

State of South Dakota

NINETY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2016

990X0137

SENATE TRANSPORTATION

ENGROSSED NO. **SB 156** - 02/22/2016

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Vehle, Frerichs, Holien, and Tieszen and Representatives Partridge, Harrison, Johns, Romkema, and Zikmund

1 FOR AN ACT ENTITLED, An Act to establish certain requirements and protections regarding
2 transportation network companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Digital network," any online-enabled application, website, or system offered or
7 utilized by a transportation network company that enables a prearranged ride with
8 a transportation network company driver;

9 (2) "Personal vehicle," a vehicle that is used by a transportation network company driver
10 to provide a prearranged ride and is owned, leased, or otherwise authorized for use
11 by the transportation network company driver. The term does not include any taxicab,
12 limousine, or for-hire vehicle;

13 (3) "Prearranged ride," the provision of transportation by a driver to a rider, beginning
14 when a driver accepts a rider's request for a ride through a digital network controlled



1 by a transportation network company, continuing while the driver transports a
2 requesting rider, and ending when the last requesting rider departs from the personal
3 vehicle. The term does not include transportation provided through a shared expense
4 carpool or vanpool arrangement or by using a taxicab, limousine, or other for-hire
5 vehicle;

6 (4) "Transportation network company," a corporation, partnership, sole proprietorship,
7 or other entity that uses a digital network to connect transportation network company
8 riders to transportation network company drivers who provide prearranged rides and
9 that does not control, direct, or manage the personal vehicles or transportation
10 network company drivers that connect to its digital network, except where agreed to
11 by written contract;

12 (5) "Transportation network company driver" or "driver," a person who receives
13 connections to potential riders and related services from a transportation network
14 company in exchange for payment of a fee to the transportation network company
15 and who uses a personal vehicle to provide a prearranged ride to riders upon
16 connection through a digital network controlled by a transportation network company
17 in return for compensation or payment of a fee;

18 (6) "Transportation network company rider" or "rider," a person who uses a
19 transportation network company's digital network to connect with a transportation
20 network driver who provides a prearranged ride to the person in the driver's personal
21 vehicle between points chosen by the person.

22 Section 2. That the code be amended by adding a NEW SECTION to read:

23 Before a transportation network company allows a person to act as a transportation network
24 company driver on the transportation network company's digital network, the transportation

1 network company shall require the person to submit to the transportation network company an
2 application that includes:

- 3 (1) The person's name, address, and age;
- 4 (2) A copy of the person's driver license;
- 5 (3) The registration for the personal vehicle that the person will use to provide
6 prearranged rides;
- 7 (4) Proof of financial responsibility for the personal vehicle of a type and in the amounts
8 required by the transportation network company; and
- 9 (5) Any other information required by the transportation network company.

10 Section 3. That the code be amended by adding a NEW SECTION to read:

11 Before a transportation network company allows a person to act as a driver on the
12 transportation network company digital network, the transportation network company shall
13 conduct, or contract with a third party to conduct:

- 14 (1) A local and national criminal background check;
- 15 (2) A search of the national sex offender registry; and
- 16 (3) Obtain a copy of the person's driving record maintained under § 32-12-61.

17 Section 4. That the code be amended by adding a NEW SECTION to read:

18 A transportation network company may not knowingly allow to act as a transportation
19 network company driver on the transportation network company's digital network a person:

- 20 (1) Who has received judgments for more than three moving traffic violations in the
21 preceding three years, or at least one violation involving reckless driving or driving
22 on a suspended or revoked license in the preceding three years;
- 23 (2) Who has been convicted in the preceding seven years of a felony;
- 24 (3) Who has been convicted in the preceding seven years of a misdemeanor involving:

- 1 (a) Resisting a law enforcement officer;
- 2 (b) Dishonesty;
- 3 (c) Injury to a person;
- 4 (d) Operating a motor vehicle while intoxicated;
- 5 (e) Operating a motor vehicle in a manner that endangers a person;
- 6 (f) Operating a motor vehicle with a suspended or revoked driver license; or
- 7 (e) Damage to the property of another person;
- 8 (4) Who is a match in the state or national sex offender registry; or
- 9 (5) Who is unable to provide information required under section 3 of this Act.

