



By Friday 3/20

State of Wisconsin
2015 - 2016 LEGISLATURE

THANKS

LRB-1723/PI
MPG&PJK:kjf

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-volo

INSERT

1PZ

1 AN ACT *to amend* 194.01 (1); and *to create* 20.165 (1) (gh), 340.01 (23g) (b) 4.,
 2 440.08 (2) (a) 69m., subchapter IV of chapter 440 [precedes 440.40] and 632.355
 3 of the statutes; **relating to:** regulation of transportation network companies,
 4 granting rule-making authority, making an appropriation, and providing a
 5 penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 20.165 (1) (gh) of the statutes is created to read:
 7 20.165 (1) (gh) *Transportation network company accessibility grants.* All
 8 moneys received from fees collected under s. 440.45 (6) (a), for the grants under s.
 9 440.45 (6) (b).

****NOTE. Please note that I did not create a new appropriation for the moneys from initial and renewal licensure fees for transportation network company licenses. Those moneys would, therefore, be covered under s. 20.165 (1) (g), stats. Please let me know if that is not consistent with your intent. MPG

b-2 (insert)

1 SECTION 2. 194.01 (1) of the statutes is amended to read:

2 194.01 (1) "Common motor carrier" means any person who holds himself or
3 herself out to the public as willing to undertake for hire to transport passengers or
4 property by motor vehicle upon the public highways. The transportation of
5 passengers in taxicab service or in commuter car pool or van pool vehicles that are
6 designed to carry less than 8 passengers, including the driver, or in a school bus
7 under s. 120.13 (27) or in a motor vehicle being operated to provide to the passenger
8 transportation network services, as defined in s. 440.40 (6), is not transportation by
9 a common motor carrier.

10 SECTION 3. 340.01 (23g) (b) 4. of the statutes is created to read:

11 340.01 (23g) (b) 4. A motor vehicle being operated for the provision of
12 transportation network services, as defined in s. 440.40 (6).

13 SECTION 4. 440.08 (2) (a) 69m. of the statutes is created to read:

14 440.08 (2) (a) 69m. Transportation network company: March 1 of each year.

15 SECTION 5. Subchapter IV of chapter 440 [precedes 440.40] of the statutes is
16 created to read:

17 CHAPTER 440

18 SUBCHAPTER IV

19 TRANSPORTATION NETWORK COMPANIES

20 440.40 Definitions. In this subchapter:

21 (1) "Licensed company" means a transportation network company that is
22 licensed under s. 440.415.

used to provide

used

ok

add - 11/14/14

1 (2) "Participating driver" means an individual who uses a personal motor
2 vehicle to provide transportation network services through a licensed company.

3 (3) "Passenger" means a customer of a licensed company.

4 (4) "Transportation network company" means an entity that uses an
5 online-enabled application or platform to connect passengers and participating
6 drivers for the purpose of providing transportation network services to passengers.
7 "Transportation network company" does not include a taxicab or limousine service.

8 (5) "Transportation network insurance" means the insurance that satisfies the
9 requirements under s. 440.48 (2).

10 (6) "Transportation network services" means transportation of a passenger
11 between points chosen by the passenger and prearranged with a participating driver
12 by means of an online-enabled application or platform.

***NOTE: See my changes to the definitions. Okay? Should the fact that the services are prepaid be included as an element in the definition of "transportation network services" or "transportation network company"? MPG

***NOTE: I did not include the statement of legislative intent from the drafting instructions. We normally do not include a statement of legislative intent or findings unless the findings or intent statement could help sustain a provision for which there is a reasonable probability of a constitutional challenge, or if the bill is intended to be a recodification bill that makes no substantive changes. Neither exception applies to this draft. A statement of legislative intent is disfavored for a number of reasons, including redundancy, unforeseen effects, inconsistent use of standards for statutory interpretation, and conflicts with the substance of the statutory language. Please let me know if you'd like to discuss the issue further. MPG

13 **440.41 License required.** No person may operate a transportation network
14 company in this state unless the transportation network company is a licensed
15 company.

16 **440.415 Licensure of transportation network companies.** (1) INITIAL
17 LICENSE. The department shall grant a license to operate a transportation network
18 company in this state to an applicant for licensure if the department determines that
19 all of the following requirements are met:

Insert 3-1

Notwithstanding s. 440.03 (9) (a) ✓

1 (a) The applicant submits an application to the department on a form
2 prescribed by the department. The application shall include the applicant's name,
3 address, tax identification number, and any other information required by the
4 department by rule.

5 (b) The applicant is a transportation network company.

6 (c) The applicant demonstrates to the satisfaction of the department that it
7 satisfies all applicable requirements under ss. 440.42, 440.44, 440.45, and 440.48.

