated "excellent" by AM Best.

Under this bill, every single ride initiated through the Uber platform would be covered by a primary \$1-million commercial liability insurance policy provided by the TNC. This is in place from the time the driver accepts the request for a ride until the passenger exits the vehicle. Note that this is double the existing taxi and limo requirements in Fargo and is in line with Bismarck.

This bill also requires that when a driver is logged into the Uber app, but not actually providing transportation to a passenger, Uber must provide insurance coverage at North Dakota state required levels in the event that a driver's personal policy is not available for any reason. What's important to remember, is that the insurance provisions here

require the TNC to provide end-to-end insurance from the moment a driver flips the app on, through the duration of a trip.

Our coverage has been reviewed by several state insurance departments and found to meet or exceeds financial responsibility requirements. One former President of the National Association of Insurance Commissioners, President of the Property Casualty Insurers Association of America and South Carolina Insurance Commissioner noted most clearly *"The special interests are lobbying false claims about an "insurance gap" when none such exists. They are using scare tactics on a new service in order to protect their turf and to make more profits for themselves at the expense of drivers and consumers. I've reviewed the coverage plans and there is no insurance gap."*

Second, each and every one of our drivers undergoes a stringent background check process before coming onto the platform. The bill requires every driver applicant to pass a federal, multi-state, and county-level background check. This process is superior to many existing state practices and also requires a scan of the driver motor vehicle records and national sex offender registry. The process was recently audited and vetted by Mayor Rudy Giuliani and his security consulting firm, who found our process to be sound and "a substantial improvement over the existing safety standards in the personal hire transportation world."

North Dakota has a positive reputation for being a business friendly state that supports American innovation, and hopefully soon – supports the new industry of ridesharing. 20+ jurisdictions in the US have passed TNC regulations, the most recent of which is Illinois, which passed regulations similar to those in front of you.

I want to summarize by saying that Uber is in favor of balanced regulation that would allow free markets to operate, and bring on-demand transportation to communities of all sizes. SB2368 does just that and would help provide a permanent home for ridesharing in North Dakota.

I would like to thank all of you for your time and attention, and would be happy to answer any questions.

2/06/15

#3-1

SB 2368

Senate Transportation Committee

Joe Burgum

Mr. Chairman and Senators of the committee - thank you for allowing me to speak this morning.

My name is Joe Burgum. I am here today as a resident of Fargo, a citizen of North Dakota, and a customer of Transportation Network Companies, or TNCs.

I recently moved home to Fargo after living in Chicago, Los Angeles, and Seattle. My time away has provided me the opportunity to understand why I love our great state and observe ways in which it could improve. I believe that SB 2368 leads to one of these ways.

In case you haven't used TNC services from companies like Uber or Lyft, I'll explain them using an example that may be more familiar.

Some of you may know the concept of Custom Combining and the impact it has had on North Dakota. As our state was evolving into the agricultural power that it is today, it was a common sight to see the fields filled with custom combines moving north up the plains from Nebraska to North Dakota. The value of custom combining is that farms did not need to own expensive combining equipment that was used for a small window of time each fall. This idea of sharing resources on an economy of scale for a community, is often referred to as collaborative consumption; a powerful economic tool which is changing how people live and is at the center of how customs combining and TNCs are successful.

TNCs allow drivers to respond to demand for rides and share the use of vehicles in a more efficient way. From the East coast, to the West coast, and in the Midwest, I have personally seen the positive impact of ride-sharing on communities.

Whether it be from ease of mind, knowing I can find a safe and reliable ride home after a night out, to knowing many others are doing the same and are staying off the road.

I have seen my girlfriend in Minneapolis become a driver as a way to make the equivalent to her full-time corporate entry level job in order to pay off student debt.

While riding with TNC drivers, I often heard stories of individuals taking a risk and moving to a new city. These drivers knew that if when moved to a city with Uber or Lyft, they would have an income as they transition into other employment. Note this bill as a differentiator as we work to attract and retain a workforce.

Not only will this bill allow for a free market solution to public safety, the creation of jobs with flexible hours, and a workforce attractor, it provides us an opportunity to show the world we are open to new technologies that improve our quality of life.

In closing, I would ask that you not only vote in favor of this bill, but take a moment to explain why we need TNCs to your fellow Statesman. This is a simple way to make a great change.

#4-1
2/06/15

IN OPPOSITION TO SB 2368

Dale A. Haake – Director of Casualty Claims for Nodak Mutual Ins.

Representing Nodak Mutual Insurance Company

Chairman Oehlke, members of the Senate Transportation Committee, my name is Dale Haake, Director of Casualty Claims for Nodak Mutual Ins. out of Fargo, and I am here to speak in opposition to SB 2368, specifically 39-34-09 which deals with disclosure requirements and obligations of insurers regarding accidents involving TNC drivers.

As stated in several places in this bill, it is well understood that many personal auto policies have exclusions for both liability claims and collision losses when the vehicle is being used as a livery conveyance. These are very standard exclusions which exist in a great majority of auto policies. Yet, this bill places undue burdens upon insurance carriers, even when that carrier has no obligation to cover such losses.

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SB 2368
2/24/15

Paragraph 4. of 39-34-09 places a requirement upon each insurer to disclose prominently on its application for insurance, a notice of whether or not the policy provides coverage while the insured is engaged in TNC services. Then, if such an exclusion does exist, another document must be supplied the insured restating the exact wording which excludes this coverage. This is not required of other exclusions. Why should this burden exist in this situation?

Then we have paragraph 3. of 39-34-09. This puts an obligation on the personal auto carrier, even after they have printed a notice on their application for insurance that they are excluding coverage for TNC service and have provided another document to the insured stating the wording they used in the policy to exclude such coverage, to investigate each loss which does occur and notify the insured that coverage does not apply. Then, and only then, will the insurance provided by the TNC company agree to get involved.

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SB2368
2/06/15

Chairman Oehlke, members of the Senate Transportation Committee, these requirements do not make sense. These requirements will waste money and effort for every auto carrier that writes business in North Dakota. It places added burden and chance for error on each and every insurance agent who writes business in this state. Plus it requires insurance carriers to conduct needless investigations on accidents and to formally deny claims just to get the TNC carrier to perform. That is not fair to the auto carriers in this state, it is not fair to the insurance agents in this state, and it is not fair to the people who have been harmed in some manner by a driver engaged in TNC service who will have their claims delayed while things "work their way through the channels".

The solution to the mess 39-34-09 will create is to require the insurance coverage mandated for the TNC driver and the TNC company to be primary over any other insurance which may exist. I would encourage that all reference to insurance ^eby struck from this bill and that the issue

4-4
SB2368
2/26/15

of insurance coverage be addressed under HB 1144 which takes the
burden from the personal auto insurance carrier and places it upon the
TNC company, their driver, and their insurers, which is where the
burden should be placed.

Senate Transportation
February 6, 2015
9:00 a.m.

TESTIMONY IN OPPOSITION TO SB 2368

Good morning Chairman Oehlke and members of the Senate Transportation Committee. My name is Pat Ward. I represent the Property and Casualty Insurance Association of America and the Association of North Dakota Insurers in opposition to SB 2368.

This bill does two things. It attempts to regulate transportation network companies and their drivers. It also creates certain insurance requirements and disclosures relating to the transportation network company service.

This bill is based on an Illinois statute that was adopted last session and is intended to go into effect in July of 2015. My understanding is that this Illinois statute is currently being reviewed in the current Illinois session and several changes are likely to come, now that there is a new governor.

The issue of TNC companies such as Uber and Lyft has created a good number of legislative and legal struggles in both state legislatures and municipalities around the country, as well as the Courts.

The most comprehensive legislation is the California model which the insurance industry has introduced in North Dakota as HB 1144. I am providing you with copies of HB 1144. This is the model we support for insuring all scenarios involving these drivers.

Lobbyists and attorneys were here from Uber and we are working with the House committee to get a good insurance bill.

SB 2368
2/06/15
#5-2

I oppose this bill on many points. I would strongly urge a Do Not Pass. However, if this committee believes there is a need for Uber regulation as provided in this bill outside of the insurance requirements, I believe that you should gut the insurance requirements from this bill and pass this bill as a TNC regulation statute and leave the House Bill to be the insurance regulation statute.

There are many legal issues and potential quagmires presented by this type of operation. While we certainly respect and encourage the innovation and believe this could provide a useful service for North Dakotans, we believe that insurance regulation should be handled separately and with supervision of DOI, not DOT.

We urge a strong Do Not Pass and I will try to answer any questions.

P:\PWARD\Legislative 2015\Testimony in Opposition to SB 2368.doc

#6-1
SB 2368
2/06/15

Introduced by

Representative Keiser

Senator Klein

1 A BILL for an Act to create and enact chapter 26.1-40.1 of the North Dakota Century Code,
2 relating to insurance coverage of motor vehicles participating in transportation network
3 company networks, priority of coverage, and minimum limits; and to provide for application.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 26.1-40.1 of the North Dakota Century Code is created and enacted
6 as follows:

7 **26.1-40.1-01. Definitions.**

8 As used in this chapter, unless the context otherwise requires:

- 9 1. "Application off stage" of operation means the time period when the driver is operating
10 the vehicle for personal noncommercial reasons and not engaged in any manner or
11 operation for the transportation network company.
- 12 2. "Application on stage" means the time period the driver is logged onto the
13 online-enabled application of a transportation network company and available for hire
14 but not engaged and there is no passenger on board.
- 15 3. "Engaged stage" means the time period from the moment a participating driver
16 accepts a ride request on the transportation network company online-enabled
17 application or platform until the driver completes the transaction on the online-enabled
18 application or platform or until the ride is complete, whichever is later.
- 19 4. "Participating driver" or "driver" means any person who uses a vehicle in connection
20 with a transportation network company's online-enabled application or platform to
21 connect with passengers.
- 22 5. "Passengers on-board stage" means the time period when there are passengers in the
23 vehicle pursuant to the driver's participation in a transportation network company.

1 6. "Transportation network company" means a person operating in this state that
2 provides prearranged transportation services for compensation using an
3 online-enabled application or platform to connect passengers with drivers using a
4 personal vehicle.

5 7. "Transportation network company insurance" means a liability insurance policy that
6 specifically covers liabilities arising from a participating driver's use of a vehicle in
7 connection with a transportation network company's online-enabled application or
8 platform.

9 **26.1-40.1-02. Required disclosures.**

10 1. A transportation network company shall disclose in writing to participating drivers, as
11 part of its agreement with those drivers, the insurance coverage and limits of liability
12 that the transportation network company provides while the driver uses a vehicle in
13 connection with a transportation network company's online-enabled application or
14 platform and shall advise a participating driver in writing of when the driver's personal
15 automobile insurance policy will not provide coverage under the agreement.

16 2. A transportation network company shall disclose in writing to participating drivers, as
17 part of its agreement with those drivers, of when the driver's personal automobile
18 insurance policy will not provide collision or comprehensive coverage, under the
19 agreement.

20 3. A transportation network company shall provide notice of a driver's participation in the
21 transportation network directly to the driver's personal automobile insurer unless that
22 insurer is providing transportation network company insurance to the driver.

23 **26.1-40.1-03. Coverage required when transportation network company application is**
24 **engaged until completion of ride.**

25 1. A transportation network company and any participating driver shall maintain
26 transportation network company insurance and unless otherwise specified, the
27 following requirements apply to transportation network company insurance during the
28 engaged stage and during the passenger on-board stage.

29 a. Transportation network company insurance is primary and in the amount of one
30 million dollars for death, personal injury, and property damage. The requirements

1 for the coverage required by this subdivision may be satisfied by any of the
2 following:

3 (1) Transportation network company insurance maintained by a participating
4 driver.

5 (2) Transportation network company insurance maintained by a transportation
6 network company.

7 (3) Any combination of paragraphs 1 and 2.

8 b. Transportation network company insurance coverage provided under this section
9 also provides for uninsured motorist coverage and underinsured motorist
10 coverage in the amount of one million dollars anytime the driver has
11 transportation network company passengers on board.

12 c. Transportation network company insurance coverage must provide personal
13 injury protection to drivers, passengers, and pedestrians as provided under
14 chapter 26.1-41.

15 d. The primary insurer, in the case of insurance coverage provided under
16 subdivision a, has the duty to defend and indemnify the insured.

17 e. A transportation network company may meet its obligations under this section
18 through a policy obtained by a participating driver under paragraph 1 or 3 of
19 subdivision a only if the transportation network company verifies that the policy is
20 maintained by the driver and is specifically written to cover the driver's use of a
21 vehicle in connection with a transportation network company's online-enabled
22 application or platform.

23 **26.1-40.1-04. Insurance coverage during the application on stage with no passengers**
24 **in vehicle.**

25 1. The following requirements apply to transportation network company insurance for
26 application on stage:

27 a. Transportation network company insurance shall be primary and in the amount of
28 at least twenty-five thousand dollars for death and personal injury per person, fifty
29 thousand dollars for death and personal injury per incident, and twenty-five
30 thousand dollars for property damage.

31 b. Transportation network company insurance coverage must provide:

- 1 (1) Uninsured motorist coverage under subsection 3 of section 26.1-40-15.1;
- 2 (2) Underinsured motorist coverage under subsection 2 of section 26.1-40-15.1;
- 3 (3) Personal injury protection under chapter 26.1-41; and
- 4 (4) Collision physical damage coverage and comprehensive physical damage
- 5 coverage.
- 6 2. The requirements for the coverage required by this section may be satisfied by any of
- 7 the following:
- 8 a. Transportation network company insurance maintained by a participating driver.
- 9 b. Transportation network company insurance maintained by a transportation
- 10 network company that provides coverage in the event a participating driver's
- 11 insurance policy under subdivision a of subsection 1 has ceased to exist or has
- 12 been canceled, or the participating driver does not otherwise maintain
- 13 transportation network company insurance pursuant to this section.
- 14 c. Any combination of subsections a and b.
- 15 3. A transportation network company shall maintain insurance coverage that provides
- 16 excess coverage insuring the transportation network company and the driver in the
- 17 amount of at least two hundred thousand dollars per occurrence to cover any liability
- 18 arising from a participating driver using a vehicle in connection with a transportation
- 19 network company's online-enabled application or platform within the application on
- 20 stage specified in this section, which liability exceeds the required coverage limits in
- 21 subdivision a of subsection 1.
- 22 4. The insurer providing insurance coverage under this section is the only insurer having
- 23 the duty to defend any liability claim arising from an accident occurring within the time
- 24 periods specified in this section.
- 25 5. A transportation network company may meet its obligations under this section through
- 26 a policy obtained by a participating driver under subdivisions a or c of subsection 2
- 27 only if the transportation network company verifies that the policy is maintained by the
- 28 driver and is specifically written to cover the driver's use of a vehicle in connection with
- 29 a transportation network company's online-enabled application or platform.
- 30 6. Coverage under a transportation network company insurance policy may neither be
- 31 dependent on a driver's personal automobile insurance policy carrier first denying a

1 claim nor a personal automobile insurance policy carrier be required to first deny a
2 claim.