10 Section 5. That the code be amended by adding a NEW SECTION to read:

11 A transportation network company shall establish and enforce a zero tolerance policy for
12 drug and alcohol use by transportation network company drivers during any period when a
13 transportation network company driver is engaged in, or is logged into the transportation
14 network company's digital network but is not engaged in, a prearranged ride. The policy shall
15 include provisions for:

- 16 (1) Investigations of alleged policy violations; and
- 17 (2) Suspensions of transportation network company drivers under investigation.

18 Section 6. That the code be amended by adding a NEW SECTION to read:

19 A transportation network company shall require that a personal vehicle used to provide any
20 prearranged ride shall comply with all applicable laws and rules concerning vehicle equipment.

21 Section 7. That the code be amended by adding a NEW SECTION to read:

22 A transportation network company driver or transportation network company on the driver's
23 behalf shall maintain primary motor vehicle insurance that recognizes that the driver is a
24 transportation network company driver or otherwise uses a vehicle to transport riders for

1 compensation and covers the driver while:

2 (1) The driver is logged on to the transportation network company's digital network; or

3 (2) The driver is engaged in a prearranged ride.

4 Section 8. That the code be amended by adding a NEW SECTION to read:

5 The following motor vehicle insurance requirements apply while a participating
6 transportation network company driver is logged on to the transportation network company's
7 digital network and is available to receive transportation requests but is not engaged in a
8 prearranged ride:

9 (1) Primary motor vehicle liability insurance in the amount of at least fifty thousand
10 dollars for death and bodily injury per person, one hundred thousand dollars for death
11 and bodily injury per incident, and twenty-five thousand dollars for property damage;

12 (2) Uninsured and underinsured coverage as required by §§ 58-11-9 and 58-11-9.4; and

13 (3) The coverage requirements of subdivision (1) may be satisfied by motor vehicle
14 insurance maintained by the transportation network company driver, motor vehicle
15 insurance maintained by the transportation network company, or any combination of
16 such insurance.

17 Section 9. That the code be amended by adding a NEW SECTION to read:

18 The following motor vehicle insurance requirements apply while a transportation network
19 company driver is engaged in a prearranged ride:

20 (1) Primary motor vehicle liability insurance that provides at least one million dollars for
21 death, bodily injury, and property damage;

22 (2) Uninsured and underinsured coverage as required by §§ 58-11-9 and 58-11-9.4; and

23 (3) The coverage requirements of subdivision (1) may be satisfied by motor vehicle
24 insurance maintained by the transportation network company driver, motor vehicle

1 insurance maintained by the transportation network company, or any combination of
2 such insurance.

3 Section 10. That the code be amended by adding a NEW SECTION to read:

4 If the insurance maintained by the driver pursuant to section 8 or 9 of this Act has lapsed or
5 does not provide the required coverage, the insurance maintained by the transportation network
6 company shall provide the coverage required by those sections beginning with the first dollar
7 of a claim and has the duty to defend any claim.

8 Section 11. That the code be amended by adding a NEW SECTION to read:

9 Coverage under a motor vehicle insurance policy maintained by the transportation network
10 company may not be dependent on a personal motor vehicle insurer first denying a claim nor
11 shall a personal motor vehicle insurance policy be required to first deny a claim.

12 Section 12. That the code be amended by adding a NEW SECTION to read:

13 Any insurance required by sections 8 and 9 of this Act may be placed with an insurer
14 licensed under title 58, or with a surplus lines insurer eligible under title 58.

15 Section 13. That the code be amended by adding a NEW SECTION to read:

16 Any insurance satisfying the requirements of section 8 or 9 of this Act shall be deemed to
17 satisfy the financial responsibility requirement for a motor vehicle under § 32-35-113.

18 Section 14. That the code be amended by adding a NEW SECTION to read:

19 A transportation network company driver shall carry proof of coverage satisfying sections
20 8 and 9 of this Act at all times during the driver's use of a vehicle in connection with a
21 transportation network company's digital network. If there is an accident, a transportation
22 network company driver shall provide proof of insurance coverage information to the directly
23 interested parties, motor vehicle insurers, and investigating law enforcement officers, upon
24 request. Upon such request, a transportation network company driver shall also disclose to

1 directly interested parties, motor vehicle insurers, and investigating law enforcement officers,
2 whether the driver was logged on to the transportation network company's digital network or
3 on a prearranged ride at the time of an accident.