8 (d) The applicant pays the initial credential fee determined by the department
9 under s. 440.03 (9) (a).
 (initial) (license) (of \$5,000)

****NOTE: Please let me know if, like the renewal fee in the draft, you wish to specify an initial licensure fee as opposed to having DSPS establish the fee according to its usual process? MPG
****NOTE: Do you want to authorize DSPS to establish other application requirements by rule? Also, do you want to have a general rules promulgation requirement requiring DSPS to promulgate rules to implement the subchapter? MPG

10 (2) RENEWAL. (a) The renewal date for a license granted under sub. (1) is
11 specified in s. 440.08 (2) (a) 69m. A renewal application shall be submitted to the
12 department on a form prescribed by the department and shall include any
13 information required by the department by rule. (a)

14 (b) Notwithstanding s. 440.03 (9), the renewal application for a licensed
15 company shall include a renewal fee of \$5,000.

****NOTE: Based on the drafting instructions, unlike other occupations regulated by DSPS, under this draft, the renewal date is annual instead of biennial, and, therefore, the renewal fee must be paid annually, consistent with the drafting instructions. MPG

16 440.42 Agent. Each licensed company shall maintain an agent for service of
17 process in this state.

18 440.425 Fare disclosures. If a licensed company charges a fare for the
19 transportation network services provided to passengers, the licensed company shall
20 do all of the following:

1 (1) Disclose its fare calculation method on its Internet site.

2 (2) Inform each ^{prospective} passenger of all applicable fare rates.

3 (3) Give each passenger the option to receive an estimated fare before the
4 passenger enters a participating driver's vehicle ^{to receive} transportation network
5 services. ^{fare}

***NOTE: It is my understanding that transportation network companies operate on a bid basis. The passenger enters the trip coordinates, and receives bids from participating drivers. If this is the reality, it seems somewhat inconsistent with this fare disclosures provision. Also, if all services for a trip arranged through a transportation network company are prepaid using the company's online-enabled application or platform, that fact is inconsistent with the language under sub. (3), above, requiring only an estimated fare (as opposed to actual prepayment) before the passenger enters the participating driver's vehicle. Please let me know how you would like to proceed. Thanks. MPG

6 **440.43 Identification of participating drivers and their vehicles.** Each

7 licensed company shall make available to each ^{prospective} passenger ^{or the prospective passenger's authorized representative} on the licensed company's
8 Internet site or on line-enabled application or platform, a photograph of the
9 participating driver and the license plate number of the participating driver's motor
10 vehicle before the passenger enters the participating driver's motor vehicle for
11 transportation network services.

12 **440.435 Electronic receipt.** Within a reasonable time after transportation
13 network services have been provided to a passenger, the licensed company
14 facilitating the services shall transmit an electronic receipt for the services to the
15 passenger that contains all of the following:

16 (1) The origin and destination of the transportation network services provided
17 to the passenger. ^{or the passenger's authorized representative}

18 (2) The total time and distance of the transportation network services provided
19 to the passenger. ^{trip}

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

digital network or software

1 **440.44 Zero tolerance for use of drugs or alcohol.** (1) POLICY. Each
 2 licensed company shall develop, implement, and make available on its Internet site
 3 a policy prohibiting any participating driver from using alcohol, or any other
 4 intoxicant that may render the participating driver incapable of safely driving, while
 5 the participating driver is providing or is available to provide transportation
 6 network services or is logged on to the licensed company's digital network or software application

****NOTE: See my changes. Okay? I used "intoxicant" instead of "drug" because it is less ambiguous, and I included an implicit reference to the standard under s. 346.63 (1) (a). Also, I assume that by "zero tolerance" we mean prohibiting any use of alcohol or intoxicating drugs and drafted the provision accordingly. MPG

7 (2) COMPLAINTS. (a) Each licensed company shall develop, implement, and
 8 make available on its Internet site, complaint procedures for passengers to report ^s of
 9 suspected violations of the policy under sub. (1).

10 (b) Upon receipt of a passenger complaint concerning a violation of a licensed
 11 company's policy under sub. (1), the licensed company shall immediately suspend the
 12 participating driver and investigate the complaint. The suspension shall continue
 13 until the complaint is resolved.

14 (c) Each licensed company shall maintain all records of any investigation under
 15 par. (b), including the results of that investigation and any action taken based on that
 16 investigation, for at least 2 years after the date the passenger complaint was received
 17 by the licensed company.

18 **440.445 Certain requirements for participating drivers and their**
 19 **vehicles.** (1) APPLICATION. Before a licensed company allows an individual to be a
 20 participating driver for the licensed company, the licensed company shall do all of the
 21 following:

Insert 6 - 17

1 (a) Require the individual to submit an application to the licensed company
2 that includes all of the following, in addition to any other information the licensed
3 company requires:

4 1. The individual's name, address, and age.

5 2. A copy of the individual's driver's license.

6 3. The individual's driving history.

7 4. Proof of motor vehicle registration for each motor vehicle the individual will
8 use to provide transportation network services through the licensed company.

9 5. A copy of the individual's automobile liability insurance policy for each motor
10 vehicle the individual will use to provide transportation network services through
11 the licensed company.