3 7. In every instance where transportation network company insurance maintained by a
4 participating driver to fulfill the insurance obligations of this section has lapsed or
5 ceased to exist, the transportation network company shall provide the coverage
6 required by this section beginning with the first dollar of a claim.

7 **26.1-40.1-05. Liability of transportation network company beyond required limits.**

8 This chapter does not limit the liability of a transportation network company arising out of an
9 automobile accident involving a participating driver in any action for damages against a
10 transportation network company for an amount above the required insurance coverage.

11 **26.1-40.1-06. Limitations on driver's personal auto policy during passenger on-board**
12 **stage, engaged stage, and application on stage.**

13 1. During the application on stage, engaged stage, or passenger on-board stage, the
14 following apply:

15 a. The participating driver's or the vehicle owner's personal automobile insurance
16 policy does not provide any coverage to the participating driver, vehicle owner, or
17 any third party, unless the policy expressly provides for that coverage during the
18 period of time to which this section is applicable, with or without a separate
19 charge, or the policy contains an amendment or endorsement to provide that
20 coverage, for which a separately stated premium is charged.

21 b. The participating driver's or the vehicle owner's personal automobile insurance
22 company does not have the duty to defend or indemnify for the driver's activities
23 in connection with the transportation network company, unless the policy
24 expressly provides otherwise for the period of time to which this section is
25 applicable, with or without a separate charge, or the policy contains an
26 amendment or endorsement to provide that coverage, for which a separately
27 stated premium is charged.

28 c. Nothing in this chapter may be construed to require a private passenger
29 automobile insurance policy to provide primary or excess coverage during the
30 application on stage, engaged stage, or passenger on-board stage.

1 **26.1-40.1-07. Discretionary personal insurance where offered by personal automobile**
2 **insurer.**

3 Notwithstanding any other law, a personal automobile insurer may offer an automobile
4 liability insurance policy, or an amendment or endorsement to an existing policy that covers a
5 private passenger vehicle or similar type of vehicle with a passenger capacity of eight persons
6 or less, including the driver, while used in connection with a transportation network company's
7 online-enabled application or platform only if the policy expressly provides for the coverage
8 during the time period specified in section 26.1-40.1-03, with or without a separate charge, or
9 the policy contains an amendment or an endorsement to provide that coverage, for which a
10 separately stated premium may be charged.

11 **26.1-40.1-08. Duty to cooperate.**

12 In a claims coverage investigation involving a participating driver, a transportation network
13 company or its insurer shall cooperate with insurers that are involved in the claims coverage
14 investigation to facilitate the exchange of information, including the provision of dates and times
15 at which an accident occurred involving a participating driver and the precise times that the
16 participating driver logged on and off the transportation network company's online-enabled
17 application or platform.

18 **26.1-40.1-09. Confidentiality of passenger personal information.**

19 A transportation network company may not disclose to a third party any personally
20 identifiable information of a transportation network company passenger unless the customer
21 knowingly consents, under a legal obligation, or the disclosure is to the commissioner of
22 insurance in order to investigate a complaint filed with the commissioner against a
23 transportation network company or a participating driver and the commissioner treats the
24 information under confidentiality protections.

25 **26.1-40.1-10. Financial responsibility.**

26 Transportation network company insurance that meets the requirements of this chapter is
27 deemed to satisfy the financial responsibility requirements of chapter 39-16.

28 **26.1-40.1-11. Proof of insurance.**

29 A participating driver of a transportation network company shall carry proof of transportation
30 network company insurance coverage at all times during the driver's use of a vehicle in
31 connection with a transportation network company's online-enabled application or platform. In

- 1 the event of an accident, a participating driver shall provide this insurance coverage information
2 to any other party involved in the accident, and to a police officer, upon request.

- 3 **SECTION 2. APPLICATION.** The insurance commissioner shall expedite review of any
4 application for approval of transportation network company insurance products so that these
5 products become available for purchase on or before the effective date of this Act.

#7
7-1
SA 2368
2/06/15

U B E R

EVERYONE'S PRIVATE DRIVER™

August 27, 2014

Assembly Bill 2293 (Bonilla) - SUPPORT

Uber Technologies, Inc. is in **SUPPORT** of Assembly Bill 2293.

New amendments to AB 2293 address many of the concerns that Uber has had in regard to excessive insurance requirements.

Given California's unique insurance regulatory framework, including Prop 103, we believe the bill is an appropriate compromise for insurance companies and TNCs in this state. We encourage the Governor and the California Public Utilities Commission (CPUC) to clarify how the excess liability insurance applies when a driver is associated with multiple TNCs so as to not create duplicative coverage.

Uber appreciates the willingness of all parties to work through the many complex policy issues related to ridesharing.

AB 2293 is further testament to the California Legislature's commitment to foster innovation and build a new economy. Uber, along with tens of thousands of driver partners and riders, looks forward to continuing to grow and thrive in our home state of California and around the world.

UBER is proud to be a California-born company. By seamlessly connecting riders to drivers through our app, Uber links people all over the globe (located in 180 cities in 45 countries) with easy and affordable transportation options.



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SACRAMENTO, CA
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7-2
SB 2368
2/06/15

August 27, 2014

The Honorable Susan Bonilla
State Capitol
P.O. Box 942849
Sacramento, CA 94249

Dear Assemblymember Bonilla,

Lyft writes to support the current version of AB 2293 (Bonilla). After long and intense negotiation, we have arrived at a compromise to provide clarity for all parties. The bill allows for insurance companies to update and introduce new policies for consumers who wish to turn their vehicles from a financial burden into an economic opportunity. Riders and drivers will also continue to be protected by Lyft's \$1 million insurance policy whenever they are matched. This current level of protection remains many times higher than what is provided by taxis in major cities like Los Angeles.

Lyft has diligently worked with the supporters of this bill, Senate leadership and the Governor's office to reach this compromise. Lyft therefore urges a yes vote on AB 2293.

Regards,

David Estrada
Vice President of Government Relations

#8-1

Senate Transportation
February 6, 2015

PROPOSED AMENDMENTS TO SB 2368
In Alternative to Do Not Pass

Page 2, remove lines 4-7

Page 3, remove lines 3-31

Page 4, remove lines 1-14

Page 5, remove lines 10-19

Renumber accordingly

#9-1

SB2368

2/06/15

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U.S. judge says Lyft drivers may be entitled to employee benefits

Thu, Jan 29 2015

By Dan Levine

SAN FRANCISCO, Jan 29 (Reuters) - A U.S. judge on Thursday said it was "very difficult" to decide whether drivers for smartphone-enabled car service Lyft are employees or independent contractors, but that California law appears to favor the drivers.

Lyft and larger rival Uber face separate lawsuits seeking class action status in San Francisco federal court, brought on behalf of drivers who contend they are employees and entitled to reimbursement for expenses including gas and vehicle maintenance. The drivers currently pay those costs themselves.

A ruling against either company could significantly raise their costs beyond the lawsuits' scope and force the companies to pay social security, workers' compensation, and unemployment insurance. That could affect the valuations for other startups that rely on large networks of individuals to provide rides, clean houses and the like.

At a hearing on the Lyft lawsuit on Thursday, U.S. District Judge Vincent Chhabria said he was "scratching my head" because traditional employment categories are "woefully outdated" when applied to companies like Lyft.

However, Chhabria said California legal precedents "point pretty strongly in the direction" that "people who do the kinds of things that Lyft drivers do here are employees."

A hearing on the same issue involving Uber is set to take place on Friday before a different judge.

Uber has raised more than \$4 billion from prominent venture capital firms such as Benchmark and Google Ventures, valuing the company at \$40 billion and making it the most valuable U.S. startup. Lyft has raised \$331 million from Andreessen Horowitz, Founders Fund and other investors.

The drivers have not yet specified how much money they are seeking in damages.
(Reporting by Dan Levine; Editing by Christian Plumb)

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PROPOSED AMENDMENT TO SENATE BILL NO. 2368

#1

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TRANSPORTATION

NETWORK COMPANY SERVICES. During the 2015-16 interim, the legislative management shall study services offered by a transportation network company. The study must examine and identify which government agency or agencies are equipped to regulate transportation network company services. The study must examine insurance coverage provided by transportation network companies and determine whether additional insurance is required to protect transportation network company drivers and transportation network company customers against loss. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-fifth legislative assembly.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

Page 2, remove lines 4 through 13

Page 2, line 14, replace "39-34-04" with "39-34-02"

Page 2, line 15, after "agent" insert "with the secretary of state"

Page 2, line 17, replace "39-34-05" with "39-34-03"

Page 2, remove lines 18 through 20

Page 2, remove lines 24 through 31

Page 3, remove lines 1 and 2

Page 3, line 3, replace "39-34-08" with "39-34-04"

Page 4, line 15, replace "39-34-09" with "39-34-05"

Page 5, remove lines 28 through 31

Page 6, remove lines 1 through 13

Page 6, line 14, replace "39-34-11" with "39-34-06"

Page 7, line 13, replace "nineteen" with "eighteen"

Page 7, remove lines 14 through 31

Page 8, remove lines 1 through 15

Page 8, line 16, replace "39-34-16" with "39-34-07"

Page 8, line 19, replace "one" with "six"

Page 8, line 21, replace "39-34-17" with "39-34-08"

Page 8, replace lines 22 through 29 with "A transportation network company may not disclose any personally identifiable information of a transportation network company passenger except under a legal obligation or for payment processing. For any other disclosure, the transportation network company must obtain the passenger's written consent on a separate form specifically addressing passenger personal information before the company may disclose the passenger's personally identifiable information."

Page 9, line 1, replace "39-34-18" with "39-34-09"

Page 9, line 4, replace "municipality or other local entity" with "political subdivision"

Page 9, line 7, replace "municipality's or other local entity's" with "political subdivision's"

Renumber accordingly

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Renumber accordingly

OT#3
2/19/15

3-1
SB 2368
2/19/15

Prepared by the North Dakota
Insurance Department
February 17, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2368

Page 1, line 1, replace "chapter" with "chapters 26.1-40.1 and"

Page 1, line 2, after "services" insert ", insurance coverage of motor vehicles participating in transportation network company networks and services, priority of coverage, and minimum limits"

Page 1, after line 3, insert:

SECTION 1. Chapter 26.1-40.1 of the North Dakota Century Code is created and enacted as follows:

"26.1-40.1-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Application off stage" of operation means the time period when the driver is operating the vehicle for personal noncommercial reasons and not engaged in any manner or operation for the transportation network company.
2. "Application on stage" means the time period the driver is logged onto the online-enabled application of a transportation network company and available for hire but not engaged and there is no passenger on board.
3. "Engaged stage" means the time period from the moment a participating driver accepts a ride request on the transportation network company online-enabled application or platform until the driver completes the transaction on the online-enabled application or platform or until the ride is complete, whichever is later.
4. "Participating driver" or "driver" means any person who uses a vehicle in connection with a transportation network company's online-enabled application or platform to connect with passengers.
5. "Passengers on-board stage" means the time period when there are passengers in the vehicle pursuant to the driver's participation in a transportation network company.

6. "Transportation network company" means a person operating in this state that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.
7. "Transportation network company insurance" means an insurance policy that covers a driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform.

26.1-40.1-02. Required disclosures.

1. A transportation network company shall disclose in writing or electronic form to participating drivers, as part of its agreement with those drivers, the insurance coverage and limits of liability that the transportation network company provides while the driver uses a vehicle in connection with a transportation network company's online-enabled application or platform and shall advise a participating driver that the driver's personal automobile insurance policy may not provide coverage under the agreement.
2. A transportation network company shall disclose in writing or electronic form to participating drivers, as part of its agreement with those drivers, of when the driver's personal automobile insurance policy may not provide collision or comprehensive coverage, under the agreement.
3. A transportation network company shall provide notice of a driver's participation in the transportation network directly to the driver's personal automobile insurer unless that insurer is providing transportation network company insurance to the driver.

26.1-40.1-03. Coverage required when transportation network company application is engaged until completion of ride when the passenger has exited the vehicle.

1. A transportation network company and any participating driver shall maintain transportation network company insurance that provides for the following requirements that apply to transportation network company insurance during the engaged stage and during the passenger on-board stage.
 - a. Transportation network company liability insurance is primary and in the amount of one million dollars for death, bodily injury, and property damage. The requirements for the coverage required by this subdivision may be satisfied by any of the following:
 - (1) Transportation network company insurance maintained by a participating driver.

- (2) Transportation network company insurance maintained by a transportation network company.
- (3) Any combination of paragraphs 1 and 2.
- b. Transportation network company insurance coverage provided under this section also provides for uninsured motorist coverage and underinsured motorist coverage in the amount of one million dollars anytime the driver has transportation network company passengers on board.
- c. Transportation network company insurance coverage must provide personal injury protection to drivers, passengers, and pedestrians as provided under chapter 26.1-41.
- d. The primary insurer, in the case of insurance coverage provided under subdivision a, has the sole duty to defend and indemnify the insured.

26.1-40.1-04. Insurance coverage during the application on stage with no passengers in vehicle.