4 Section 15. That the code be amended by adding a NEW SECTION to read:

5 The transportation network company shall disclose in writing to each transportation network
6 company driver the following before the driver is allowed to accept a request for a prearranged
7 ride on the transportation network company's digital network:

8 (1) The insurance coverage, including the types of coverage and the limits for each
9 coverage, that the transportation network company provides while the transportation
10 network company driver uses a personal vehicle in connection with a transportation
11 network company's digital network; and

12 (2) That the transportation network company driver's own motor vehicle insurance policy
13 might not provide any coverage while the driver is logged on to the transportation
14 network company's digital network and is available to receive transportation requests
15 or is engaged in a prearranged ride, depending on its terms.

16 Section 16. That the code be amended by adding a NEW SECTION to read:

17 Any insurer that writes motor vehicle insurance in this state may exclude any coverage
18 afforded under the policy issued to an owner or operator of a personal vehicle for any loss or
19 injury that occurs while a driver is logged on to a transportation network company's digital
20 network or while a driver provides a prearranged ride. This right to exclude all coverage may
21 apply to any coverage included in a motor vehicle insurance policy including:

22 (1) Liability coverage for bodily injury and property damage;

23 (2) Personal injury protection coverage;

24 (3) Uninsured and underinsured motorist coverage;

- 1 (4) Medical payments coverage;
- 2 (5) Comprehensive physical damage coverage; and
- 3 (6) Collision physical damage coverage.

4 Section 17. That the code be amended by adding a NEW SECTION to read:

5 Any exclusions as allowed by section 16 of this Act applies notwithstanding any
6 requirement under chapter 32-35. Nothing in this Act implies or requires that a personal motor
7 vehicle insurance policy provide coverage while the driver is logged on to the transportation
8 network company's digital network, while the driver is engaged in a prearranged ride, or while
9 the driver otherwise uses a vehicle to transport riders for compensation.

10 Section 18. That the code be amended by adding a NEW SECTION to read:

11 Nothing in this Act requires an insurer to use any particular policy language or reference to
12 section 16 of this Act in order to exclude any and all coverage for any loss or injury that occurs
13 while a driver is logged on to a transportation network company's digital network or while a
14 driver provides a prearranged ride.

15 Section 19. That the code be amended by adding a NEW SECTION to read:

16 Nothing in this Act precludes an insurer from providing primary or excess coverage for the
17 transportation network company driver's vehicle, if it so chose to do so by contract or
18 endorsement.

19 Section 20. That the code be amended by adding a NEW SECTION to read:

20 Any motor vehicle insurer that excludes the coverage described in section 8 or 9 of this Act
21 has no duty to defend or indemnify any claim expressly excluded by the policy. Nothing in this
22 Act invalidates or limits an exclusion contained in a policy including any policy in use or
23 approved for use in this state prior to the enactment of this Act that excludes coverage for
24 vehicles used to carry persons or property for a charge or available for hire by the public.

1 Section 21. That the code be amended by adding a NEW SECTION to read:

2 A motor vehicle insurer that defends or indemnifies a claim against a driver that is excluded
3 under the terms of the insurer's policy, shall have a right of contribution against other insurers
4 that provide motor vehicle insurance to the same driver in satisfaction of the coverage
5 requirements of sections 8 or 9 of this Act at the time of loss.

6 Section 22. That the code be amended by adding a NEW SECTION to read:

7 In a claims coverage investigation, transportation network companies shall immediately
8 provide upon request by directly involved parties or any insurer of the transportation network
9 company driver if applicable, the precise times that a transportation network company driver
10 logged on and off of the transportation network company's digital network in the twelve-hour
11 period immediately preceding and in the twelve-hour period immediately following the accident.
12 Any insurer providing coverage as set forth in sections 8 and 9 of this Act shall disclose upon
13 request by any other such insurer involved in the particular claim, the applicable coverages,
14 exclusions, and limits provided under any motor vehicle insurance maintained in order to satisfy
15 the requirements of sections 8 and 9 of this Act.