Insert 7-11

12 (2) INDIVIDUALS WHO MAY NOT BE PARTICIPATING DRIVERS. A licensed company may
13 not allow any of the following individuals to be a participating driver for the licensed
14 company:

15 (a) An individual who has had more than 3 moving violations, as defined in s.
16 343.01 (2) (cg), in the past 3 years, or one major violation, specified by the department
17 by rule, in the past 3 years, including fleeing or attempting to elude an officer under
18 s. 346.04 (3), reckless driving under s. 346.62, or driving with a suspended or revoked
19 license under s. 343.44 (1) (a) or (b).

***NOTE: Because it is not clear what may or may not constitute a major violation, I included rules promulgation language for DSEPS to define the term. Okay? Also, let me know if you want to include a specific requirement for a criminal background check for participating drivers or a requirement that a participating driver report any conviction to the licensed company for which the participating driver drives. MPG

20 (b) An individual who has been convicted in the last 7 years of driving under
21 the influence of an intoxicant or other drug in violation of s. 346.63, of a sex offense,

2. as defined in s. 301.45 (1d) (b)

1 or of any crime involving fraud, theft, damage to property, violence, acts of terror, or
2 the use of a motor vehicle in the commission of a felony.

MPG ~~****NOTE: See also the list under s. 351.02. Also, do you want to define "sex offense"?~~

3 (c) An individual whose information is contained in the sex offender registry
4 under s. 301.45 or on the National Sex Offender Public Website.

5 (d) An individual who does not possess a valid driver's license.

6 (e) An individual who does not possess proof of motor vehicle registration for
7 each motor vehicle the individual ~~uses~~ ^{would use} to provide transportation network services.

8 (f) An individual who is not at least 19 years of age.

MPG ~~****NOTE: I did not include the proof of auto insurance requirement because extensive insurance requirements already exist under s. 440.48 in the draft. Okay? MPG~~

9 (3) VEHICLE SAFETY AND EMISSIONS. Each licensed company shall ensure that
10 any motor vehicle a participating driver uses to provide transportation network
11 services satisfies all state ~~and federal~~ vehicle safety and emissions standards for
12 private motor vehicles.

~~****NOTE: I added federal because many vehicle safety and emissions standards are federal standards. Okay?~~

13 (4) NO STREET HAILS. A participating driver may not solicit or accept street hails
14 or otherwise provide rides for compensation that are not prearranged through a
15 licensed company.

16 (5) NO CASH TRIPS. (a) A participating driver may not solicit or accept any cash
17 payment ~~from a passenger~~ ^{for transportation network services}

18 (b) All payments for transportation network services shall be made
19 electronically using the licensed company's ~~on line-enabled application or platform~~

~~****NOTE: Again, do the services have to be prepaid? MPG~~

digital network or software

Insert 8-7

Insert 8-8

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May not discriminate

1 **440.45 Nondiscrimination; accessibility.** (1) NONDISCRIMINATION POLICY.

2 Each licensed company shall adopt a policy of nondiscrimination on the basis of
3 destination, race, color, national origin, religious belief or affiliation, sex, disability,
4 age, sexual orientation, or gender identity with respect to passengers and potential
5 passengers and notify all participating drivers of the nondiscrimination policy.

Prospective

6 (2) ^A Participating drivers shall comply with all applicable laws regarding
7 nondiscrimination against ^{any} passengers or potential passengers on the basis of
8 destination, race, color, national origin, religious belief or affiliation, sex, disability,
9 age, sexual orientation, or gender identity.

***NOTE: I don't see anything in the statutes concerning discrimination on the basis of gender identity, which is included in the drafting instructions, but there may be local laws. Also, with respect to nondiscrimination on the basis of "destination," is the intent to prohibit a participating driver to turn down a passenger on the basis of the passenger's desired destination? Currently, I am not aware of any law that would require a participating driver to take a passenger regardless of the choice of destination. Also, is this a nonissue given the bidding structure employed by transportation network companies? It is my understanding a driver would be free to bid or not bid with full knowledge of the passenger's desired destination. MPG

Permit

10 (3) ^{Each} Participating drivers shall comply with all applicable laws relating to
11 accommodation of service animals ^{to accompany passengers}
^{in connection with transportation network services}

12 (4) A licensed company may not impose additional charges for providing
13 transportation network services to persons with disabilities because of those
14 disabilities.

15 (5) Each licensed company shall provide each ^{Prospective} passenger an opportunity to
16 indicate whether the passenger requires a wheelchair-accessible vehicle. If a
17 licensed company cannot arrange wheelchair-accessible transportation network

18 services for a ^{Prospective} passenger ^{who} ~~that~~ requires wheelchair-accessible services, the licensed
19 company shall direct ^{refer} the passenger to an alternate provider of wheelchair-accessible
20 transportation, if available.

Prospective

****NOTE: Should the language be: "requires a wheelchair-accessible vehicle or other accommodation"? Also, it is not clear to me what the second sentence here actually requires a licensed company to do. Do you mean just give the passenger a referral? MPG

1 (6) ACCESSIBILITY GRANTS. (a) Each licensed company shall pay a fee of \$10,000
2 to the department for each year for which the licensed company does not make any
3 wheelchair-accessible transportation network services available to passengers, as
4 determined by the department.