- 1. The following requirements apply to transportation network company insurance for application on stage:
 - a. Transportation network company insurance shall be primary and in the amount of at least fifty thousand dollars for death and bodily injury per person, one hundred thousand dollars for death and bodily injury per incident, and twenty-five thousand dollars for property damage.
 - b. Transportation network company insurance coverage must provide:
 - (1) Uninsured motorist coverage under subsection 3 of section 26.1-40-15.1;
 - (2) Underinsured motorist coverage under subsection 2 of section 26.1-40-15.1; and
 - (3) Personal injury protection under chapter 26.1-41.
- 2. The requirements for the coverage required by this section may be satisfied by any of the following:

- a. Transportation network company insurance maintained by a participating driver.
 - b. Transportation network company insurance maintained by a transportation network company that provides coverage in the event a participating driver's insurance policy under subdivision a of subsection 1 has ceased to exist or has been canceled, or the participating driver does not otherwise maintain transportation network company insurance pursuant to this section.
 - c. Any combination of subsections a and b.
3. The primary insurer, in the case of the insurance coverage provided under subdivision a of subsection 1, has the sole duty to defend and indemnify the insured during the time period specified in this section.
 4. Coverage under a transportation network company insurance policy may neither be dependent on a driver's personal automobile insurance policy carrier first denying a claim nor a personal automobile insurance policy carrier being required to first deny a claim.
 5. In every instance where transportation network company insurance maintained by a participating driver to fulfill the insurance obligations of this section has lapsed or ceased to exist, the transportation network company shall provide the coverage required by this section beginning with the first dollar of a claim.

26.1-40.1-05. Liability of transportation network company beyond required limits.

This chapter does not limit the liability of a transportation network company arising out of an automobile accident involving a participating driver in any action for damages against a transportation network company for an amount above the required insurance coverage.

26.1-40.1-06. Limitations on driver's personal automobile policy during passenger on-board stage, engaged stage, and application on stage.

1. During the application on stage, engaged stage, or passenger on-board stage, the following apply:
 - a. The participating driver's or the vehicle owner's personal automobile insurance policy does not provide any coverage to the participating driver, vehicle owner, or any third party, unless the policy expressly provides for that coverage during the period of time to which this section is applicable, with or without a separate charge, or the policy contains an amendment or endorsement to provide that coverage,

for which a separately stated premium is charged.

- b. The participating driver's or the vehicle owner's personal automobile insurance company does not have the duty to defend or indemnify for the driver's activities in connection with the transportation network company, unless the policy expressly provides otherwise for the period of time to which this section is applicable, with or without a separate charge, or the policy contains an amendment or endorsement to provide that coverage, for which a separately stated premium is charged.
- c. Nothing in this chapter may be construed to require a private passenger automobile insurance policy to provide primary or excess coverage during the application on stage, engaged stage, or passenger on-board stage.

26.1-40.1-07. Discretionary personal insurance where offered by personal automobile insurer.

A personal automobile insurer may offer an automobile liability insurance policy, or an amendment or endorsement to an existing policy that covers a private passenger vehicle or similar type of vehicle with a passenger capacity of eight persons or less, including the driver, while used in connection with a transportation network company's online-enabled application or platform only if the policy expressly provides for the coverage during the time period specified in section 26.1-40.1-03, with or without a separate charge, or the policy contains an amendment or an endorsement to provide that coverage, for which a separately stated premium may be charged.

26.1-40.1-08. Duty to cooperate.

In a claims coverage investigation involving a participating driver, a transportation network company or its insurer shall cooperate with insurers that are involved in the claims coverage investigation to facilitate the exchange of information, including the provision of dates and times at which an accident occurred involving a participating driver and the precise times that the participating driver logged on and off the transportation network company's online-enabled application or platform.

26.1-40.1-09. Confidentiality of passenger personal information.

A transportation network company may not disclose any personally identifiable information of a transportation network company passenger except under a legal obligation or for payment processing. For any other disclosure, the transportation network company must obtain the passenger's written consent on a separate form specifically addressing passenger personal information before the company may disclose the passenger's personally identifiable information.

26.1-40.1-10. Financial responsibility.

Transportation network company insurance that meets the requirements of this chapter is deemed to satisfy the financial responsibility requirements of chapter 39-16.

26.1-40.1-11. Proof of insurance.

A participating driver of a transportation network company shall carry proof of transportation network company insurance coverage at all times during the driver's use of a vehicle in connection with a transportation network company's online-enabled application or platform. In the event of an accident, a participating driver shall provide this insurance coverage information to any other party involved in the accident, and to a police officer, upon request.

26.1-40.1-12. Authorized or eligible carrier.

Transportation network company insurance required by this chapter may be placed with an insurer authorized to do business in the state or with a surplus lines insurer eligible under section 26.1-44-03."

Renumber accordingly

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

1-1
SB 2368
2/11/15



SENATE BILL 14-125

BY SENATOR(S) Jahn and Harvey, Baumgardner, Cadman, Crowder, Grantham, Herpin, Hodge, Johnston, Lambert, Marble, Newell, Rivera, Steadman, Todd, Zenzinger, Aguilar;
also REPRESENTATIVE(S) Pabon and Szabo, Becker, Coram, Foote, Garcia, Gardner, Hamner, Holbert, Hulinghorst, Joshi, Kagan, Landgraf, Lawrence, May, McCann, McNulty, Murray, Navarro, Nordberg, Priola, Rankin, Schafer, Scott, Singer, Stephens, Vigil, Williams, Wilson, Wright, Ginal, Pettersen, Rosenthal, Saine, Sonnenberg, Young.

CONCERNING THE REGULATION OF TRANSPORTATION NETWORK COMPANIES, AND, IN CONNECTION THEREWITH, REQUIRING TRANSPORTATION NETWORK COMPANIES TO CARRY LIABILITY INSURANCE, CONDUCT BACKGROUND CHECKS ON TRANSPORTATION NETWORK COMPANY DRIVERS, INSPECT TRANSPORTATION NETWORK COMPANY VEHICLES, AND OBTAIN A PERMIT FROM THE PUBLIC UTILITIES COMMISSION; AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 40-1-102, **amend** (3) (b) as follows:

40-1-102. Definitions. As used in articles 1 to 7 of this title, unless

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

the context otherwise requires:

(3) (b) "Common carrier" does not include a motor carrier that provides transportation not subject to regulation pursuant to section 40-10.1-105, ~~or~~ A MOTOR CARRIER that is subject to part 3, 4, or 5 of article 10.1 of this title, A TRANSPORTATION NETWORK COMPANY, AS DEFINED IN SECTION 40-10.1-602 (3), OR A TRANSPORTATION NETWORK COMPANY DRIVER, AS DEFINED IN SECTION 40-10.1-602 (4).

SECTION 2. In Colorado Revised Statutes, 40-7-112, **amend** (1) (a) as follows:

40-7-112. Applicability of civil penalties. (1) (a) A person who operates or offers to operate as a motor carrier as defined in section 40-10.1-101; ~~or~~ a motor carrier, motor private carrier, broker, freight forwarder, leasing company, or other person required to register under section 40-10.5-102; OR A TRANSPORTATION NETWORK COMPANY REQUIRED TO OBTAIN A PERMIT UNDER SECTION 40-10.1-606 is subject to civil penalties as provided in this section and sections 40-7-113 to 40-7-116, in addition to any other sanctions that may be imposed pursuant to law.

SECTION 3. In Colorado Revised Statutes, 40-10.1-101, **amend** (6) and (10) as follows:

40-10.1-101. Definitions. As used in this article, unless the context otherwise requires:

(6) "Contract carrier" means every person, other than a common carrier or a motor carrier of passengers under part 3 of this article, who, by special contract, directly or indirectly affords a means of passenger transportation over any public highway of this state; EXCEPT THAT THE TERM DOES NOT INCLUDE A TRANSPORTATION NETWORK COMPANY, AS DEFINED IN SECTION 40-10.1-602 (3), OR A TRANSPORTATION NETWORK COMPANY DRIVER, AS DEFINED IN SECTION 40-10.1-602 (4).

(10) "Motor carrier" means any person owning, controlling, operating, or managing ~~any~~ A motor vehicle that provides transportation in intrastate commerce pursuant to this article; EXCEPT THAT THE TERM DOES NOT INCLUDE A TRANSPORTATION NETWORK COMPANY, AS DEFINED IN

SECTION 40-10.1-602 (3), OR A TRANSPORTATION NETWORK COMPANY DRIVER, AS DEFINED IN SECTION 40-10.1-602 (4).

SECTION 4. In Colorado Revised Statutes, 40-10.1-103, **add** (3) as follows:

40-10.1-103. Subject to control by commission.
(3) TRANSPORTATION NETWORK COMPANIES, AS DEFINED IN SECTION 40-10.1-602 (3), ARE NOT COMMON CARRIERS, CONTRACT CARRIERS, OR MOTOR CARRIERS UNDER THIS TITLE, BUT ARE DECLARED TO BE AFFECTED WITH A PUBLIC INTEREST AND ARE SUBJECT TO REGULATION TO THE EXTENT PROVIDED IN PART 6 OF THIS ARTICLE.

SECTION 5. In Colorado Revised Statutes, **add** 40-10.1-117 as follows:

40-10.1-117. Limited regulation of transportation network companies. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, TRANSPORTATION NETWORK COMPANIES, AS DEFINED IN SECTION 40-10.1-602 (3), ARE GOVERNED EXCLUSIVELY UNDER PART 6 OF THIS ARTICLE.

SECTION 6. In Colorado Revised Statutes, **add** part 6 to article 10.1 of title 40 as follows:

PART 6
TRANSPORTATION NETWORK COMPANIES

40-10.1-601. Short title. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "TRANSPORTATION NETWORK COMPANY ACT".

40-10.1-602. Definitions. AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "PERSONAL VEHICLE" MEANS A VEHICLE THAT IS USED BY A TRANSPORTATION NETWORK COMPANY DRIVER IN CONNECTION WITH PROVIDING SERVICES FOR A TRANSPORTATION NETWORK COMPANY THAT MEETS THE VEHICLE CRITERIA SET FORTH IN THIS PART 6.

(2) "PREARRANGED RIDE" MEANS A PERIOD OF TIME THAT BEGINS

WHEN A DRIVER ACCEPTS A REQUESTED RIDE THROUGH A DIGITAL NETWORK, CONTINUES WHILE THE DRIVER TRANSPORTS THE RIDER IN A PERSONAL VEHICLE, AND ENDS WHEN THE RIDER DEPARTS FROM THE PERSONAL VEHICLE.

(3) "TRANSPORTATION NETWORK COMPANY" MEANS A CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP, OR OTHER ENTITY, OPERATING IN COLORADO, THAT USES A DIGITAL NETWORK TO CONNECT RIDERS TO DRIVERS FOR THE PURPOSE OF PROVIDING TRANSPORTATION. A TRANSPORTATION NETWORK COMPANY DOES NOT PROVIDE TAXI SERVICE, TRANSPORTATION SERVICE ARRANGED THROUGH A TRANSPORTATION BROKER, RIDESHARING ARRANGEMENTS, AS DEFINED IN SECTION 39-22-509 (1)(a)(II), C.R.S., OR ANY TRANSPORTATION SERVICE OVER FIXED ROUTES AT REGULAR INTERVALS. A TRANSPORTATION NETWORK COMPANY IS NOT DEEMED TO OWN, CONTROL, OPERATE, OR MANAGE THE PERSONAL VEHICLES USED BY TRANSPORTATION NETWORK COMPANY DRIVERS. A TRANSPORTATION NETWORK COMPANY DOES NOT INCLUDE A POLITICAL SUBDIVISION OR OTHER ENTITY EXEMPTED FROM FEDERAL INCOME TAX UNDER SECTION 115 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

(4) "TRANSPORTATION NETWORK COMPANY DRIVER" OR "DRIVER" MEANS AN INDIVIDUAL WHO USES HIS OR HER PERSONAL VEHICLE TO PROVIDE SERVICES FOR RIDERS MATCHED THROUGH A TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK. A DRIVER NEED NOT BE AN EMPLOYEE OF A TRANSPORTATION NETWORK COMPANY.

(5) "TRANSPORTATION NETWORK COMPANY RIDER" OR "RIDER" MEANS A PASSENGER IN A PERSONAL VEHICLE FOR WHOM TRANSPORT IS PROVIDED, INCLUDING:

(a) AN INDIVIDUAL WHO USES A TRANSPORTATION NETWORK COMPANY'S ONLINE APPLICATION OR DIGITAL NETWORK TO CONNECT WITH A DRIVER TO OBTAIN SERVICES IN THE DRIVER'S VEHICLE FOR THE INDIVIDUAL AND ANYONE IN THE INDIVIDUAL'S PARTY; OR

(b) ANYONE FOR WHOM ANOTHER INDIVIDUAL USES A TRANSPORTATION NETWORK COMPANY'S ONLINE APPLICATION OR DIGITAL NETWORK TO CONNECT WITH A DRIVER TO OBTAIN SERVICES IN THE DRIVER'S VEHICLE.

(6) "TRANSPORTATION NETWORK COMPANY SERVICES" OR "SERVICES" MEANS THE PROVISION OF TRANSPORTATION BY A DRIVER TO A RIDER WITH WHOM THE DRIVER IS MATCHED THROUGH A TRANSPORTATION NETWORK COMPANY. THE TERM DOES NOT INCLUDE SERVICES PROVIDED EITHER DIRECTLY BY OR UNDER CONTRACT WITH A POLITICAL SUBDIVISION OR OTHER ENTITY EXEMPT FROM FEDERAL INCOME TAX UNDER SECTION 115 OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED.

40-10.1-603. Limited regulation. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, TRANSPORTATION NETWORK COMPANIES ARE GOVERNED EXCLUSIVELY BY THIS PART 6. A TRANSPORTATION NETWORK COMPANY IS NOT SUBJECT TO THE COMMISSION'S RATE, ENTRY, OPERATIONAL, OR COMMON CARRIER REQUIREMENTS, OTHER THAN THOSE REQUIREMENTS EXPRESSLY SET FORTH IN THIS PART 6.

40-10.1-604. Registration - financial responsibility of transportation network companies - insurance. (1) A TRANSPORTATION NETWORK COMPANY SHALL COMPLY WITH THE FILING REQUIREMENTS OF PART 3 AND THE REGISTERED AGENT REQUIREMENT OF PART 7 OF ARTICLE 90 OF TITLE 7, C.R.S.

(2) A TRANSPORTATION NETWORK COMPANY SHALL FILE WITH THE COMMISSION DOCUMENTATION EVIDENCING THAT THE TRANSPORTATION NETWORK COMPANY OR THE DRIVER HAS SECURED PRIMARY LIABILITY INSURANCE COVERAGE FOR THE DRIVER FOR INCIDENTS INVOLVING THE DRIVER DURING A PREARRANGED RIDE. COVERAGE FOR INCIDENTS INVOLVING A DRIVER DURING A PREARRANGED RIDE MUST BE IN THE AMOUNT OF AT LEAST ONE MILLION DOLLARS PER OCCURRENCE. THE INSURANCE POLICY MUST PROVIDE COVERAGE AT ALL TIMES THE DRIVER IS ENGAGED IN A PREARRANGED RIDE. THIS SUBSECTION (2) BECOMES EFFECTIVE NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS PART 6.

