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SENATE BILL NO. 1216

Offered January 14, 2015

Prefiled January 13, 2015

A BILL to amend the Code of Virginia by adding in Chapter 20 of Title 46.2 an article numbered 3.1, consisting of sections numbered 46.2-2067.1 through 46.2-2067.14, relating to transportation network companies; licensure; penalties.

Patron—Stanley

Referred to Committee on Transportation

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 20 of Title 46.2 an article numbered 3.1, consisting of sections numbered 46.2-2067.1 through 46.2-2067.14, as follows:

Article 3.1.

Transportation Network Companies.

§ 46.2-2067.1. Definitions.

"Personal vehicle" means a motor vehicle that is not used to transport passengers for compensation except as a TNC driver vehicle.

"TNC driver" means an individual who uses a personal vehicle that the individual owns or leases to provide transportation services to TNC riders in the Commonwealth requested through a TNC platform.

"TNC driver vehicle" means a personal motor vehicle that is owned or leased by a TNC driver and used to provide transportation services requested through a TNC platform after obtaining a TNC driver vehicle decal from the Department.

"TNC platform" means any digital platform offered by a TNC whereby a TNC driver provides transportation services to TNC riders.

"TNC rider" means an individual who has entered into a contractual agreement with a TNC licensed by the Department and who connects with TNC drivers through a TNC platform.

"Transportation network company" or "TNC" means a person who provides, sells, furnishes, contracts or arranges for prearranged rides using a TNC platform that connects passengers with TNC drivers.

§ 46.2-2067.2. Licensure required for TNCs; penalty.

A. No TNC shall conduct business in the Commonwealth unless such TNC holds a current TNC license from the Department. Any TNC that conducts business in the Commonwealth without such license is guilty of a Class 1 misdemeanor per violation.

B. All general statutory and regulatory provisions of the Department shall apply to TNCs licensed under this article unless otherwise specified in this article.

§ 46.2-2067.3. Requirements of TNC licensees.

A. All TNCs:

1. Shall maintain a registered agent in the Commonwealth;

2. Shall have business licenses in the localities where business is conducted;

3. May allow TNC drivers to offer service to TNC riders for compensation, no charge, or suggested compensation;

4. Shall prohibit TNC drivers from prearranging, soliciting, or accepting street hails or arranging for transportation of any individual, whether a TNC rider or not, in a means not booked through a TNC platform; and

5. Shall be subject to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

B. The software application used by a TNC to connect TNC drivers and TNC riders shall permit TNC riders to view on their smartphone, tablet, or other mobile device before the passenger enters the TNC driver's vehicle a photograph of the TNC driver and the license plate number of the TNC driver's vehicle.

C. All TNCs shall implement a zero-tolerance policy on the use of drugs or alcohol applicable to itself, any TNC driver, or an affiliate and shall provide notice of the zero-tolerance policy on its website, as well as the procedures for a TNC rider to report a complaint about a TNC driver with whom he was matched and who the TNC rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride. Upon receipt of such TNC rider complaint, the TNC shall immediately deactivate the TNC driver's access to its TNC platforms pending an investigation of the allegations. The TNC driver's deactivation of access to the TNC platforms shall last for the duration of the investigation.

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D. Prior to permitting an individual to act as a TNC driver, all TNCs shall obtain a fingerprint criminal history report using Live Scan at an office of the Department or a national fingerprint criminal history through the Department of State Police. All TNCs shall require the TNC driver to annually obtain and review a criminal history records check for all TNC drivers and shall affirm to the Department that such review has been performed. All TNCs shall disqualify all TNC driver applicants or immediately terminate TNC drivers whose criminal history records check reveals that they have been convicted of or pleaded guilty to committing, attempting to commit, or conspiracy to commit any of the following felony offenses:

1. Any offense involving fraud under Article 4 (§ 18.2-111 et seq.) of Chapter 5 or Chapter 6 (§ 18.2-168 et seq.) of Title 18.2;

2. Any sexual offense under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 or § 18.2-346 or 18.2-370;

3. Any act of violence under § 19.2-297.1; or

4. Any crime punishable as a felony in the Commonwealth in the commission of which a motor vehicle is used.

E. Prior to permitting an individual to act as a TNC driver, all TNCs shall obtain and review Virginia's Sex Offender and Crimes Against Minors Registry and the U.S. Department of Justice's National Sex Offender Public Website. All TNCs shall disqualify a TNC driver during any period in which it is determined that the TNC driver is a person for whom registration is required with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 or on the U.S. Department of Justice's National Sex Offender Public Website. All TNCs shall review the Registry annually for all TNC drivers and affirm to the Department that such review has been performed. All TNCs shall disqualify any TNC driver applicant or immediately terminate any TNC driver who is determined to have registered on the Registry.