5 (b) The department shall use all moneys received under par. (a) to provide
6 grants of up to \$15,000 per driver to participating drivers to pay for vehicle
7 modifications to provide wheelchair-accessible transportation network services to
8 passengers.

****NOTE: See my changes. Okay? Note that, to minimize confusion, we generally try to avoid using the term "fund" unless we are creating a ch. 25 fund. MPG

9 **440.455 Records.** Each licensed company shall do all of the following:

10 (1) Maintain passenger trip records for at least one year from the date of each
11 trip.

12 (2) Maintain all records concerning each participating driver for at least one
13 year after the date on which the participating driver ceases to be a participating
14 driver for the licensed company.

15 **440.46 Personally identifiable information.** A licensed company may not
16 disclose a passenger's personally identifiable information to any other person, unless

17 one of the following is true: *or prospective passenger's*

18 (1) The passenger *any* consents to the disclosure. *or prospective passenger*

19 (2) The disclosure is required by law.

20 (3) The disclosure is necessary to protect or defend the terms of use of the
21 licensed company's transportation network services or to investigate a violation of
22 those terms.

of the participating driver's motor vehicle

1 (4) The disclosure is to the participating driver, is limited to the passenger's
 2 name and telephone number, and is for the sole purpose of facilitating the
 3 participating driver's provision of transportation network services to the passenger.
 4 **440.465 No local regulation.** Section 349.24 does not apply to a licensed
 5 company or a participating driver providing transportation network services under
 6 this subchapter. No city, village, town, or county may enact an ordinance or adopt
 7 a resolution that regulates the provision of transportation network services to
 8 passengers by a licensed company or its participating drivers.

Insert 11-8

9 **440.48 Insurance requirements.** (1) DISCLOSURES REQUIRED REGARDING
 10 INSURANCE COVERAGE. A licensed company shall in writing disclose to each of its
 11 participating drivers, in the written agreement with the driver or, if there is no
 12 written agreement, at any time before the driver is allowed to accept a request for
 13 transportation network services on the licensed company's online-enabled
 14 application or platform, all of the following:

digital network or software

15 (a) The motor vehicle liability insurance coverage, including the limits, that the
 16 licensed company provides for the participating driver while the participating driver
 17 is using a personal vehicle to provide transportation network services.

18 (b) That the participating driver's own motor vehicle liability insurance policy
 19 covering the participating driver's personal vehicle may not provide coverage for the
 20 participating driver while the participating driver is using the personal vehicle to
 21 provide transportation network services.

22 (2) COVERAGE REQUIREMENTS. A participating driver shall at all times while the
 23 participating driver is providing transportation network services have in force
 24 transportation network insurance. All of the following requirements apply to the
 25 transportation network insurance:

or is logged on to the licensed company's digital network

and their vehicles in connection with transportation network services

software application

1 (a) The insurance must provide primary liability coverage with limits of at least
2 the amounts required for providing proof of financial responsibility under s. 344.01
3 (2) (d).

4 (b) The insurance must include uninsured motorist coverage with limits of at
5 least the amounts required under s. 632.32 (4) (a) 1.

6 (c) The insurance must be issued by an insurer authorized to do business in this
7 state in one or more lines of insurance that includes motor vehicle liability insurance
8 or must be surplus lines insurance, as defined in s. 618.40 (10).

9 (d) The insurance must provide the coverage specified in pars. (a) and (b) from
10 the moment the participating driver logs on to the licensed company's
11 ~~online-enabled application or platform~~ until the participating driver logs off the
12 licensed company's ~~online-enabled application or platform~~ or the passenger exits the
13 vehicle, whichever is later.

digital network or software

14 (e) The insurer issuing the coverage must agree to defend the insured against
15 any claim against the insured that is covered under the policy.

16 (3) HOW INSURANCE MAY BE PROVIDED. (a) The requirement under sub. (2) for a
17 participating driver to have transportation network insurance may be satisfied in
18 any of the following ways:

19 1. By the participating driver's own motor vehicle liability insurance policy that
20 covers the participating driver's personal vehicle and that does not exclude coverage
21 under the policy terms for injury or loss occurring while the driver is ~~operating~~ the
22 vehicle to provide transportation network services.

using

23 2. By a transportation network insurance policy maintained by the licensed
24 company.

25 3. By any combination of the insurance policies specified in subds. 1. and 2.

1 (b) Notwithstanding par. (a), if the participating driver's own motor vehicle
2 liability insurance policy is the transportation network insurance, or any part of it,
3 and the participating driver's policy coverage lapses, terminates, is canceled, or
4 ceases to exist for any other reason, the licensed company shall provide the coverage
5 required under sub. (2) beginning with the first dollar of a covered claim.