(3) FOR THE PERIOD OF TIME WHEN A DRIVER IS LOGGED INTO A TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK BUT IS NOT ENGAGED IN A PREARRANGED RIDE, THE FOLLOWING INSURANCE REQUIREMENTS APPLY:

(a) A TRANSPORTATION NETWORK COMPANY OR A DRIVER SHALL MAINTAIN CONTINGENT LIABILITY INSURANCE WITH A LIABILITY LIMIT EQUAL TO AT LEAST THE MINIMUM AMOUNT REQUIRED BY SECTION

10-4-620, C.R.S. AT A MINIMUM, THE CONTINGENT LIABILITY INSURANCE MUST PROVIDE LIABILITY COVERAGE IF THE DRIVER'S INSURER FOR PERSONAL AUTOMOBILE INSURANCE VALIDLY DENIES COVERAGE UNDER THE TERMS OF THE DRIVER'S PERSONAL AUTOMOBILE INSURANCE POLICY OR THE DRIVER OTHERWISE DOES NOT HAVE PERSONAL AUTOMOBILE INSURANCE COVERAGE. NOTHING IN THIS PARAGRAPH (a) PRECLUDES AN INSURER'S RIGHT TO EQUITABLE SUBROGATION. THE REQUIREMENTS OF THIS PARAGRAPH (a) EXPIRE ON JANUARY 15, 2015, AND THIS PARAGRAPH (a) IS REPEALED, EFFECTIVE JULY 1, 2015.

(b) ON OR BEFORE JANUARY 15, 2015, AND THEREAFTER, A DRIVER OR A TRANSPORTATION NETWORK COMPANY ON THE DRIVER'S BEHALF SHALL MAINTAIN A PRIMARY AUTOMOBILE INSURANCE POLICY THAT:

(I) RECOGNIZES THAT THE DRIVER IS A TRANSPORTATION NETWORK COMPANY DRIVER AND COVERS THE DRIVER'S PROVISION OF TRANSPORTATION NETWORK COMPANY SERVICES WHILE THE DRIVER IS LOGGED INTO THE TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK;

(II) MEETS AT LEAST THE MINIMUM COVERAGE OF AT LEAST FIFTY THOUSAND DOLLARS TO ANY ONE PERSON IN ANY ONE ACCIDENT, ONE HUNDRED THOUSAND DOLLARS TO ALL PERSONS IN ANY ONE ACCIDENT, AND FOR PROPERTY DAMAGE ARISING OUT OF THE USE OF THE MOTOR VEHICLE TO A LIMIT, EXCLUSIVE OF INTEREST AND COSTS, OF THIRTY THOUSAND DOLLARS IN ANY ONE ACCIDENT; AND

(III) IS ONE OF THE FOLLOWING:

(A) FULL-TIME COVERAGE SIMILAR TO THE COVERAGE REQUIRED BY COMMISSION RULES PROMULGATED UNDER SECTION 40-10.1-107 (1);

(B) AN INSURANCE RIDER TO, OR ENDORSEMENT OF, THE DRIVER'S PERSONAL AUTOMOBILE INSURANCE POLICY REQUIRED BY THE "MOTOR VEHICLE FINANCIAL RESPONSIBILITY ACT," ARTICLE 7 OF TITLE 42, C.R.S.; OR

(C) A CORPORATE LIABILITY INSURANCE POLICY PURCHASED BY THE TRANSPORTATION NETWORK COMPANY THAT PROVIDES PRIMARY COVERAGE FOR THE PERIOD OF TIME IN WHICH A DRIVER IS LOGGED INTO THE DIGITAL

NETWORK.

(c) THE DIVISION OF INSURANCE SHALL CONDUCT A STUDY OF WHETHER THE LEVELS OF COVERAGE PROVIDED FOR IN THIS SUBSECTION (3) ARE APPROPRIATE FOR THE RISK INVOLVED WITH TRANSPORTATION NETWORK COMPANY SERVICES. IN CONDUCTING THE STUDY, THE DIVISION OF INSURANCE SHALL CONVENE ONE OR MORE STAKEHOLDER MEETINGS TO EVALUATE THE CHOICES OF COVERAGE SET FORTH IN SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS SUBSECTION (3). ON OR BEFORE JANUARY 15, 2015, THE DIVISION OF INSURANCE SHALL PRESENT ITS FINDINGS AND ANY RECOMMENDATIONS TO THE BUSINESS, LABOR, ECONOMIC AND WORKFORCE DEVELOPMENT COMMITTEE IN THE HOUSE OF REPRESENTATIVES, THE BUSINESS, LABOR, AND TECHNOLOGY COMMITTEE IN THE SENATE, THE TRANSPORTATION AND ENERGY COMMITTEE IN THE HOUSE OF REPRESENTATIVES, AND THE TRANSPORTATION COMMITTEE IN THE SENATE.

(d) IF A TRANSPORTATION NETWORK COMPANY PURCHASES AN INSURANCE POLICY UNDER THIS SUBSECTION (3), IT SHALL PROVIDE DOCUMENTATION TO THE COMMISSION EVIDENCING THAT THE TRANSPORTATION NETWORK COMPANY HAS SECURED THE POLICY. IF THE RESPONSIBILITY IS PLACED ON A DRIVER TO PURCHASE INSURANCE UNDER THIS SUBSECTION (3), THE TRANSPORTATION NETWORK COMPANY SHALL VERIFY THAT THE DRIVER HAS PURCHASED AN INSURANCE POLICY UNDER THIS SUBSECTION (3).

(4) A DRIVER'S PERSONAL AUTOMOBILE INSURANCE POLICY THAT COMPLIES WITH PART 6 OF ARTICLE 4 OF TITLE 10, C.R.S., IS SUFFICIENT TO SATISFY THE COMPULSORY INSURANCE REQUIREMENTS THEREOF. AN INSURANCE POLICY REQUIRED BY SUBSECTION (2) OR SUBSECTION (3) OF THIS SECTION:

(a) MAY BE PLACED WITH AN INSURER LICENSED UNDER TITLE 10, C.R.S., OR WITH A SURPLUS LINES INSURER AUTHORIZED UNDER ARTICLE 5 OF TITLE 10, C.R.S.; AND

(b) NEED NOT SEPARATELY SATISFY THE REQUIREMENTS OF PART 6 OF ARTICLE 4 OF TITLE 10, C.R.S.

(5) NOTHING IN THIS SECTION REQUIRES A PERSONAL AUTOMOBILE INSURANCE POLICY TO PROVIDE COVERAGE FOR THE PERIOD OF TIME IN

WHICH A DRIVER IS LOGGED INTO A TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK.

(6) IF MORE THAN ONE INSURANCE POLICY PROVIDES VALID AND COLLECTIBLE COVERAGE FOR A LOSS ARISING OUT OF AN OCCURRENCE INVOLVING A MOTOR VEHICLE OPERATED BY A DRIVER, THE RESPONSIBILITY FOR THE CLAIM MUST BE DIVIDED ON A PRO RATA BASIS AMONG ALL OF THE APPLICABLE POLICIES. THIS EQUAL DIVISION OF RESPONSIBILITY MAY ONLY BE MODIFIED BY THE WRITTEN AGREEMENT OF ALL OF THE INSURERS OF THE APPLICABLE POLICIES AND THE OWNERS OF THOSE POLICIES.

(7) IN A CLAIMS COVERAGE INVESTIGATION, A TRANSPORTATION NETWORK COMPANY SHALL COOPERATE WITH A LIABILITY INSURER THAT ALSO INSURES THE DRIVER'S TRANSPORTATION NETWORK COMPANY VEHICLE, INCLUDING THE PROVISION OF RELEVANT DATES AND TIMES DURING WHICH AN INCIDENT OCCURRED THAT INVOLVED THE DRIVER WHILE THE DRIVER WAS LOGGED INTO A TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK.

(8) NOTHING IN THIS SECTION MODIFIES OR ABROGATES ANY OTHERWISE APPLICABLE INSURANCE REQUIREMENTS SET FORTH IN TITLE 10, C.R.S.

(9) IF A TRANSPORTATION NETWORK COMPANY'S INSURER MAKES A PAYMENT FOR A CLAIM COVERED UNDER COMPREHENSIVE COVERAGE OR COLLISION COVERAGE, THE TRANSPORTATION NETWORK COMPANY SHALL CAUSE ITS INSURER TO ISSUE THE PAYMENT DIRECTLY TO THE BUSINESS REPAIRING THE VEHICLE OR JOINTLY TO THE OWNER OF THE VEHICLE AND THE PRIMARY LIENHOLDER ON THE COVERED VEHICLE. THE COMMISSION SHALL NOT ASSESS ANY FINES AS A RESULT OF A VIOLATION OF THIS SUBSECTION (9).

40-10.1-605. Operational requirements. (1) THE FOLLOWING REQUIREMENTS APPLY TO THE PROVISION OF SERVICES:

(a) A DRIVER SHALL NOT PROVIDE SERVICES UNLESS A TRANSPORTATION NETWORK COMPANY HAS MATCHED THE DRIVER TO A RIDER THROUGH A DIGITAL NETWORK. A DRIVER SHALL NOT SOLICIT OR ACCEPT THE ON-DEMAND SUMMONING OF A RIDE, OTHERWISE KNOWN AS A "STREET HAIL".

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(b) A TRANSPORTATION NETWORK COMPANY SHALL MAKE AVAILABLE TO PROSPECTIVE RIDERS AND DRIVERS THE METHOD BY WHICH THE TRANSPORTATION NETWORK COMPANY CALCULATES FARES OR THE APPLICABLE RATES BEING CHARGED AND AN OPTION TO RECEIVE AN ESTIMATED FARE.

(c) UPON COMPLETION OF A PREARRANGED RIDE, A TRANSPORTATION NETWORK COMPANY SHALL TRANSMIT TO THE RIDER AN ELECTRONIC RECEIPT, EITHER BY ELECTRONIC MAIL OR VIA TEXT MESSAGE, DOCUMENTING:

(I) THE POINT OF ORIGIN AND DESTINATION OF THE PREARRANGED RIDE;

(II) THE TOTAL DURATION AND DISTANCE OF THE PREARRANGED RIDE;

(III) THE TOTAL FARE PAID, INCLUDING THE BASE FARE AND ANY ADDITIONAL CHARGES INCURRED FOR DISTANCE TRAVELED OR DURATION OF THE PREARRANGED RIDE; AND

(IV) THE DRIVER'S FIRST NAME AND TELEPHONE NUMBER.

(d) BEFORE PERMITTING A PERSON TO ACT AS A DRIVER ON ITS DIGITAL NETWORK, A TRANSPORTATION NETWORK COMPANY SHALL CONFIRM THAT THE PERSON IS AT LEAST TWENTY-ONE YEARS OF AGE AND POSSESSES:

(I) A VALID DRIVER'S LICENSE;

(II) PROOF OF AUTOMOBILE INSURANCE;

(III) PROOF OF A COLORADO VEHICLE REGISTRATION; AND

(IV) WITHIN NINETY DAYS OF THE EFFECTIVE DATE OF THIS PART 6 AND PURSUANT TO COMMISSION RULES, PROOF THAT THE PERSON IS MEDICALLY FIT TO DRIVE.

(e) A DRIVER SHALL NOT OFFER OR PROVIDE TRANSPORTATION NETWORK COMPANY SERVICES FOR MORE THAN TWELVE CONSECUTIVE

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HOURS.

(f) A TRANSPORTATION NETWORK COMPANY SHALL IMPLEMENT AN INTOXICATING SUBSTANCE POLICY FOR DRIVERS THAT DISALLOWS ANY AMOUNT OF INTOXICATION OF THE DRIVER WHILE PROVIDING SERVICES. THE TRANSPORTATION NETWORK COMPANY SHALL INCLUDE ON ITS WEB SITE AND MOBILE DEVICE APPLICATION SOFTWARE A NOTICE CONCERNING THE TRANSPORTATION NETWORK COMPANY'S INTOXICATING SUBSTANCE POLICY.

(g)(I) A TRANSPORTATION NETWORK COMPANY SHALL CONDUCTOR HAVE A CERTIFIED MECHANIC CONDUCT A SAFETY INSPECTION OF A PROSPECTIVE DRIVER'S VEHICLE BEFORE IT IS APPROVED FOR USE AS A PERSONAL VEHICLE AND SHALL HAVE PERIODIC INSPECTIONS OF PERSONAL VEHICLES CONDUCTED THEREAFTER, AT INTERVALS OF AT LEAST ONE INSPECTION PER YEAR. A SAFETY INSPECTION SHALL INCLUDE AN INSPECTION OF:

- (A) FOOT BRAKES;
- (B) EMERGENCY BRAKES;
- (C) STEERING MECHANISM;
- (D) WINDSHIELD;
- (E) REAR WINDOW AND OTHER GLASS;
- (F) WINDSHIELD WIPERS;
- (G) HEADLIGHTS;
- (H) TAIL LIGHTS;
- (I) TURN INDICATOR LIGHTS;
- (J) STOP LIGHTS;
- (K) FRONT SEAT ADJUSTMENT MECHANISM;
- (L) THE OPENING, CLOSING, AND LOCKING CAPABILITY OF THE

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DOORS;

(M) HORN;

(N) SPEEDOMETER;

(O) BUMPERS;

(P) MUFFLER AND EXHAUST SYSTEM;

(Q) TIRE CONDITIONS, INCLUDING TREAD DEPTH;

(R) INTERIOR AND EXTERIOR REAR-VIEW MIRRORS; AND

(S) SAFETY BELTS.

(II) EFFECTIVE NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS PART 6, THE COMMISSION MAY ALSO CONDUCT INSPECTIONS OF PERSONAL VEHICLES.

(h) A PERSONAL VEHICLE MUST:

(I) HAVE AT LEAST FOUR DOORS; AND

(II) BE DESIGNED TO CARRY NO MORE THAN EIGHT PASSENGERS, INCLUDING THE DRIVER.