F. Prior to permitting an individual to act as a TNC driver, all TNCs shall obtain and review a driving record report from the Commonwealth or the state of licensure for such individual. All TNCs shall review driving record reports annually for all TNC drivers and affirm to the Department that such review has been performed. All TNCs shall disqualify any applicant whose driving record report reveals that, within the three-year period prior to such report, he has been convicted of or pleaded guilty to more than three moving violations or any of the following offenses:

1. Any violation of § 18.2-51.4, 18.2-266, or 18.2-266.1;

2. Refusal to submit to a chemical test to determine the alcohol or drug content of the person's blood or breath in accordance with §§ 18.2-268.1 through 18.2-268.12;

3. Failure of the driver whose vehicle is involved in an accident to stop and disclose his identity at the scene of the accident;

4. Escaping or eluding a law-enforcement officer under § 46.2-817; or

5. A violation resulting in revocation pursuant to § 46.2-391.

G. All TNCs shall disqualify a TNC driver if the criminal background check or driving history report conducted under this section reveals that the individual violated laws comparable to the offenses listed in this ssection in any other jurisdiction within the United States.

§ 46.2-2067.4. TNC driver requirements.

No TNC driver shall provide transportation services or conduct business with a TNC, and no TNC shall engage a TNC driver unless at all times the TNC driver:

1. Is at least 21 years of age;

2. Possesses a valid unrestricted driver's license;

3. Has a valid social security number and provides it to the TNC;

4. Has a valid decal issued by the Department for all vehicles used while conducting business with the TNC;

5. Has in force at all times the insurance coverages required by § 46.2-2067.5 and has proof of such coverage at all times; and

6. Satisfies the vehicle requirements and vehicle safety inspection requirements as set forth in § 46.2-2067.6.

§ 46.2-2067.5. TNC and TNC driver insurance requirements.

A. All TNCs shall maintain on each TNC driver's behalf, or verify that each TNC driver maintains at all times, a primary liability insurance policy or policies that:

1. Provide primary insurance coverage of at least $1 million per accident for accidents involving a TNC driver, providing coverage 24 hours per day, seven days per week;

2. Provide uninsured and underinsured motorist primary coverage 24 hours per day, seven days per week, of at least $1 million per person and at least $1 million per accident for bodily injury resulting from accidents involving a TNC driver; and

3. Include an endorsement to the primary coverage that binds the insurance company to the provisions of this section until such time as the insurer provides the Department with notice of

cancellation or modification of the policy, which notice shall be provided not later than 30 days prior to the effective date of cancellation or modification.

B. All TNCs or TNC drivers shall file with the Department a copy of the policy or policies required by this section prior to conducting business and shall annually file a certificate or certificates of insurance and provide any policy amendments, revisions, or changes.

C. In the event the insurance coverage of a TNC driver is canceled, lapses, or is otherwise determined to be inapplicable, the insurance coverage of the TNC shall be deemed binding and primary for the TNC driver.

D. Coverage of the TNC and TNC driver insurance policies shall not depend upon or be contingent on a personal motor vehicle policy's first denying a claim or coverage.

§ 46.2-2067.6. TNC and TNC driver vehicle safety, decal, and signage requirements.

A. All TNCs shall ensure that at all times while engaged in providing transportation services for the TNC, the TNC drivers operate only personal vehicles with a maximum seating capacity of seven persons, excluding the driver.

B. All TNCs shall ensure that all TNC driver vehicles have been inspected for safety before being used to provide service and thereafter on an annual basis. The annual safety inspection shall be performed by inspection stations approved by the Department of State Police.

C. At all times while engaged in providing transportation services for a TNC, each TNC driver vehicle shall display an exterior vehicle marking that is easily visible from 100 feet and in a form approved by the Department identifying it as a vehicle operated under a TNC platform.

D. All TNC drivers shall obtain from the Department a decal that has specific numerical identifications and is available on a searchable database to all law enforcement and that shall be affixed to the rear license plate of the TNC driver vehicle.

E. The Department shall maintain a list of all TNC drivers who have been issued decals, and the fees for such decals shall cover all costs of creating and maintaining the list.

§ 46.2-2067.7. Notice to TNC by TNC drivers.

All TNC drivers shall immediately notify the TNC of the following:

1. Any change, restriction, limitation, or revocation of the TNC driver's license status;

2. Any change, restriction, limitation, or revocation of the TNC driver's vehicle registration for any vehicle used to conduct business with the TNC;

3. Any change, restriction, limitation, or cancellation of any motor vehicle insurance policy maintained by the TNC driver pursuant to § 46.2-2067.5; or

4. Any arrest, charge, or conviction for a violation of any state or federal criminal law by the TNC driver that would require registration with the Sex Offender and Crimes Against Minors Registry pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1 or on the U.S. Department of Justice's National Sex Offender Public Website or any other offense listed in § 46.2-2067.3.