6 (c) Nothing in this section requires a private motor vehicle insurance policy to
7 provide primary or excess coverage during the period from the moment a
8 participating driver for a licensed company logs on to the licensed company's
9 ~~online-enabled application or platform~~ until the participating driver logs off the
10 licensed company's ~~online-enabled application or platform~~ or the passenger exits the
11 vehicle, whichever is later. *digital network or software*

12 (4) PROOF OF INSURANCE. A participating driver must carry proof of
13 transportation network insurance coverage with him or her at all times during his
14 or her use of a vehicle in connection with a licensed company's ~~online-enabled~~
15 ~~application or platform~~. In the event of an accident during his or her use of a vehicle
16 in connection with a licensed company's ~~online-enabled application or platform~~, a
17 participating driver shall provide the transportation network insurance coverage
18 information to any other party involved in the accident, and to a law enforcement
19 officer, upon request.

20 (5) COOPERATION WITH CLAIMS INVESTIGATIONS. In the investigation of any claim
21 made under a transportation network insurance policy, a licensed company and the
22 insurer providing the transportation network insurance shall cooperate with other
23 insurers involved in the investigation to facilitate the exchange of information,
24 including providing the dates and times at which an accident occurred that involved
25 a participating driver and the precise times at which the participating driver logged

SECTION 5

digital network or software

1 on and off the licensed company's ~~online-enabled~~ application ~~or platform~~ in the
2 24-hour period immediately preceding the accident.

3 **440.49 Disciplinary proceedings and actions.** (1) INVESTIGATIONS AND
4 HEARINGS. Subject to the rules promulgated under s. 440.03 (1), the department may
5 conduct investigations and hold hearings to determine whether a violation of this
6 subchapter or any rule promulgated under this subchapter or a violation of any other
7 law that substantially relates to the operation of a transportation network company
8 or the provision of transportation network services ~~to passengers~~ has occurred.

9 (2) DISCIPLINE. Subject to the rules promulgated under s. 440.03 (1), the
10 department may reprimand a licensed company or deny, limit, suspend, or revoke a
11 license granted under s. 440.415 if the department finds that an applicant for
12 licensure or a licensed company has done any of the following:

13 (a) Intentionally made a material misstatement in an application for a license
14 or license renewal.

15 (b) Advertised in a manner that is false or misleading.

16 (c) Obtained or attempted to obtain compensation through fraud or deceit.

17 (d) Violated this subchapter or any rule promulgated under this subchapter or
18 violated any other law that substantially relates to the operation of a transportation
19 network company or the provision of transportation network services ~~to passengers~~.

***NOTE: Do you want to include any other specific bases for discipline?

20 (3) FORFEITURES. In addition to or in lieu of a reprimand or other action under
21 sub. (2), the department may assess against a licensed company, for the violations
22 enumerated under sub. (2), a forfeiture of not more than \$5,000 for each separate
23 offense. Each day of continued violation constitutes a separate offense.

1 **440.495 Penalties.** Any person who violates this subchapter or any rule

2 promulgated under this subchapter may be fined not more than \$1,000 or imprisoned

3 for not more than 6 months or both.

****NOTE: This penalty provision and the forfeiture provision above are placeholders. Please let me know what penalties you want to include. MPG

4 **SECTION 6.** 632.355 of the statutes is created to read:

5 **632.355 Insurance coverage of vehicles used to provide transportation**

6 **network services.** (1) DEFINITION. In this section, "transportation network

7 services" has the meaning given in s. 440.40 (6). 5

8 (2) COVERAGE AND DUTY TO DEFEND MAY BE EXCLUDED. (a) An insurer that issues

9 a motor vehicle insurance policy is not required to provide coverage under the policy,

10 or to defend against any claims made under the policy, for injury or loss that occurs

11 while a vehicle that is insured under the policy is being used to provide, or is available

12 to provide, transportation network services if all of the following are satisfied:

13 1. The coverage and duty to defend are excluded under the terms of the policy
14 and the exclusion is expressly set forth in the policy.

15 2. The insurer notifies the insured within a reasonable time after proof of loss
16 is submitted that the insurer has no duty to defend or indemnify any person for
17 liability for any loss that is properly excluded under the terms of the policy.

18 (3) DISCLOSURE OF COVERAGE; EXCLUSION. (a) An insurer that issues a motor
19 vehicle insurance policy must disclose on its application for insurance, in a
20 prominent place, whether the policy provides any coverage for injury or loss that
21 occurs while a vehicle that is insured under the policy is being used to provide, or is
22 available to provide, transportation network services.

1 (b) If a motor vehicle insurance policy excludes coverage of an insured vehicle
 2 while the vehicle is being used to provide, or is available to provide, transportation
 3 network services, the insurer or its agent must disclose in writing the exact language
 4 of the exclusion to an applicant for insurance during the application process.

Insert 16-3

SECTION 7. Effective date.

5
 6 (1) This act takes effect on the first day of the 4th month beginning after
 7 publication.