(i) A TRANSPORTATION NETWORK COMPANY SHALL MAKE THE FOLLOWING DISCLOSURE TO A PROSPECTIVE DRIVER IN THE PROSPECTIVE DRIVER'S TERMS OF SERVICE:

WHILE OPERATING ON THE TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK, YOUR PERSONAL AUTOMOBILE INSURANCE POLICY MIGHT NOT AFFORD LIABILITY COVERAGE, DEPENDING ON THE POLICY'S TERMS.

(j) (I) A TRANSPORTATION NETWORK COMPANY SHALL MAKE THE FOLLOWING DISCLOSURE TO A PROSPECTIVE DRIVER IN THE PROSPECTIVE DRIVER'S TERMS OF SERVICE:

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IF THE VEHICLE THAT YOU PLAN TO USE TO PROVIDE TRANSPORTATION NETWORK COMPANY SERVICES FOR OUR TRANSPORTATION NETWORK COMPANY HAS A LIEN AGAINST IT, YOU MUST NOTIFY THE LIENHOLDER THAT YOU WILL BE USING THE VEHICLE FOR TRANSPORTATION SERVICES THAT MAY VIOLATE THE TERMS OF YOUR CONTRACT WITH THE LIENHOLDER.

(II) THE DISCLOSURE SET FORTH IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (j) MUST BE PLACED PROMINENTLY IN THE PROSPECTIVE DRIVER'S WRITTEN TERMS OF SERVICE, AND THE PROSPECTIVE DRIVER MUST ACKNOWLEDGE THE TERMS OF SERVICE ELECTRONICALLY OR BY SIGNATURE.

(k) A TRANSPORTATION NETWORK COMPANY SHALL MAKE AVAILABLE TO A RIDER A CUSTOMER SUPPORT TELEPHONE NUMBER ON ITS DIGITAL NETWORK OR WEB SITE FOR RIDER INQUIRIES.

(I) THE DISCLOSURE REQUIREMENTS SET FORTH IN THIS SUBSECTION (I) TAKE EFFECT ON JULY 1, 2014.

(m) (I) A TRANSPORTATION NETWORK COMPANY SHALL NOT DISCLOSE TO A THIRD PARTY ANY PERSONALLY IDENTIFIABLE INFORMATION CONCERNING A USER OF THE TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK UNLESS:

(A) THE TRANSPORTATION NETWORK COMPANY OBTAINS THE USER'S CONSENT TO DISCLOSE PERSONALLY IDENTIFIABLE INFORMATION;

(B) DISCLOSURE IS NECESSARY TO COMPLY WITH A LEGAL OBLIGATION; OR

(C) DISCLOSURE IS NECESSARY TO PROTECT OR DEFEND THE TERMS AND CONDITIONS FOR USE OF THE SERVICE OR TO INVESTIGATE VIOLATIONS OF THE TERMS AND CONDITIONS.

(II) THE LIMITATION ON DISCLOSURE DOES NOT APPLY TO THE DISCLOSURE OF AGGREGATED USER DATA AND OTHER INFORMATION ABOUT THE USER THAT IS NOT PERSONALLY IDENTIFIABLE.

(n) ANY TAXICAB COMPANY OR SHUTTLE COMPANY AUTHORIZED BY THE COMMISSION UNDER THIS ARTICLE MAY CONVERT TO A TRANSPORTATION NETWORK COMPANY MODEL OR MAY SET UP A SUBSIDIARY OR AFFILIATE TRANSPORTATION NETWORK COMPANY. IN CONVERTING TO A TRANSPORTATION NETWORK COMPANY MODEL OR SETTING UP A TRANSPORTATION NETWORK COMPANY SUBSIDIARY OR AFFILIATE, A TAXICAB COMPANY OR SHUTTLE COMPANY AUTHORIZED BY THE COMMISSION UNDER THIS ARTICLE MAY COMPLETELY OR PARTIALLY SUSPEND ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ISSUED UNDER SECTION 40-10.1-201. DURING THE PERIOD OF SUSPENSION OF ITS CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, A TAXICAB COMPANY, SHUTTLE COMPANY, OR A SUBSIDIARY OR AFFILIATE OF A TAXICAB COMPANY OR SHUTTLE COMPANY IS EXEMPT FROM TAXI OR SHUTTLE STANDARDS UNDER THIS ARTICLE, THE STANDARDS CONCERNING THE REGULATION OF RATES AND CHARGES UNDER ARTICLE 3 OF THIS TITLE, AND ANY COMMISSION RULES REGARDING COMMON CARRIERS PROMULGATED UNDER THIS ARTICLE OR ARTICLE 3 OF THIS TITLE.

(o) EACH TRANSPORTATION NETWORK COMPANY SHALL REQUIRE THAT EACH PERSONAL VEHICLE PROVIDING TRANSPORTATION NETWORK COMPANY SERVICES DISPLAY AN EXTERIOR MARKING THAT IDENTIFIES THE PERSONAL VEHICLE AS A VEHICLE FOR HIRE.

(2) A TRANSPORTATION NETWORK COMPANY OR A THIRD PARTY SHALL RETAIN TRUE AND ACCURATE INSPECTION RECORDS FOR AT LEAST FOURTEEN MONTHS AFTER AN INSPECTION WAS CONDUCTED FOR EACH PERSONAL VEHICLE USED BY A DRIVER.

(3) (a) BEFORE A PERSON IS PERMITTED TO ACT AS A DRIVER THROUGH USE OF A TRANSPORTATION NETWORK COMPANY'S DIGITAL NETWORK, THE PERSON SHALL:

(I) OBTAIN A CRIMINAL HISTORY RECORD CHECK PURSUANT TO THE PROCEDURES SET FORTH IN SECTION 40-10.1-110 AS SUPPLEMENTED BY THE COMMISSION'S RULES PROMULGATED UNDER SECTION 40-10.1-110 OR THROUGH A PRIVATELY ADMINISTERED NATIONAL CRIMINAL HISTORY RECORD CHECK, INCLUDING THE NATIONAL SEX OFFENDER DATABASE; AND

(II) IF A PRIVATELY ADMINISTERED NATIONAL CRIMINAL HISTORY RECORD CHECK IS USED, PROVIDE A COPY OF THE CRIMINAL HISTORY

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RECORD CHECK TO THE TRANSPORTATION NETWORK COMPANY.

(b) A DRIVER SHALL OBTAIN A CRIMINAL HISTORY RECORD CHECK IN ACCORDANCE WITH SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (3) EVERY FIVE YEARS WHILE SERVING AS A DRIVER.

(c) (I) A PERSON WHO HAS BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO DRIVING UNDER THE INFLUENCE OF DRUGS OR ALCOHOL IN THE PREVIOUS SEVEN YEARS BEFORE APPLYING TO BECOME A DRIVER SHALL NOT SERVE AS A DRIVER. IF THE CRIMINAL HISTORY RECORD CHECK REVEALS THAT THE PERSON HAS EVER BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO ANY OF THE FOLLOWING FELONY OFFENSES, THE PERSON SHALL NOT SERVE AS A DRIVER:

(A) AN OFFENSE INVOLVING FRAUD, AS DESCRIBED IN ARTICLE 5 OF TITLE 18, C.R.S.;

(B) AN OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9), C.R.S.;

(C) AN OFFENSE AGAINST PROPERTY, AS DESCRIBED IN ARTICLE 4 OF TITLE 18, C.R.S.; OR

(D) A CRIME OF VIOLENCE, AS DESCRIBED IN SECTION 18-1.3-406, C.R.S.

(II) A PERSON WHO HAS BEEN CONVICTED OF A COMPARABLE OFFENSE TO THE OFFENSES LISTED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) IN ANOTHER STATE OR IN THE UNITED STATES SHALL NOT SERVE AS A DRIVER.

(III) A TRANSPORTATION NETWORK COMPANY OR A THIRD PARTY SHALL RETAIN TRUE AND ACCURATE RESULTS OF THE CRIMINAL HISTORY RECORD CHECK FOR EACH DRIVER THAT PROVIDES SERVICES FOR THE TRANSPORTATION NETWORK COMPANY FOR AT LEAST FIVE YEARS AFTER THE CRIMINAL HISTORY RECORD CHECK WAS CONDUCTED.

(IV) A PERSON WHO HAS, WITHIN THE IMMEDIATELY PRECEDING FIVE YEARS, BEEN CONVICTED OF OR PLED GUILTY OR NOLO CONTENDERE TO A FELONY SHALL NOT SERVE AS A DRIVER.

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(4)(a) BEFORE PERMITTING AN INDIVIDUAL TO ACT AS A DRIVER ON ITS DIGITAL NETWORK, A TRANSPORTATION NETWORK COMPANY SHALL OBTAIN AND REVIEW A DRIVING HISTORY RESEARCH REPORT FOR THE INDIVIDUAL.

(b) AN INDIVIDUAL WITH THE FOLLOWING MOVING VIOLATIONS SHALL NOT SERVE AS A DRIVER:

(I) MORE THAN THREE MOVING VIOLATIONS IN THE THREE-YEAR PERIOD PRECEDING THE INDIVIDUAL'S APPLICATION TO SERVE AS A DRIVER;
OR

(II) A MAJOR MOVING VIOLATION IN THE THREE-YEAR PERIOD PRECEDING THE INDIVIDUAL'S APPLICATION TO SERVE AS A DRIVER, WHETHER COMMITTED IN THIS STATE, ANOTHER STATE, OR THE UNITED STATES, INCLUDING VEHICULAR ELUDING, AS DESCRIBED IN SECTION 18-9-116.5, C.R.S., RECKLESS DRIVING, AS DESCRIBED IN SECTION 42-4-1401, C.R.S., AND DRIVING UNDER RESTRAINT, AS DESCRIBED IN SECTION 42-2-138, C.R.S.

(c) A TRANSPORTATION NETWORK COMPANY OR A THIRD PARTY SHALL RETAIN TRUE AND ACCURATE RESULTS OF THE DRIVING HISTORY RESEARCH REPORT FOR EACH DRIVER THAT PROVIDES SERVICES FOR THE TRANSPORTATION NETWORK COMPANY FOR AT LEAST THREE YEARS.

(5) IF ANY PERSON FILES A COMPLAINT WITH THE COMMISSION AGAINST A TRANSPORTATION NETWORK COMPANY OR DRIVER, THE COMMISSION MAY INSPECT THE TRANSPORTATION NETWORK COMPANY'S RECORDS AS REASONABLY NECESSARY TO INVESTIGATE AND RESOLVE THE COMPLAINT.

(6)(a) A TRANSPORTATION NETWORK COMPANY SHALL PROVIDE SERVICES TO THE PUBLIC IN A NONDISCRIMINATORY MANNER, REGARDLESS OF GEOGRAPHIC LOCATION OF THE DEPARTURE POINT OR DESTINATION, ONCE THE DRIVER AND RIDER HAVE BEEN MATCHED THROUGH THE DIGITAL NETWORK; RACE; ETHNICITY; GENDER; SEXUAL ORIENTATION, AS DEFINED IN SECTION 2-4-401 (13.5), C.R.S.; GENDER IDENTITY; OR DISABILITY THAT COULD PREVENT CUSTOMERS FROM ACCESSING TRANSPORTATION. A DRIVER SHALL NOT REFUSE TO TRANSPORT A PASSENGER UNLESS:

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(I) THE PASSENGER IS ACTING IN AN UNLAWFUL, DISORDERLY, OR ENDANGERING MANNER;

(II) THE PASSENGER IS UNABLE TO CARE FOR HIMSELF OR HERSELF AND IS NOT IN THE CHARGE OF A RESPONSIBLE COMPANION; OR

(III) THE DRIVER HAS ALREADY COMMITTED TO PROVIDING A RIDE FOR ANOTHER RIDER.

(b) A TRANSPORTATION NETWORK COMPANY SHALL NOT IMPOSE ADDITIONAL CHARGES FOR PROVIDING SERVICES TO PERSONS WITH PHYSICAL OR MENTAL DISABILITIES BECAUSE OF THOSE DISABILITIES.

(c) A DRIVER SHALL PERMIT A SERVICE ANIMAL TO ACCOMPANY A RIDER ON A PREARRANGED RIDE.

(d) IF A RIDER WITH PHYSICAL OR MENTAL DISABILITIES REQUIRES THE USE OF THE RIDER'S MOBILITY EQUIPMENT, A DRIVER SHALL STORE THE MOBILITY EQUIPMENT IN THE VEHICLE DURING A PREARRANGED RIDE IF THE VEHICLE IS REASONABLY CAPABLE OF STORING THE MOBILITY EQUIPMENT. IF THE DRIVER IS UNABLE TO STORE A RIDER'S MOBILITY EQUIPMENT IN THE DRIVER'S VEHICLE, THE DRIVER SHALL REFER THE RIDER TO ANOTHER DRIVER OR TRANSPORTATION SERVICE PROVIDER WITH A VEHICLE THAT IS EQUIPPED TO ACCOMMODATE THE RIDER'S MOBILITY EQUIPMENT.

(7) (a) A TRANSPORTATION NETWORK COMPANY IS NOT LIABLE FOR A DRIVER'S VIOLATION OF SUBSECTION (6) OF THIS SECTION UNLESS THE DRIVER'S VIOLATION HAS BEEN PREVIOUSLY REPORTED TO THE TRANSPORTATION NETWORK COMPANY IN WRITING, AND THE TRANSPORTATION NETWORK COMPANY HAS FAILED TO REASONABLY ADDRESS THE ALLEGED VIOLATION. THE COMMISSION SHALL AFFORD A TRANSPORTATION NETWORK COMPANY THE SAME DUE PROCESS RIGHTS AFFORDED TRANSPORTATION PROVIDERS IN DEFENDING AGAINST CIVIL PENALTIES ASSESSED BY THE COMMISSION.

(b) THE COMMISSION MAY ASSESS A CIVIL PENALTY UP TO FIVE HUNDRED FIFTY DOLLARS UNDER THIS SUBSECTION (7).

(8) WITHIN TEN DAYS OF RECEIVING A COMPLAINT ABOUT A DRIVER'S ALLEGED VIOLATION OF SUBSECTION (6) OF THIS SECTION, THE

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COMMISSION SHALL REPORT THE COMPLAINT TO THE TRANSPORTATION NETWORK COMPANY FOR WHICH THE DRIVER PROVIDES SERVICES.