16 Section 23. That § 32-9-3 be amended to read:

17 32-9-3. For the purposes of this chapter, the following do not come within the definition of
18 "motor carriers" or "commercial vehicles" if used in intrastate operations:

- 19 (1) A motor vehicle registered in South Dakota used to carry private business property
20 of five hundred pounds or less;
- 21 (2) A motor vehicle chassis registered in South Dakota on which is mounted a
22 cornsheller, grain cleaner, feed grinder, grain and alfalfa feed mixing machine,
23 haystack mover, sawmill, water well drilling equipment, power shovel, ditchdigger,
24 mobile crane which exceeds the maximum size or weight limits prescribed by chapter

1 32-22, drag line, posthole auger, and which is not used for demonstration or display
2 purposes outside the limits of a municipality, or a truck tractor and trailer carrying
3 permanently mounted hay grinding equipment;

4 (3) Any motor vehicle registered in South Dakota used for the transportation of liquid
5 or solid livestock waste including trailers and equipment used to load liquid or solid
6 livestock waste and any vehicle registered in South Dakota used for the application,
7 distribution, spraying, or transportation from retail business to user of dry, liquid, or
8 anhydrous ammonia fertilizers or agricultural chemicals;

9 (4) A motor vehicle registered in South Dakota of less than thirty thousand pounds gross
10 weight owned by a merchant licensed under chapter 10-45 or the merchant's
11 commissioned paid employee and used to transport the merchant's previously sold
12 merchandise to a purchaser outside the limits of a municipality and to return
13 exchanged property or to transport fuels to a purchaser within a municipality or an
14 unincorporated town which is without such service;

15 (5) A motor vehicle registered in South Dakota, owned by a farmer of this state and used
16 by or for the farmer to transport property for the farmer's farming operation, to
17 transport farm property from farm to farm or from a community or market to the farm
18 or from the farm to a community or market, to transport livestock in a vehicle or
19 combination of vehicles registered at twenty-six thousand pounds or less without
20 monetary compensation, or to transport farm property when the vehicles are used as
21 reimbursement in the ordinary exchange of farm work;

22 (6) A motor vehicle registered in South Dakota operated by or for its owner and
23 exclusively used to transport products originating in or produced from logging or
24 mining operations or lumber milling waste products if such products are owned in

1 fee by the motor vehicle owner;

2 (7) Any motor vehicle, trailer, semitrailer, motor propelled, or trailed vehicle chassis
3 registered in South Dakota, which is used exclusively on the job site for the
4 construction of township roads, stock water dugouts, dams, farm and ranch irrigation
5 systems, or other soil and water conservation projects on farms and ranches, or for
6 the construction or maintenance of highways in the State of South Dakota. Prior to
7 moving any such vehicle or equipment between job sites or from job site to a central
8 location, the owner shall register the vehicle or equipment pursuant to § 32-9-58;

9 (8) A motor vehicle used principally for providing prearranged transportation of persons
10 to or from their place of employment and is operated by a person who does not drive
11 the vehicle for the person's principal occupation, but is driving it only to or from the
12 person's principal place of employment or for personal use as permitted by the owner
13 of the vehicle;

14 (9) A motor vehicle that is not for hire and is operated solely for educational purposes
15 by a student or an instructor as part of a heavy motor vehicle or heavy equipment
16 operator's course offered by a nonprofit postsecondary institution located in the state;

17 (10) A motor vehicle used for personal purposes and not operated for private business use;

18 (11) A motor vehicle used for recreational purposes and not operated for private business
19 use;

20 (12) A motor vehicle, trailer, semitrailer, motor propelled, or trailed vehicle chassis,
21 registered in South Dakota and used to move equipment involved in soil and water
22 conservation projects or township road work when operated between job sites or
23 from a job site to a central location or point of repair;

24 (13) Any motor vehicle used by an implement dealer to transport farm machinery to and

1 from a county fair or the state fair;

2 (14) A motor vehicle owned by a licensed motor vehicle dealer and used to transport
3 inventory replacement vehicles to the dealer's principal place of business. For the
4 purpose of this subdivision, motor vehicle does not include any motor vehicle which
5 carries inventory replacement vehicles entirely upon its own structure; and

6 (15) A motor vehicle used to provide any prearranged ride as defined by section 1 of this
7 Act.

8 Section 24. That the code be amended by adding a NEW SECTION to read:

9 Prior to operating in this state, a transportation network company shall register with the
10 Department of Public Safety, providing the following information:

- 11 (1) All contact information for the company, including the agent for service of process
12 within the state;
- 13 (2) A sales tax license issued by the state, if applicable;
- 14 (3) The company's certificate of authority, as registered with the secretary of state; and
- 15 (4) Proof of insurance, pursuant to this Act.