****NOTE: This delayed effective date gives currently practicing transportation network companies three months to obtain a license before the licensing requirement becomes effective. Okay? MPG

(END)

Insert 16-4

D-Note

2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1723/P2ins
MPG:kjf:jf

1

INSERT 2-9

2

SECTION 1. 194.01 (2) of the statutes is amended to read:

3

194.01 (2) "Contract motor carrier" means any person engaged in the

4

transportation by motor vehicle over a regular or irregular route upon the public

5

highways of property for hire, including the transportation of buildings, as defined

6

in s. 348.27 (12m) (a) 1. The transportation of property in a motor vehicle being used

7

subject to subch. IV of ch. 440 is not transportation by a contract motor carrier.

****NOTE: Note that subch IV of ch. 440 only applies to the transpiration of passengers, not property. Also, I did not include an exemption from the definition of "private motor carrier" because that definition already excludes automobiles. Please let me know if you still want to include such an exemption. MPG

Exclusion

History: 1971 c. 164 s. 88; 1977 c. 29 ss. 1303, 1304, 1654 (9) (c), (f), (10) (a); 1979 c. 34, 110, 221, 355; 1981 c. 347; 1983 a. 189, 243; 1985 a. 29, 187; 1993 a. 16, 112, 490; 1997 a. 254; 2001 a. 90, 107; 2005 a. 250; 2013 a. 364.

END INSERT 2-9

INSERT 3-1

8

(2) "Participating driver" means an individual who provides transportation

9

network services through a licensed company using a motor vehicle that the

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individual owns, leases, or is otherwise authorized to use and that is not a taxicab,

11

limousine, or similar for-hire vehicle.

12

(3) "Transportation network company" means an entity that uses a digital

13

network or software application to connect passengers and participating drivers for

14

the purpose of providing transportation network services to those passengers.

15

"Transportation network company" does not include a taxicab, limousine, or similar

16

for-hire vehicle service.

17

(4) "Transportation network insurance" means insurance that satisfies the

18

requirements under s. 440.48 (2).

1 (5) "Transportation network services" means transportation of a passenger
 2 between points chosen by the passenger and prearranged with a participating driver
 3 by means of a digital network or software application. Transportation network
 4 services begin when a participating driver accepts a request for transportation
 5 received through a licensed company's digital network or software application,
 6 continue while the participating driver transports the passenger in the participating
 7 driver's motor vehicle, and end when the passenger exits the participating driver's
 8 vehicle. "Transportation network services" do not include transportation in a
 9 taxicab, limousine, or similar for-hire vehicle.

END INSERT 3-1

INSERT 6-13

***NOTE: I altered the language slightly to allow procedures for and complaints by persons other than passengers as well. Okay?

END INSERT 6-13

INSERT 7-11

10

(b) Conduct, or have a ^{3rd} third party conduct, a local and national criminal
 11 background check for the individual that includes all of the following:

12

1. A multi-state and multi-jurisdictional criminal records locator or other
 13 similar commercial nationwide database with validation.

14

2. A national sex offender registry database.

15

(c) Obtain and review a driving history research report for the individual.

END INSERT 7-11

INSERT 8-7

add a space?

1 6. an individual who does not possess proof of automobile liability insurance for
2 each motor vehicle the individual uses to provide transportation network services.

END INSERT 8-7

Would use

INSERT 8-8

3 (b) A participating driver who is convicted of any moving violation or of any
4 felony or misdemeanor anywhere shall immediately notify the licensed company of
5 the conviction.

END INSERT 8-8

INSERT 11-8

(2) (B)
6

(b) The requirements under chs. 340 to 349 applicable specifically to
7 commercial vehicles or for-hire vehicles do not apply to motor vehicles used by
8 participating drivers to provide transportation network services through a licensed
9 company.

(3) (B)
10

(c) The requirements under ss. 342.06 (1) (h) and (3), 342.10 (3) (a), and 342.33
11 do not apply to motor vehicles used by participating drivers to provide transportation
12 network services through a licensed company.

END INSERT 11-8

INSERT 16-4

13 **SECTION 2. Effective dates.** This act takes effect on the day after publication,
14 except as follows:

15

treatment
(1) The creation of section 440.41 of the statutes takes effect on the first day
16 of the 4th month beginning after publication.

END INSERT 16-4

INSERT 16-3

1 **SECTION 1. Initial applicability.**

2 (1) INSURANCE COVERAGE.

3 (a) The treatment of sections 440.48 (3) (a) 1. and 632.355 (2) (a) 1. of the
4 statutes first applies to motor vehicle liability insurance policies that are newly
5 issued or renewed on the effective date of this paragraph.

6 (b) The treatment of section 632.355 (2) (a) 2. of the statutes first applies to
7 claims that are made under motor vehicle liability insurance policies that are newly
8 issued or renewed on the effective date of this paragraph.

9 (c) The treatment of section 632.355 (3) of the statutes first applies to
10 applications for motor vehicle liability insurance that are made on the effective date
11 of this paragraph.

(END OF INSERT 16-3)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1723/P2dn

PJK...
5f

Date

(a)

x Since a participating driver must at all times while logged on have transportation network insurance, I added that language to proposed s. 440.48 (2) (intro.). I did not add that language to proposed s. 440.48 (3) 1. Okay?