(9) A DRIVER SHALL IMMEDIATELY REPORT TO THE TRANSPORTATION NETWORK COMPANY ANY REFUSAL TO TRANSPORT A PASSENGER PURSUANT TO PARAGRAPH (a) OF SUBSECTION (6) OF THIS SECTION, AND THE TRANSPORTATION NETWORK COMPANY SHALL ANNUALLY REPORT ALL SUCH REFUSALS TO THE COMMISSION IN A FORM AND MANNER DETERMINED BY THE COMMISSION.

40-10.1-606. Permit required for transportation network companies - penalty for violation - rules. (1) A PERSON SHALL NOT OPERATE A TRANSPORTATION NETWORK COMPANY IN COLORADO WITHOUT FIRST HAVING OBTAINED A PERMIT FROM THE COMMISSION.

(2) THE COMMISSION SHALL ISSUE A PERMIT TO EACH TRANSPORTATION NETWORK COMPANY THAT MEETS THE REQUIREMENTS OF THIS PART 6 AND PAYS AN ANNUAL PERMIT FEE OF ONE HUNDRED ELEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS TO THE COMMISSION. THE COMMISSION MAY ADJUST THE ANNUAL PERMIT FEE BY RULE TO COVER THE COMMISSION'S DIRECT AND INDIRECT COSTS ASSOCIATED WITH IMPLEMENTING THIS PART 6.

(3) THE COMMISSION SHALL DETERMINE THE FORM AND MANNER OF APPLICATION FOR A TRANSPORTATION NETWORK COMPANY PERMIT.

(4) THE COMMISSION MAY TAKE ACTION AGAINST A TRANSPORTATION NETWORK COMPANY AS SET FORTH IN SECTION 40-10.1-112, INCLUDING ISSUING AN ORDER TO CEASE AND DESIST AND SUSPENDING, REVOKING, ALTERING, OR AMENDING A PERMIT ISSUED TO THE TRANSPORTATION NETWORK COMPANY.

(5) (a) FOR A VIOLATION OF THIS PART 6 OR A FAILURE TO COMPLY WITH A COMMISSION ORDER, DECISION, OR RULE ISSUED UNDER THIS PART 6, A TRANSPORTATION NETWORK COMPANY IS SUBJECT TO THE COMMISSION'S AUTHORITY UNDER SECTIONS 40-7-101, 40-7-112, 40-7-113, 40-7-115, AND 40-7-116.

(b) THE COMMISSION SHALL NOT ASSESS A PENALTY AGAINST A DRIVER.

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(6) THE COMMISSION MAY DENY AN APPLICATION UNDER THIS PART 6 OR REFUSE TO RENEW THE PERMIT OF A TRANSPORTATION NETWORK COMPANY BASED ON A DETERMINATION THAT THE TRANSPORTATION NETWORK COMPANY HAS NOT SATISFIED A CIVIL PENALTY ARISING OUT OF AN ADMINISTRATIVE OR ENFORCEMENT ACTION BROUGHT BY THE COMMISSION.

40-10.1-607. Fees - transportation network company fund - creation. THE COMMISSION SHALL TRANSMIT ALL FEES COLLECTED PURSUANT TO THIS PART 6 TO THE STATE TREASURER, WHO SHALL CREDIT THE FEES TO THE TRANSPORTATION NETWORK COMPANY FUND, WHICH IS HEREBY CREATED IN THE STATE TREASURY. THE MONEYS IN THE FUND ARE CONTINUOUSLY APPROPRIATED TO THE COMMISSION FOR THE PURPOSES SET FORTH IN THIS PART 6. ALL INTEREST EARNED FROM THE INVESTMENT OF MONEYS IN THE FUND IS CREDITED TO THE FUND. ANY MONEYS NOT EXPENDED AT THE END OF THE FISCAL YEAR REMAIN IN THE FUND AND DO NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND.

40-10.1-608. Rules. (1) THE COMMISSION MAY PROMULGATE RULES CONSISTENT WITH THIS PART 6, INCLUDING RULES CONCERNING ADMINISTRATION, FEES, AND SAFETY REQUIREMENTS.

(2) THE COMMISSION MAY PROMULGATE RULES REQUIRING A TRANSPORTATION NETWORK COMPANY TO MAINTAIN AND FILE WITH THE COMMISSION EVIDENCE OF FINANCIAL RESPONSIBILITY AND PROOF OF THE CONTINUED VALIDITY OF THE INSURANCE POLICY, SURETY BOND, OR SELF-INSURANCE, BUT SHALL NOT REQUIRE A TRANSPORTATION NETWORK COMPANY TO FILE A COPY OF THE INSURANCE POLICY.

SECTION 7. In Colorado Revised Statutes, add 8-41-211 as follows:

8-41-211. Transportation network company drivers - rules. UPON THE EFFECTIVE DATE OF PART 6 OF ARTICLE 10.1 OF TITLE 40, C.R.S., THE DIRECTOR, UPON CONSIDERATION OF EXISTING COLORADO STATUTORY AND CASE LAW, MAY BY RULE DETERMINE WHETHER OR NOT TRANSPORTATION NETWORK COMPANIES HAVE AN OBLIGATION UNDER EXISTING COLORADO LAW TO PROVIDE OR OFFER FOR PURCHASE WORKERS' COMPENSATION INSURANCE COVERAGE TO TRANSPORTATION NETWORK COMPANY DRIVERS.

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SECTION 8. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the transportation network company fund created in section 40-10.1-607, Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2014, the sum of \$179,777 and 2.5 FTE, or so much thereof as may be necessary, for allocation to the public utilities commission for the administrative costs related to the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2014, the sum of \$9,108 and 0.1 FTE, or so much thereof as may be necessary, for the provision of legal services for the public utilities commission related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (1) of this section.

SECTION 9. Safety clause. The general assembly hereby finds,

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determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Morgan Carroll
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

Mr. Chairman and Representatives of the committee - thank you for allowing me to speak this morning.

My name is Joe Burgum. I am here today as a resident of Fargo, a citizen of North Dakota, and a customer of Transportation Network Companies, or TNCs.

I have recently moved home to Fargo after living in Chicago, Los Angeles, and Seattle. My time away has provided me the opportunity to understand why I love our great state and observe ways in which it could improve. I believe that SB 2368 leads to one of these ways.

In case you haven't used TNC services from companies like Uber or Lyft, I'll explain them using an example that may be more familiar.

Some of you may know the concept of Custom Combining and the impact it has had on North Dakota. As our state was evolving into the agricultural power that it is today, it was a common sight to see the fields filled with custom combines moving north up the plains from Nebraska to North Dakota. The value of custom combining is that farmers did not need to own expensive combining equipment that was used for a small window of time each fall. This idea of sharing resources on an economy of scale for a community, is often referred to as collaborative consumption; a powerful economic tool which is changing how people live and is at the center of how customs combining and TNCs are successful.

TNCs allow drivers to respond to demand for rides and share the use of vehicles in a more efficient way. From the East coast, to the West coast, and in the Midwest, I have personally seen the positive impact of ride-sharing on communities.

Whether it be from ease of mind, knowing I can find a safe and reliable ride home after a night out, to knowing many others are doing the same and are staying off the road.

I have seen my girlfriend in Minneapolis become a driver as a way to make the equivalent to her full-time corporate entry level job in order to pay off student debt.

While riding with TNC drivers, I often heard stories of individuals taking a risk and moving to a new city. These drivers knew that if when moved to a city with Uber or Lyft, they would have an income as they transition into other employment. Note this bill as a differentiator as we work to attract and retain a workforce.

Not only will this bill allow for a free market solution to public safety, the creation of jobs with flexible hours, and a workforce attractor, it provides us an opportunity to show the world we are open to new technologies that improve our quality of life.

In closing, I encourage you to work with Uber so we may welcome this business to North Dakota and to vote in favor of this bill - It is a simple way to make a great change.

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#2

HOUSE BILL NO. 2368

Amendments Proposed by Sagar Shah (Uber Technologies)

Definitions:

1. Page 1, line 18 replace the definition of "Participating driver" with the following:

"Participating driver" or "driver" means any person who uses a vehicle in connection with a transportation network company's online-enabled application or platform to transport passengers for compensation.

2. Page 1, line 23 replace the definition of "Transportation network company" with the following:

"Transportation network company" means a person operating in this state that enables prearranged transportation services for compensation using an online - enabled application or platform to connect passengers with independent participating drivers using a personal vehicle.

Insurance:

3. Page 3, line 26-29 change coverage amounts to \$50/100/25 with the following language:

"Motor vehicle liability coverage and the coverage is secondary. The coverage must include at least fifty thousand dollars per person and one hundred thousand dollars per incident for death and bodily injury and at least twenty five thousand dollars for property damage."

4. Page 4, line 9 add "excludes coverage," before "has ceased to exist"

"... in the event that a participating driver's insurance policy under subsection a **excludes coverage**, has ceased to exist or has been cancelled..."

5. P. 4, lines 13-17 – STRIKE sub-section 3

Alternatively, strike and replace with:

"Where coverage to satisfy this section is maintained by a participating driver, the transportation network company shall verify proof of that policy before allowing the participating driver to accept a ride request in connection with a transportation network company's digital platform."

Privacy:

6. P. 7, lines 19-25 – STRIKE section **39-34-05. Personally identifiable information**

Alternatively, strike and replace with:

A transportation network company may not disclose any personally identifiable information of a transportation network company passenger except pursuant to the publically disclosed terms of the transportation network company's privacy policy. For any other disclosure not governed by the transportation network company's privacy policy, the transportation network company must obtain the passenger's consent before the company may disclose the passenger's personally identifiable information.

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House Transportation
March 19, 2015
2:30 PM

TESTIMONY IN SUPPORT OF SB 2368
With proposed amendments

Good morning Chairman Ruby and members of the House Transportation Committee. My name is Pat Ward. I represent the Property and Casualty Insurance Association of America and the Association of North Dakota Insurers in support of SB 2368.

This bill does two things. It attempts to regulate transportation network companies and their drivers. It also creates certain insurance requirements and disclosures relating to the transportation network company service.

The issue of TNC companies such as Uber and Lyft has created a good number of legislative and legal struggles in both state legislatures and city councils in municipalities around the country, as well as the Courts.

The most comprehensive legislation is the California model which the insurance industry originally introduced in North Dakota as HB 1144. This is the model we support for insuring all scenarios involving these drivers. This bill is now like a hybrid of California, Colorado, Illinois and Virginia legislation with some good and bad features and needs further amending.

Lobbyists and attorneys have been here from Uber and we are all working to get the best possible insurance bill. DOI also has been included in the discussion.

I am sure this committee believes there is a need for Uber regulation as provided in this bill outside of the insurance requirements. My concern is with the

insurance and potential gaps in coverage. We also want to avoid a lot of unnecessary coverage disputes and litigation. There are many legal issues and potential quagmires presented by this type of operation. While we certainly respect and encourage the innovation and believe this could provide a useful service for North Dakotans, we believe that insurance regulation should be handled separately and with supervision of DOI. We do not want to see Uber drivers or the cars left unprotected because of coverage issues caused by their job with a TNC in conflict with the long-standing language of their Personal Auto Policies which usually excludes coverage for this type of commercial activity.

I have several amendments to propose. Many of you worked on a similar bill that was in House IBL before crossover. The Senate Transportation committee also did a lot of great work in putting this SB 2368 together. The battle ground for us is the Application on phase when a driver is logged in to work but not yet engaged to get a passenger. I have a handout that relates to the procedures involved in logging in, and I believe Uber will tell you if asked that they do have a time out feature available that would or could prevent inadvertent app on situations. I also sent you an email this morning which has a video you can watch.

We urge a Do Pass of this bill with the amendments I propose. I will now try to explain those and I will try to answer any questions. Thanks for your time and attention to this important matter.

#4

SB 2368
3-19-15

1 of 8

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FIRST ENGROSSMENT

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2368

Introduced by

Senators Casper, Axness, Oehlke, Sinner

Representatives Beadle, Owens

1 A BILL for an Act to create and enact chapters 26.1-40.1 and 39-34 of the North Dakota Century
2 Code, relating to transportation network company services.

3 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

4 SECTION 1. Chapter 26.1-40.1 of the North Dakota Century Code is created and enacted
5 as follows:

6 **26.1-40.1-01. Definitions.**

7 As used in this chapter and chapter 39-34, unless the context otherwise requires:

- 8 1. "Application off stage" of operation means the time period when the driver is operating
9 the vehicle for personal noncommercial reasons and not engaged in any manner or
10 operation for the transportation network company.
- 11 2. "Application on stage" means the time period the driver is logged onto the
12 online-enabled application of a transportation network company and available for hire
13 but not engaged and there is no passenger on board.
- 14 3. "Engaged stage" means the time period from the moment a participating driver
15 accepts a ride request on the transportation network company online-enabled
16 application or platform until the driver completes the transaction on the online-enabled
17 application or platform or until the ride is complete, whichever is later.
- 18 4. "Participating driver" or "driver" means any individual who uses a vehicle in connection
19 with a transportation network company's online-enabled application or platform to
20 connect with passengers.
- 21 5. "Passengers on-board stage" means the time period when there are passengers in the
22 vehicle pursuant to the driver's participation in a transportation network company.
- 23 6. "Transportation network company" means a person operating in this state which
24 provides prearranged transportation services for compensation using an

1 online-enabled application or platform to connect passengers with drivers using a
2 personal vehicle.

3 7. "Transportation network company insurance" means an insurance policy that covers a
4 driver's use of a vehicle in connection with a transportation network company's
5 online-enabled application or platform.

6 **26.1-40.1-02. Required disclosures.**

7 1. A transportation network company shall disclose in writing or electronic form to
8 participating drivers, as part of its agreement with those drivers, the insurance
9 coverage and limits of liability that the transportation network company provides while
10 the driver uses a vehicle in connection with a transportation network company's
11 online-enabled application or platform and shall advise a participating driver that the
12 driver's personal automobile insurance policy may not provide coverage under the
13 agreement.

14 2. A transportation network company shall disclose in writing or electronic form to
15 participating drivers, as part of its agreement with those drivers, ~~of~~ when the driver's
16 personal automobile insurance policy may not provide collision or comprehensive
17 coverage, under the agreement.

18 3. A transportation network company shall provide notice in writing or electronically to the
19 driver instructing the driver to notify the driver's personal automobile insurer of the
20 driver's participation in the transportation network.