§ 46.2-2067.8. Prohibited acts by TNC driver; penalty.

A. No TNC driver shall prearrange, solicit, or accept street hails or arrange for transportation of an individual, whether a TNC rider or not, in a means not booked or reserved by or through a TNC platform.

B. No TNC driver shall discriminate against or refuse to serve a TNC rider on the basis of age, race, gender, ADA-protected disabilities, destination, or any other discrimination prohibited by state or federal law.

C. No TNC driver shall serve any customer in the Commonwealth through a TNC platform unless the TNC is duly licensed by the Department.

D. No TNC driver shall serve any customer in the Commonwealth who is not a TNC rider.

E. It shall be a Class 1 misdemeanor to operate a TNC driver vehicle without a decal from the Department or with a decal that has been revoked by the Department.

§ 46.2-2067.9. Safe access to TNC platforms.

All TNC drivers shall access and operate smartphones, tablets, and all mobile electronic devices consistent with laws of the Commonwealth and only in a manner consistent with highway safety and shall have only one TNC platform application operating at any one time.

§ 46.2-2067.10. TNC records retention and access by the Department.

A. All TNCs shall maintain for 10 years accurate and up-to-date copies of the following documents and information for all TNC drivers who operate in the Commonwealth:

1. The criminal history records check required under subsection D of § 46.2-2067.3;

2. The sex offender registry check required under subsection E of § 46.2-2067.3;

3. The driving record report required under subsection F of § 46.2-2067.3;

4. Insurance requirements under § 46.2-2067.5;

5. A legible copy or electronic scan of each TNC driver's license;

6. Each TNC driver's social security number;

7. Each TNC driver vehicle's registration card; and

8. Proof of motor vehicle inspections required under § 46.2-2067.6.

B. All records required to be maintained in this section shall be available for inspection by agents of the Department in the Commonwealth during normal business hours.

§ 46.2-2067.11. TNC notice to TNC drivers.

All TNCs shall provide written notice annually to TNC drivers to consult with appropriate professionals and authorities regarding the possible financial and contractual consequences of operating as a TNC driver, including consequences for personal income tax and tangible personal property tax liabilities, personal insurance coverage of the TNC driver vehicle, and financing agreements with TNC driver vehicle lienholders.

§ 46.2-2067.12. Department investigations.

A. If any individual or TNC rider files a complaint with the Department against a TNC, a TNC driver, or the operator of a vehicle providing services under a TNC platform, the TNC shall provide, when requested by the Department, such records as are reasonably necessary to investigate and resolve that specific complaint.

B. The Department shall coordinate with the Office of Consumer Affairs in the Office of the Attorney General on any complaints by TNC riders or the general public against TNCs or TNC drivers.

§ 46.2-2067.13. Periodic audits by the Department.

To ensure public safety, the Department shall conduct periodic audits on an annual basis of all TNCs. All TNCs shall provide to the Department, on request, unique identification numbers, each of which has been assigned to an individual Virginia TNC driver. The records of the TNC drivers associated with the driver identification numbers that the Department has identified, from which the TNC may redact the TNC driver's social security number (other than the last four digits), shall be provided to the Department by the TNC.

§ 46.2-2067.14. TNC enforcement and penalties.

A. The Department, local law enforcement, and state law enforcement shall enforce the provisions of this article as to TNCs and TNC drivers.

B. An initial violation of this article by a TNC within the first 12 months of licensure shall result in the Department issuing a written warning to the TNC.

C. Any subsequent violation of this article by a TNC shall result in imposition of a monetary fine of not less than $15,000 per violation.

D. All violations determined by the Department to be willful, intentional, or a result of gross negligence shall result in the revocation or suspension of the license of the TNC for a period of not less than one year.

E. An initial violation of this article by a TNC driver within the first 12 months after issuance to such driver of a TNC decal shall result in the Department issuing a written warning to the TNC driver with a copy to the TNC.

F. Any subsequent violation of this article by a TNC driver shall result in the imposition of a monetary fine of not less than $1,000 per violation.

2. That the Department of Motor Vehicles shall submit a report annually on or before December 1 to the Chairmen of the House and Senate Committees on Transportation that shall include the following information: (i) the number and nature of all enforcement actions taken under Article 3.1 (§ 46.2-2067.1 et seq.) of Chapter 20 of Title 46.2 as created in this act; (ii) the number of TNC driver vehicle decals issued; (iii) the number of complaints received regarding TNCs, TNC drivers, or TNC driver vehicles; (iv) the number of TNC driver vehicle decals revoked; and (v) the results of all audits and investigations involving TNCs, TNC drivers, or TNC driver vehicles.