Proposed s. 632.355 states that the participating driver's personal insurance is not required to provide coverage while the driver is providing transportation network services. Do you also want to add that the personal insurance is not required to provide coverage while the driver is logged on but before providing transportation network services? The reason this may be an issue is that proposed s. 632.355 (3) requires an insurance application to disclose what if any coverage is provided. The tricky part is that a driver's personal insurance may provide coverage for the driver's personal use of the vehicle but the driver may be logged on while using the vehicle for personal use.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1723/P2dn
PJK:kjf:rs

March 19, 2015

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Gallagher, Michael

From: Bacher, Luke
Sent: Tuesday, March 24, 2015 10:13 AM
To: Gallagher, Michael
Subject: LRB 1723
Attachments: 201503241007.pdf

Importance: High

Mike –

Attached are some changes we need to the P2 draft.

We are on a very short timeline and need it ASAP.

-Luke

Luke Bacher
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WI 15-1723 INSURANCE AMENDMENT

Definitions 440.40

- **Strike the definition of “Participating driver” and replace with the following:**
 - (2) "Participating driver" or "driver" means an individual who:
 - (a) Receives connections to potential passengers and related services from a TNC in exchange for payment of a fee to the TNC; and
 - (b) Uses a personal vehicle to provide transportation network company services to riders upon connection through a digital network controlled by a TNC in return for compensation or payment of a fee.

- **Strike the definition of “Transportation network company” and replace with the following:**
 - (3) “Transportation network company” or “TNC” means a business entity operating in this state that uses a digital network to connect riders to transportation network company services provided by transportation network company drivers. A TNC does not provide taxicab, limousine, or other similar for-hire vehicle service. A TNC shall not be deemed to control, direct or manage the personal vehicles or participating drivers that connect to its digital network, except where agreed to by written contract.

- ✗ • **Strike subsection (4) the definition of “TNC network insurance” in total.**

- ✗ • **Add the definition of “Personal vehicle”:**
 - (4) "Personal vehicle" means a vehicle that is used by a participating driver in connection with providing transportation network company services and is:
 - (a) Owned, leased or otherwise authorized for use by the Transportation Network Company Driver; and
 - (b) Not a taxicab, limousine, shuttle or other for-hire vehicle.

- **Strike the definition of “Transportation network company services” and replace with the following:**
 - a. (5) “Transportation network company services” or “TNC services” 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 TNC, continuing while the driver transports a requesting rider, and ending when the last requesting rider departs from the personal vehicle. TNC services does not include transportation provided using a taxi, limousine, shuttle, or other for-hire vehicle.

- ✗ • **Add the definition of “Digital network”:**
 - (6) “Digital network” means any online-enabled application, software, website or system offered or utilized by a TNC that enables the prearrangement of rides with participating driver s.

✗ • **Add the definition of "TNC rider":**

- (7) "Transportation Network Company Rider" or "rider" means an individual or persons who use a TNC's digital network to connect with a driver who provides transportation network company services to the rider in the driver's personal vehicle between points chosen by the rider.

Insurance Requirements.

Strike 440.48 in total and replace with the following:

(1) **INSURANCE REQUIREMENTS.** On or before July 1, 2015 and thereafter, a participating driver or TNC on the driver's behalf shall maintain primary automobile insurance that:

(a) Recognizes that the driver is a Transportation Network Company Driver or otherwise uses a vehicle to transport passengers for compensation and covers the driver:

1. while the driver is logged on to the Transportation Network Company's digital network; or
2. while the driver is engaged in providing TNC services.

(b) The following automobile insurance requirements shall apply while a participating driver is logged on to the TNC 's digital network and is available to receive transportation requests but is not engaged in a TNC services.

1. 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.
2. The coverage requirements of this subsection (b) may be satisfied by any of the following:
 - i. Automobile insurance maintained by the driver; or
 - ii. Automobile insurance maintained by the TNC; or
 - iii. Any combination of subparagraphs 1. and 2.

(c) The following automobile insurance requirements shall apply while a participating driver is engaged in a TNC services:

1. Primary automobile liability insurance that provides at least \$1,000,000 for death, bodily injury and property damage;
2. The coverage requirements of this subsection (c) may be satisfied by any of the following:
 - i. Automobile insurance maintained by the driver; or
 - ii. Automobile insurance maintained by the TNC; or
 - iv. Any combination of subparagraphs 1. and 2.

- (d) If insurance maintained by driver in subsections (b) or (c) has lapsed or does not provide the required coverage, insurance maintained by a TNC shall provide the coverage required by subdivision (1) beginning with the first dollar of a claim and have the duty to defend such claim.
- (e) Coverage under an automobile insurance policy maintained by the TNC 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.
- (f) Insurance required by this subdivision (1) may be placed with an insurer authorized to do business in this state or with a surplus lines insurer as defined in Wis. Stat. § 618.40 (10).
- (g) Insurance satisfying the requirements of this subdivision (1) shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under Chapter 344 of the Wisconsin Vehicle Code, Wis. Stat. § 344.01 et seq.
- (h) A participating driver shall carry proof of coverage satisfying subsections (b) and (c) 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 driver shall provide this insurance coverage information to the directly interested parties, automobile insurers and investigating police officers, upon request pursuant to Wis. Stat. § 344.62. Upon such request, a driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers, whether he or she was logged on to the TNC's digital network or on a TNC services at the time of an accident.