21 **26.1-40.1-03. Coverage required when transportation network company application is**
22 **engaged until completion of ride when the passenger has exited the vehicle.**

23 1. A transportation network company and any participating driver shall maintain
24 transportation network company insurance that provides for the following requirements
25 that apply to transportation network company insurance during the engaged stage and
26 during the passenger on-board stage.

27 2. Transportation network company liability insurance is primary and in the amount of
28 one million dollars for death, bodily injury, and property damage. The requirements for
29 the coverage required by this subdivision may be satisfied by any of the following:

30 a. Transportation network company insurance maintained by a participating driver.

- 1 b. Transportation network company insurance maintained by a transportation
2 network company.
- 3 c. Any combination of subdivisions a and b.
- 4 3. Transportation network company insurance coverage provided under this section also
5 provides for uninsured motorist coverage and underinsured motorist coverage in the
6 amount of one million dollars anytime the driver has transportation network company
7 passengers on board.
- 8 4. Transportation network company insurance coverage must provide personal injury
9 protection to drivers, passengers, and pedestrians when required under chapter
10 26.1-41. *omit collision*
- 11 5. The primary insurer, in the case of insurance coverage provided under subdivision a,
12 has the sole duty to defend and indemnify the insured.
- 13 6. Coverage under a transportation network company insurance policy may neither be
14 dependent on a driver's personal automobile insurance policy carrier first denying a
15 claim nor a personal automobile insurance policy carrier being required to first deny a
16 claim.
- 17 7. In every instance in which transportation network company insurance maintained by a
18 participating driver to fulfill the insurance obligations of this section has excluded
19 coverage according to its policy or ceased to exist, the transportation network
20 company shall provide the coverage required by this section beginning with the first
21 dollar of a claim.
- 22 **26.1-40.1-04. Insurance coverage during the application on stage with no passengers**
23 **in vehicle.**
- 24 1. During the application on stage, the transportation network company insurance must
25 include:
- 26 a. Motor vehicle liability coverage and the coverage is *primary* secondary. The coverage
27 must include at least fifty thousand dollars per person and one hundred fifty
28 thousand dollars per incident for death and bodily injury and at least fifty
29 thousand dollars for property damage.
- 30 b. Uninsured motorist coverage under subsection 3 of section 26.1-40-15.1 and the
31 coverage is *primary* secondary.

- 1 c. Underinsured motorist coverage under subsection 2 of section 26.1-40-15.1 and
2 the coverage is ~~secondary~~ ^{primary}.
- 3 d. Personal injury protection under chapter 26.1-41 and the coverage is ~~secondary~~ ^{primary}.
- 4 2. The requirements for coverage required by this section may be satisfied by any of the
5 following:
- 6 a. Transportation network company insurance maintained by a participating driver.
7 b. Transportation network company insurance maintained by a transportation
8 network company that provides coverage in the event that a participating driver's
9 insurance policy under subsection a has ceased to exist or has been canceled or
10 in the event the participating driver does not otherwise maintain transportation
11 network company insurance.
- 12 c. Any combination of subsections a and b.
- 13 3. A transportation network company may meet its obligations under this section through
14 a policy obtained by a participating driver pursuant to subsection a or c only if the
15 transportation network company verifies that the policy is maintained by the
16 participating driver and is specifically written to cover the participating driver's use of a
17 vehicle in connection with a transportation network company's digital platform.
- 18 4. If the participating driver's vehicle is insured under a personal automobile insurance
19 policy that does not exclude coverage, then such policy must provide ~~primary~~ ^{secondary}
20 coverage and an insurance policy maintained by the transportation network company
21 under subdivision c of subsection 2 must provide excess coverage up to at least the
22 limits required by subsection 1.
- 23 5. In every instance in which transportation network company insurance maintained by a
24 participating driver to fulfill the insurance obligations of this section has lapsed or
25 ceased to exist, the transportation network company shall provide the coverage
26 required by this section beginning with the first dollar of a claim.
- 27 **26.1-40.1-05. Liability of transportation network company beyond required limits.**
- 28 This chapter does not limit the liability of a transportation network company arising out of an
29 automobile accident involving a participating driver in any action for damages against a
30 transportation network company for an amount above the required insurance coverage.

1 **26.1-40.1-06. Discretionary personal insurance where offered by personal automobile**
2 **insurer.**

3 A personal automobile insurer may offer an automobile liability insurance policy, or an
4 amendment or endorsement to an existing policy that covers a private passenger vehicle or
5 similar type of vehicle with a passenger capacity of ~~less~~ more than eight passengers, including the
6 driver, while used in connection with a transportation network company's online-enabled
7 application or platform.

8 **26.1-40.1-07. Duty to cooperate.**

9 In a claims coverage investigation involving a participating driver, a transportation network
10 company or its insurer shall cooperate with insurers that are involved in the claims coverage
11 investigation to facilitate the exchange of information, including the provision of dates and times
12 at which an accident occurred involving a participating driver and the precise times that the
13 participating driver logged on and off the transportation network company's online-enabled
14 application or platform.

15 **26.1-40.1-08. Financial responsibility.**

16 Transportation network company insurance that meets the requirements of this chapter is
17 deemed to satisfy the financial responsibility requirements of chapter 39-16.

18 **26.1-40.1-09. Proof of insurance.**

- 19 1. A participating driver of a transportation network company shall carry proof of
20 transportation network company insurance coverage at all times during the driver's
21 use of a vehicle in connection with a transportation network company's online-enabled
22 application or platform. In the event of an accident, a participating driver shall provide
23 this insurance coverage information to any other party involved in the accident, and to
24 a police officer, upon request.
- 25 2. Before the transportation network company driver is permitted to accept a request for
26 transportation network company services on the transportation network company's
27 digital network, a transportation network company driver shall provide a certificate of
28 insurance to any affiliated transportation network company.

1 **26.1-40.1-10. Authorized or eligible carrier.**

2 Transportation network company insurance required by this chapter may be placed with an
3 insurer authorized to do business in the state or with a surplus lines insurer eligible under
4 section 26.1-44-03.

5 **SECTION 2.** Chapter 39-34 of the North Dakota Century Code is created and enacted as
6 follows:

7 **39-34-01. Agent.**

8 The transportation network company must maintain a registered agent with the secretary of
9 state for service of process in this state.

10 **39-34-02. Fare charged for services.**

11 The transportation network company shall provide passengers with the applicable rates
12 being charged and the option to receive an estimated fare before the passenger enters the
13 transportation network company driver's vehicle.

14 **39-34-03. Transportation driver requirements.**

15 1. Before permitting an individual to act as a transportation network company driver on its
16 digital platform, the transportation network company shall:

17 a. Require the individual to submit an application to the transportation network
18 company, which includes information regarding the individual's address, age,
19 driver's license, driving history, motor vehicle registration, automobile liability
20 insurance, and other information required by the transportation network
21 company;

22 b. Conduct, or have a third-party conduct, a local and national criminal background
23 check for each applicant that must include:

24 (1) Multistate and multijurisdiction criminal records locator or other similar
25 commercial nationwide database with validation; and

26 (2) National sex offender registry database; and

27 c. Obtain and review a driving history research report for the individual.

28 2. The transportation network company may not permit an individual to act as a
29 transportation network company driver on its digital platform who:

7 of 8
trip records
when an accident, collision
or injury occurs

- 1 a. Has had more than three moving violations in the prior three-year period, or one
- 2 major violation in the prior three-year period, including attempting to evade the
- 3 police, reckless driving, or driving on a suspended or revoked license;
- 4 b. Has been convicted, within the past seven years, of driving under the influence of
- 5 drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a
- 6 felony, a crime involving property damage, theft, acts of violence, or acts of terror;
- 7 c. Is a match in the national sex offender registry database;
- 8 d. Does not possess a valid driver's license;
- 9 e. Does not possess proof of registration for the motor vehicle used to provide
- 10 transportation network company services;
- 11 f. Does not possess proof of automobile liability insurance for the motor vehicle
- 12 used to provide transportation network company services; or
- 13 g. Is not at least twenty-one years of age.

14 **39-34-04. Records.**

15 A transportation network company shall maintain individual trip records for at least one year
16 from the date each trip was provided and transportation network company driver records at
17 least until the ^{seven} six year anniversary of the date on which a transportation network company
18 driver's activation on the transportation network company digital network has ended.

19 **39-34-05. Personally identifiable information.**

20 A transportation network company may not disclose any personally identifiable information
21 of a transportation network company passenger except under a legal obligation or for payment
22 processing. For any other disclosure, the transportation network company must obtain the
23 passenger's written consent on a separate form specifically addressing passenger personal
24 information before the company may disclose the passenger's personally identifiable
25 information.

26 **39-34-06. Controlling authority.**

27 Notwithstanding any other provision of law, transportation network companies and
28 transportation network company drivers are governed exclusively by this chapter and any rules
29 adopted by the department consistent with this chapter. A political subdivision may not impose a
30 tax on, or require a license for, a transportation network company or a transportation network

involves an accident
collision or injury

- 1 company driver or subject a transportation network company to the political subdivision's rate,
- 2 entry, operational, or other requirements.

#15

SB 2368
3-19-15

1 of 2

March 19, 2015
Submitted to H-Transportation
2:30 p.m.

PAT WARD PROPOSED AMENDMENTS TO SB 2368

Page 2, line 3, add "specifically" after "that"

Page 2, line 15, replace "of when" with "that"

Page 3, line 11, insert after "5."

"Comprehensive and/or collision insurance, in an amount that is not less than the limits provided under the comprehensive and/or collision insurance limits provided by the Transportation Network Company driver's private passenger auto insurance policy."

Page 3, line 11, replace "5" with "6"

Page 3, line 13, replace "6" with "7"

Page 3, line 17, replace "7" with "8"

Page 3, line 26, replace "secondary" with "primary"

Page 3, line 30, replace "26.1-40-15.1" with "26.1-40-15.2"

Page 3, line 30, delete "subsection 3 of"

Page 3, line 31, replace "secondary" with "primary"

Page 4, line 1, remove "subsection 2 of"

Page 4, line 1, replace "26.1-40-15.1" with "26.1-40-15.3"

Page 4, line 2, replace "secondary" with "primary"

Page 4, line 3, replace "secondary" with "primary"

Page 4, line 4, insert "e. Collision physical damage coverage and comprehensive physical damage insurance, in an amount that is not less than the limits provided under the comprehensive and/or collision insurance limits provided by the Transportation Network Company driver's private passenger auto insurance policy."

Page 4, remove lines 18-22

2 of 2

Page 5, line 5, replace "more" with "less"

Page 7, line 17, change "six" to "seven"

Page 7, line 16, after "records" insert "or trip records where an accident, collision or injury involving the vehicle has been reported"

Page 7, line 18, after "network" insert "involving an accident, collision, or injury"

SB 2368
3-19-15

1 of 2

Transcript of How to Use the Uber Partner App video

Welcome to Uber. Drivers are our most important partners and we appreciate all you do to keep Uber running smoothly. Let's get started.

As a driver with Uber, you're able to go online whenever you want and find people who need rides anywhere in your city. To load the app, tap the Uber Partner icon on your phone and sign-in with your user name and password. Your user name is usually your email address. Once you are signed into the app, select a vehicle and you will see a button that says "Go online". Once you are online, you will start to receive trip requests. So don't go online if you're not ready to drive.

When a rider requests a trip, the driver closest to that rider automatically receives the trip request. That means when you get a trip request, there is no driver on the road in a better position to accept that trip. Your phone will start beeping and the screen will flash. Tap the screen to accept. It's important that you accept most trips because it ensures that riders can get a ride quickly. If you are online, you are expected to accept most trip requests. Once you have accepted the trip, drive to the rider's pickup location. You can tap the arrow to get turn by turn directions. The app will automatically send the rider a notification when you are almost there. Tap arrived once you get to the pickup location. If your rider entered the destination, you'll hear this sound (ring tone). If the rider did not enter the destination, you can enter it into the app. Your rider may not be ready right away, so we suggest waiting a few minutes before calling or texting. Riders generally prefer text messages to phone calls but make sure you follow all driving laws.

Once the rider is in your car, ask for their name to make sure it is the right person. Saying something like, "What is your name please?" is more effective than asking, "Are you Chris?" If you say that, the person could pretend to be your rider, Chris.

All trips through Uber must be pre-arranged. According to regulations, emailing or picking up riders who have not requested through the app is against the law that can result in citations and fines.

When you know you have the right rider, slide the blue button to begin the trip. If your rider entered their destination, you will see the route to the destination in your app. Confirm the rider's destination by asking something like, "Are we still headed to 11 West 53rd Street?" Tap the arrow for turn by turn directions to the destination. Once you arrive, slide the red button to end the trip.

Payments are calculated automatically. And both you and the rider will be prompted to leave a rating for each other. When you are done, just tap "Go online" and you're ready to accept another trip.

SB 2368
3-19-15
#7

Prepared by the North Dakota
Insurance Department
March 19, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2368

Page 2, line 3, after "that" insert "specifically"

Page 3, line 30, remove "subsection 3 of" and replace "26.1-40-15.1" with "26.1-40-15.2"

Page 4, line 1, remove "subsection 2 of" and replace "26.1-40-15.1" with "26.1-40-15.3"

Page 4, after line 3, insert:

"e. In the event a participating driver's vehicle has collision physical damage coverage and comprehensive physical damage coverage under a personal automobile policy, the transportation network company insurance coverage shall also provide collision physical damage coverage and comprehensive physical damage coverage in the same amounts carried by the participating driver's personal automobile policy and the transportation network company's coverage is secondary."

Page 4, line 9, replace "subsection" with "subdivision"

Page 4, line 12, replace "subsections" with "subdivisions"

Page 4, line 14, replace "subsection" with "subdivision" and after "c" insert "of subsection 2"

Page 4, line 18, replace "a personal" with "an"

Page 5, line 4, after "that" insert "specifically"

Renumber accordingly

#1

SB 2368
3-26-15

PROPOSED AMENDMENTS SB 2368

Page 1, line 20, replace "connect with" with "transport"

Page 1, line 20, after "passengers" insert "for compensation"

Page 1, line 23, remove "which"

Page 1, line 24, replace "provides" with "that enables"

Page 2, line 1, after "with" insert "independent participating"

Page 3, line ⁶ replace "one million dollars" with "subsection 3 of section 26.1-40-15.2"

Page 3, line 26, replace "secondary" with "primary"

Page 3, line 27, remove the second "fifty"

Page 3, line 28, replace "fifty" with "twenty-five"

Page ⁴ 4, line 13, remove "A transportation network company may meet its obligations under this section through"

Page 4, remove lines 14 through 22

Page 4, line 23, remove "5."