16 Upon registration, the Department of Public Safety shall issue to the company a license to
17 operate within the state. The department may set a license fee of no more than fifty dollars per
18 license.

19 Section 25. That the code be amended by adding a NEW SECTION to read:

20 A transportation network company operating within the state shall:

- 21 (1) Provide each rider with any applicable rates charged for a prearranged ride and the
22 option to receive an estimated fare before the rider enters the driver's motor vehicle;
- 23 (2) Use a digital network or website to display a picture of the driver and the license
24 plate number of the motor vehicle utilized for providing the prearranged ride before

1 the rider enters the driver's motor vehicle;

2 (3) Transmit an electronic receipt to the rider within a reasonable time after the
3 completion of a prearranged ride that lists the origin and destination of the trip, the
4 total time and distance of the trip, and an itemization of the total fare paid; and

5 (4) Maintain an agent for service of process in the state.

6 Section 26. That the code be amended by adding a NEW SECTION to read:

7 A transportation network company shall maintain individual trip records for each driver for
8 at least one year from the date each trip was provided by the driver and driver records for no less
9 than two years from the date on which a driver's activation on the digital network has ended.

10 Section 27. That the code be amended by adding a NEW SECTION to read:

11 The transportation network company shall adopt a policy prohibiting solicitation or
12 acceptance of cash payments from the riders and shall notify each driver of the policy. A driver
13 may not solicit or accept cash payments from riders, nor solicit or accept street hails. Any
14 payment for services shall be made only electronically using the digital network or online
15 application service. A driver shall apply for a state sales tax license and remit taxes accordingly,
16 if applicable.

17 Section 28. That the code be amended by adding a NEW SECTION to read:

18 Except as otherwise provided in this Act, no transportation network company may disclose
19 a rider's personally identifiable information to a third party unless:

20 (1) The rider consents;

21 (2) The disclosure is required by legal obligation; or

22 (3) The disclosure is required to protect or defend the terms of use of the service or to
23 investigate a violation of those terms.

24 A transportation network company may share a rider's name and telephone number with the

1 driver providing the prearranged ride to the rider in order to facilitate correct identification of
2 the rider by the driver, or to facilitate communication between the rider and the driver.

3 Section 29. That the code be amended by adding a NEW SECTION to read:

4 A transportation network company shall maintain records of each driver's application, motor
5 vehicle records, insurance coverage, and proof of all background checks conducted, for a period
6 of two years from the date on which a driver's activation on the transportation network
7 company's digital network has ended. For the sole purpose of verifying that a transportation
8 network company is in compliance with this chapter, the company shall allow an inspection of
9 these records by the Department of Public Safety at the department's request, or a by city or
10 municipality in which the transportation network company drivers operate, and shall reasonably
11 facilitate the department, city, or municipality in that inspection. A sample shall be chosen
12 randomly by the department, city, or municipality in a method agreeable to both parties. The
13 audit may take place electronically or at a mutually agreed upon location. The transportation
14 network company may exclude information that may tend to identify a specific rider. The
15 department shall inspect the records annually. If a city or municipality has inspected certain
16 records, the department may accept the approval of those records without further inspection. The
17 department may promulgate rules, pursuant to chapter 1-26, to set audit policies and set an audit
18 fee of no more than five hundred dollars annually.

19 In response to a specific complaint against the transportation network company or any
20 specific driver, the department may inspect records necessary to investigate the complaint. The
21 inspection may take place at a mutually agreed upon location. The transportation network
22 company may exclude information that may tend to identify a specific rider, unless that
23 information is necessary to the investigation of the complaint. All records inspected by the
24 department, city, or municipality under this section are considered confidential and may not be

1 disclosed to a third party without prior written consent of the transportation network company.

2 Section 30. That the code be amended by adding a NEW SECTION to read:

3 If a transportation network company fails to comply with any section of this Act, the
4 Department of Public Safety shall revoke the company's license to operate in the state for a
5 period of one year per offense.

6 Section 31. That the code be amended by adding a NEW SECTION to read:

7 Nothing in this Act may be construed to limit further regulation of a transportation network
8 company enacted by a city or county.