(2) DISCLOSURES REQUIRED REGARDING INSURANCE COVERAGE. The TNC shall disclose in writing to participating drivers the following before they are allowed to accept a request for a TNC services on the TNC's digital network:

- (a) The insurance coverage, including the types of coverage and the limits for each coverage, that the TNC provides while the participating driver uses a personal vehicle in connection with a TNC's digital network; and
- (b) That the participating driver's own automobile insurance policy might not provide any coverage while the driver is logged on to the TNC's digital network and is available to receive transportation requests or is engaged in TNC services depending on its terms.

(3) AUTOMOBILE INSURANCE PROVISIONS. (a) Insurers that write automobile insurance in Wisconsin may exclude any and all coverage afforded under the owner's insurance policy for any loss or injury that occurs while a participating driver is logged on to a TNC's digital network or while a driver provides a TNC services. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy including, but not limited to:

1. Liability coverage for bodily injury and property damage;
2. Uninsured and underinsured motorist coverage;

3. Medical payments coverage;
 4. Comprehensive physical damage coverage; and
 5. Collision physical damage coverage.
- (b) Such exclusions shall apply notwithstanding any requirement under Chapter 344 of the Wisconsin Vehicle Code, Wis. Stat. § 344.01 et seq. Nothing in this subdivision (3) implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the TNC's digital network, while the driver is engaged in a TNC services 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 participating driver's vehicle, if it so chooses to do so by contract or endorsement.

- (c) Automobile insurers that exclude coverage as permitted in subdivision (3) 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.

An automobile insurer that defends or indemnifies a claim against a driver that is excluded under the terms of its policy as permitted in subdivision (3), shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of subdivision (1) at the time of loss.

- (d) In a claims coverage investigation, Transportation network companies and any insurer potentially providing coverage under subdivision (1) shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the participating driver if applicable, including the precise times that a participating driver logged on and off of the TNC'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 subdivision (1).

Gallagher, Michael

From: Bacher, Luke
Sent: Tuesday, March 24, 2015 5:18 PM
To: Gallagher, Michael
Subject: RE: LRB 1723

Mike –

Rep. August has two small changes to the P2 draft that should be easily incorporated.

- 1) Page 9 – (6) Accessibility Grants. Can you strike all of that language? It would be page 9, lines 22-25 and page 10 lines 1-4.
- 2) Page 10 – Line 25 regarding location preemption – We want to be sure this covers municipalities that have already passed/enacted an ordinance/resolution (like Madison or Milwaukee). Do we need to add the word “enforce?” It would then read: “No city, village, town, or county may enact or enforce an ordinance or adopt or enforce a resolution that regulates a licensed company...”

Let me know if you have any questions.

Also, is there any timeline you can give me for a /1? We were hoping to have the /P3 early tomorrow and then if everything is good to get a /1 ASAP. Do you think that is possible? We are planning on announcing/circulating the /1 at 10:00am on Thursday, but can push it back to say 2:00pm if needed, but we’ll need to know that sooner rather than later.

-Luke

Luke Bacher
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Representative Tyler August
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From: Gallagher, Michael
Sent: Tuesday, March 24, 2015 11:36 AM
To: Bacher, Luke
Subject: RE: LRB 1723

Luke: In light of the extensive changes in these redraft instructions, I would recommend keeping this as a /P draft. That will allow us to get the redraft out to you more quickly, and also will allow us to insert ****Notes where we have questions about the new instructions. Okay?

Michael P. Gallagher
Legislative Attorney
Wisconsin Legislative Reference Bureau
(608) 267-7511

From: Bacher, Luke
Sent: Tuesday, March 24, 2015 10:13 AM

To: Gallagher, Michael
Subject: LRB 1723
Importance: High

Mike –

Attached are some changes we need to the P2 draft.

We are on a very short timeline and need it ASAP.

-Luke

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Gallagher, Michael

From: Bacher, Luke
Sent: Wednesday, March 25, 2015 1:51 PM
To: Gallagher, Michael
Subject: RE: LRB 1723

Importance: High

Mike –

We met with DSPS and they had two additional suggestions that we are going to adopt. They are below. This should be the LAST of the additions/changes I send you (sorry).

- 1) DSPS would like to include language providing for authority for DSPS to proceed with emergency rules on licensing given the short 3 month timeline. DSPS thought that you have standard language you use for that provision.
- 2) Page 14, Following Line 22 – Insert: (e) After a request by the department, failed to provide information or to cooperate in a timely manner with the department's investigation of a complaint against the credential holder. Rationale – Provides a duty to disclose information to the department and to respond to complaints. The obligation to disclose or to cooperate is triggered when there is an investigation of a complaint.

I hope this makes sense.

-Luke

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Subject: LRB 1723

Importance: High

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