Page 5, remove lines 25 through 28

Page 6, remove lines 5 through 29

Page 7, remove lines 1 through 30

Page 8, remove lines 1 and 2

#2, 1 SB2368
3-26-15

March 24, 2015 v2

SUGGESTED KEY MESSAGES FOR TNC INSURANCE COMPROMISE MODEL BILL SUPPORTERS:

- Over the past months, state legislatures have been evaluating proposals to regulate the activities of Transportation Network Companies (TNCs). The auto insurance and transportation network industries share a mutual commitment to ensuring safe transportation options and this includes ensuring that transportation network companies and their drivers maintain appropriate automobile insurance.
- Some of the leading auto insurance organizations and Transportation Network Companies have come together to urge adoption of commonsense TNC insurance rules designed to:
 - eliminate consumer confusion,
 - provide a framework for safe transportation options, and
 - support continued marketplace innovation.
- The TNC Insurance Compromise Model Bill will help bring clarity and consistency to TNC insurance laws, and will:
 - enhance consumer choice,
 - increase entrepreneurial activity, and
 - bring greater stability and confidence to the transportation network industry.
- Residents in states that have passed similar regulations have already begun to benefit from the clearly-defined insurance requirements for Transportation Network Companies and their drivers. We believe this model imposes reasonable and workable requirements for TNCs and their drivers and provides insurers with the ability to make sound underwriting and pricing decisions. We believe it will also create an environment where TNC services will thrive and also facilitate development of a robust insurance market for this new business model.

#2 p. 2

TNC Insurance Compromise Model Bill

March 24, 2015 v2

(Stat/Reg #): Transportation Network Vehicle Insurance Requirements

A. Definitions

1. "Personal Vehicle" means a vehicle that is used by a Transportation Network Company Driver in connection with providing a Prearranged Ride and is:
 - i. Owned, leased or otherwise authorized for use by the Transportation Network Company Driver; and
 - ii. Not a [TAXICAB, LIMOUSINE, OR FOR-HIRE VEHICLE].
2. "Digital network" means any 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.
3. "Transportation Network Company" means a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to this [Chapter/Title] and operating in [STATE] that uses a digital network to connect Transportation Network Company Riders to Transportation Network Company Drivers who provide Prearranged Rides. A Transportation Network Company shall not be deemed to control, direct or manage the Personal Vehicles or Transportation Network Company Drivers that connect to its digital network, except where agreed to by written contract.
4. "Transportation Network Company Driver" or "driver" means an individual who:
 - i. Receives connections to potential passengers and related services from a Transportation Network Company in exchange for payment of a fee to the Transportation Network Company; and
 - ii. Uses a Personal Vehicle to provide a Prearranged Ride to riders upon connection through a Digital network controlled by a Transportation Network Company in return for compensation or payment of a fee.
5. "Transportation Network Company Rider" or "rider" means an individual or persons who use a Transportation Network Company's digital network to connect with a Transportation Network Driver who provides Prearranged Rides to the rider in the driver's Personal Vehicle between points chosen by the rider.
6. "Prearranged Ride" means the provision of transportation by a driver to a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a Transportation Network Company, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the Personal Vehicle. A Prearranged Ride does not include transportation provided using a Taxi, Limousine, or other for-hire vehicle pursuant to [CITE DEFINITION IN STATE LAW OR MOTOR CARRIER ACT].

B. Financial Responsibility of Transportation Network Companies

On or before [MONTH, DAY, YEAR] and thereafter, a Transportation Network Company Driver or Transportation Network Company on the driver's behalf shall maintain primary automobile insurance that:

1. Recognizes that the driver is a Transportation Network Company Driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver:
 - i. while the driver is logged on to the Transportation Network Company's digital network; or
 - ii. while the driver is engaged in a Prearranged Ride.
2. The following automobile insurance requirements shall apply while a participating Transportation Network Company Driver is logged on to the Transportation Network Company's digital network and is available to receive transportation requests but is not engaged in a Prearranged Ride:
 - i. Primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage.
 - ii. *[Scriveners notes: Reference by statute all other state mandated coverage's for motor vehicles by state financial responsibility law, UM/ UIM, Med Pay, NF and/or PIP.]*
 - iii. The coverage requirements of this subsection 2 may be satisfied by any of the following:
 - a. Automobile insurance maintained by the Transportation Network Company Driver; or
 - b. Automobile insurance maintained by the Transportation Network Company; or
 - c. Any combination of subparagraphs (a) and (b).
3. The following automobile insurance requirements shall apply while a Transportation Network Company Driver is engaged in a Prearranged Ride:
 - i. Primary automobile liability insurance that provides at least \$1,000,000 for death, bodily injury and property damage;
 - ii. *[Scriveners notes: Reference by statute all other state mandated coverage's for motor vehicles by state financial responsibility law, UM/ UIM, Med Pay, NF and/or PIP.]*
 - iii. The coverage requirements of this subsection 3 may be satisfied by any of the following:
 - a. Automobile insurance maintained by the Transportation Network Company Driver; or
 - b. Automobile insurance maintained by the Transportation Network Company; or
 - c. Any combination of subparagraphs (a) and (b).

TNC Insurance Compromise Model Bill

March 24, 2015 v2

4. If insurance maintained by driver in subsections 2 or 3 has lapsed or does not provide the required coverage, insurance maintained by a Transportation Network Company shall provide the coverage required by Section B beginning with the first dollar of a claim and have the duty to defend such claim.
5. Coverage under an automobile insurance policy maintained by the Transportation Network Company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.
6. Insurance required by this Section B may be placed with an insurer licensed under [CITE STATUTE] or with a surplus lines insurer eligible under [CITE STATUTE].
7. Insurance satisfying the requirements of this Section B shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under [STATE FINANCIAL RESPONSIBILITY STATUTE].
8. A Transportation Network Company Driver shall carry proof of coverage satisfying sections B.2 and B.3 with him or her at all times during his or her use of a vehicle in connection with a transportation network company's digital network. In the event of an accident, a Transportation Network Company Driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request pursuant to [INSERT ELECTRONIC ID CARD LAW OR CREATE SUCH LAW]. Upon such request, a Transportation Network Company Driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether he or she was logged on to the Transportation Network Company's digital network or on a Prearranged Ride at the time of an accident.

C. Disclosures

1. The Transportation Network Company shall disclose in writing to Transportation Network Company Drivers the following before they are allowed to accept a request for a Prearranged Ride on the Transportation Network Company's digital network:
 - i. The insurance coverage, including the types of coverage and the limits for each coverage, that the Transportation Network Company provides while the Transportation Network Company Driver uses a Personal Vehicle in connection with a Transportation Network Company's digital network; and
 - ii. That the Transportation Network Company Driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the Transportation Network Company's digital network and is available to receive transportation requests or is engaged in a Prearranged Ride depending on its terms.

D. Automobile Insurance Provisions

1. Insurers that write automobile insurance in [INSERT STATE] may exclude any and all coverage afforded under the owner's insurance policy for any loss or injury that occurs while a Driver is logged on to a Transportation Network Company's digital network or while a Driver provides a Prearranged Ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:
 - i. Liability coverage for bodily injury and property damage;
 - ii. Personal injury protection coverage as defined in [CITE STATUTE];
 - iii. Uninsured and underinsured motorist coverage;
 - iv. . Medical payments coverage;
 - v. Comprehensive physical damage coverage; and
 - vi. Collision physical damage coverage.

Such exclusions shall apply notwithstanding any requirement under [STATE FINANCIAL RESPONSIBILITY STATUTE]. Nothing in this section implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the Transportation Network Company's digital network, while the driver is engaged in a Prearranged Ride or while the driver otherwise uses a vehicle to transport passengers for compensation.

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

2. Automobile insurers that exclude the coverage described in Section B shall have no duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this Article shall be deemed to invalidate or limit an exclusion contained in a policy, including any policy in use or approved for use in [STATE] prior to the enactment of this Article.

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

3. In a claims coverage investigation, Transportation Network Companies and any insurer potentially providing coverage under Section B shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the Transportation Network Company Driver if applicable, including the precise times that a Transportation Network Company Driver logged on and off of the Transportation Network Company's digital network in the twelve hour period immediately preceding and in the twelve hour period immediately following the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any automobile insurance maintained under Section B.

FAQs – TNC Insurance Compromise Model Bill

March 24, 2015 v2

Which organizations support the TNC Insurance Compromise Model Bill?

As of March 24, 2015, the American Insurance Association (AIA), the Property and Casualty Insurance Association of America (PCIAA), the National Association of Mutual Insurance Companies (NAMIC), State Farm, USAA, Farmers Insurance and Uber support the TNC Insurance Compromise Model Bill.

Why have Uber and some of the Leading Insurers Compromised on Legislation?

State legislatures across the country are considering TNC insurance legislation to help protect their citizens and encourage innovation. Several states have enacted TNC insurance laws and others are close.

After several conversations, we found that Uber's "essential elements" were not too far from those articulated in the Industry Toolkit.

The supporting insurance organizations and Uber concluded that if we could reach a compromise on the differences, we would ensure the proper insurance protection for consumers, and achieve more consistent legislative outcomes that allow both industries to innovate.

What are the main provisions of the TNC Insurance Compromise Model Bill?

- The model is similar to bill passed in Colorado and the pending compromise bill in New Mexico.
- In summary the legislation accomplishes the following:
 1. Expressly permits personal auto policies to exclude coverage for TNC related driving.
 2. During Period 1, this bill would mandate primary insurance coverage of **50/100/25** and includes all state mandated coverages (e.g., UM or PIP). The mandate does not include comprehensive or collision coverages.
 - Each of the six states that have passed TNC laws have enacted similar period 1 limits
 - CA, CO, UT = 50/100/30
 - IL, DC, VA = 50/100/25
 3. During Periods 2 and 3 when a driver has accepted a ride request and/or while the fare paying passenger is in the vehicle, the bill would mandate primary insurance of \$1 million in liability coverage (up to \$1.5 in a minority of states that mandate such coverage for limos) as well as any other coverage mandated for limos by the state's financial responsibility laws. The mandate does not include comprehensive or collision.
 4. These coverage mandates can be satisfied by either a policy maintained by the TNC driver, by the TNC itself or a combination of both.
 5. The primary TNC coverage shall not be dependent upon a personal auto policy denying a claim before coverage is triggered.
 6. TNC drivers will be required to carry proof of TNC insurance coverage.
 7. TNCs must disclose to their drivers that their current personal auto policy may not provide any coverage for TNC related driving.
 8. After an accident, TNC drivers must disclose whether they were logged into the TNC system.
 9. Requires cooperation between TNCs and insurers involved in a coverage investigation.
 10. Grants a statutory right of contribution against TNCs for claims insurers may have erroneously paid.

What is the main difference between the Industry Toolkit Model and this Compromise Model?

The biggest difference is the absence of the "firewall" language that appears in the California law. The Compromise Model creates neither a presumption of coverage nor a presumption against coverage for TNC related activities.

This bill also does not contain any mandate that TNCs or their drivers maintain comprehensive or collision coverage. This was only an "optional" provision in the Industry Toolkit Model.

#1 SB2368
3-27-15

PROPOSED AMENDMENTS SB 2368

Page 1, line 20, replace "connect with" with "transport"

Page 1, line 20, after "passengers" insert "for compensation"

Page 1, line 23, remove "which"

Page 1, line 24, replace "provides" with "that enables"

Page 2, line 1, after "with" insert "independent participating"

Page 2, line 3, after "that" insert "specifically"

Page 3, line 6, replace "of one million dollars" with "under subsection 3 of section 26.1-40-15.2"

~~Page 3, line 26, replace "secondary" with "primary"~~ Remove.

Page 3, line 27, remove the second "fifty"

Page 3, line 28, replace "fifty" with "twenty-five"

Page 3, line 30, remove "subsection 3 of"

Page 3, line 30, replace "26.1-40-15.1" with "26.1-40-15.2"

Page 4, line 1, remove "subsection 2 of"

Page 4, line 1, replace "26.1-40-15.1" with "26.1-40-15.3"

Page 4, line 9, replace "subsection" with "subdivision"

Page 4, line 12, replace "subsections" with "subdivisions"

Page 4, line 13, remove "A transportation network company may meet its obligations under this section through"

Page 4, remove lines 14 through 22

Page 4, line 23, remove "5."

Page 5, line 4, after "that" insert "specifically"

Page 5, line 5, replace "more" with "less"

Page 5, remove lines 25 through 28

Page 6, remove lines 5 through 29

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Page 7, remove lines 1 through 30

Page 8, remove lines 1 and 2

#2 8B2368
3-27-15

Prepared by the North Dakota
Insurance Department
March 27, 2015

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2368

Page 2, line 6, insert section 26.1-40.1-02

"On or before [MONTH, DAY, YEAR] and thereafter, a Transportation Network Company Driver or Transportation Network Company on the driver's behalf shall maintain primary automobile insurance that recognizes the driver as a Transportation Network Company Driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver."

Page 2, line 27, remove "liability"

Page 3, line 4, add after section, "is primary and"

Page 3, line 4, remove "also"

Page 3, line 8, after coverage add, "is primary and"

Page 3, line 9, remove "when required"

Page 3, line 24, after insurance add "is primary and"

Page 3, line 26, after coverage remove "and the coverage is secondary. The coverage"

Page 3, line 27, after hundred remove "fifty"

Page 3, line 30, remove "subsection 3 of" and replace "26.1-40-15.1" with "26.1-40-15.2"

Page 3, line 30-31, remove "and the coverage is secondary"

Page 4, line 1, remove "subsection 2 of" and replace "26.1-40-15.1" with "26.1-40-15.3"

Page 4, line 1-2, remove "and the coverage is secondary"

Page 4, line 3, remove "and the coverage is secondary"

Page 4, after line 26, insert section 26.1-40.1-06

Insurers that write personal automobile insurance may allow no fault insurance coverage to be conditional on Transportation Network Company no fault insurance coverage pursuant to 26.1-40.1-03 and 26.1-40.1-04.

SB 2368
3-27-15
#2 p.2

Page 4, line 9, replace "subsection" with "subdivision"

Page 4, line 12, replace "subsections" with "subdivisions"

Renumber accordingly