

<b>LFC Requester:</b>	<b>Jon Clark</b>
-----------------------	------------------

**AGENCY BILL ANALYSIS  
2015 REGULAR SESSION**

**WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:**

**[LFC@NMLEGIS.GOV](mailto:LFC@NMLEGIS.GOV)**

*and*

**[DFA@STATE.NM.US](mailto:DFA@STATE.NM.US)**

*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

Check all that apply: **Date** March 2, 2015  
**Original**     **Amendment**     **Bill No:** HB 272  
**Correction**     **Substitute**   

**Sponsor:** Reps. Youngblood & Griego    **Agency Code:** Attorney General's Office - 305  
**Short Title:** Transportation Network    **Person Writing:** Joseph Dworak  
Company Services Act    **Phone:** 827-6986    **Email:** jdworak@nmag.gov

**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY15</b>	<b>FY16</b>	<b>FY17</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
Duplicates/Relates to Appropriation in the General Appropriation Act:

**SECTION III: NARRATIVE**

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

**BILL SUMMARY**

Synopsis: House Bill 272 creates the Transportation Network Company Services Act (the “Act”) under the Public Regulation Commission (“Commission” or “PRC”). The Act defines and regulates “transportation network companies” (“TNCs”), which are entities that use digital application services to connect passengers through an online marketplace in which a driver (a car owner registered with the company) may offer their own labor and car to people who request a ride. The marketplace is generally accessed through the TNC application downloaded on the rider’s smart-phone and utilizes the phone’s GPS.

This analysis is for a substitute bill introduced by the House Transportation and Public Works Committee. The Attorney General’s Office provided full analysis for the original HB 272, dated 30 January. The substitute HB 272 differs from the original bill in the following ways:

- Clarifying language throughout the bill to assist with interpretation, cross references, and application of the law.
- Amends Section 10 of HB 272, insurance requirements for TNCs and TNC drivers.
  - o Specifically, the substitute bill requires TNCs or their drivers, after June 30, 2016, to maintain a primary liability automobile insurance policy that:
    1. recognizes the driver as a TNC driver and provides coverage while the driver is logged into the TNC network;
    2. meets minimum coverage requirements of Section 66-5-208 (under the Mandatory Financial Responsibility Act); and
    3. is either i) a full-time coverage equivalent to coverage required by Section 65-2A-18 (financial responsibility section under the Motor Carrier Act), ii) an insurance rider or indorsement to the driver’s personal insurance policy, or iii) a corporate liability insurance policy purchased by the TNC.
  - o Adds a minimum of \$1,000,000 for uninsured motorist coverage as a requirement.
  - o Clarifies that the requirements may be satisfied by insurance maintained by either the TNC or the TNC driver.
- Amends Section 11 of HB 272, insurance disclosure requirements, clarifying the scope and limitations of the company insurance coverage. The section also adds provisions allowing automobile liability insurers to exclude coverage for any loss or injury incurred while the vehicle is being used by or otherwise available under the TNC’s network.

Insurers providing coverage are required to facilitate the exchange of information regarding any investigations related to the Act.

- Clarifies language of Section 13 by replacing the term “drugs” with “illegal drugs.”
- Amends Section 14 only by removing “emissions” from the section title.
- Amends Section 16 by clarifying that TNC drivers are prohibited from accepting cash tips or cash payment from passengers – all payments are to be made electronically through the TNC electronic application services.
- Creates new Section 21, “Transportation Division Fund—Created—Assessment and Collection of Fees.”
  - o Non-reverting fund administered by the Public Regulation Commission.
  - o Comprised of fees and fines collected under the Act, and any appropriations, gifts, grants, donations, or earnings on investment in the fund.
  - o No more than 5% of the fees collected may be used for administrative purposes
- Creates new Section 22, “Records Pursuant to Rules of the Public Regulation Commission.”
  - o Requires TNCs to maintain records required under the Act, including records regarding drivers.
  - o Requires TNCs to provide any records regarding investigation of a complaint to the PRC upon request. Proprietary records shall not be disclosed by the PRC.
- Creates new Section 23, “Administrative Penalties.”
  - o Authorizes the PRC to conduct investigations, hold hearings, and issue orders regarding violations of the Act.
  - o Authorizes fines up to \$1,000 per violation.
  - o Permits continuing violations to be charged as separate and distinct offenses for each day the violation occurred.
- Creates new Section 24, “Involuntary Suspension and Revocation.”
  - o Authorizes the PRC to immediately suspend a TNC’s permit for 1) failing to maintain sufficient insurance coverage; or 2) pay fees owed by the TNC or TNC drivers
  - o Provides an opportunity for a TNC that has had its license suspended to request a hearing before the PRC. The TNC carries the burden of proving the suspension is no longer warranted.

## **FISCAL IMPLICATIONS**

## **SIGNIFICANT ISSUES**

The substituted Bill has addressed several of the previous issues raised by the Attorney General’s Office. Listed below are new considerations based only from the new language in the substitute Bill.

- 1) Section 10 (page 8, lines 11-13) appears to contain redundant language. Subsection (H) states that the insurance required under section satisfies requirements for motor vehicles under Chapter 66, Article 5 NMSA 1978. Earlier in the same Section 10, clause (B)(2)(b) already requires that a TNC or the driver maintain an insurance policy that “meets at least the minimum coverage of Section 66-5-208 NMSA 1978.”
- 2) Section 23 provides penalties for violations of the Act or rules adopted by the PRC pursuant to the Act. However, it is not clear from the language of the Bill that the PRC has express rule-making authority. It would be helpful to resolve this issue by simply adding explicit language granting the PRC broad authority to adopt rules pursuant to the Act, and include any parameters or limitations on the PRC’s rule-making authority, if any.
- 3) Section 23 provides that the PRC can issue administrative orders after an investigation and that
- 4) Section 23 permits the PRC to find violations and issue administrative orders specifying “actual or proposed acts or omissions” by a TNC that the PRC requires to be “discontinued, rectified or prevented.” This language states that violations may include proposed acts or omissions by a TNC, which suggests that a TNC can be found to violate the Act even without doing anything. Preemptive action by an administrative body may be justified as an approach to warn or otherwise avert potential violations before they occur. However, serious caution should be used when indicating the difference between an administrative action constituting a “warning” and an administrative decision finding a “violation.” As currently read, the Bill could be interpreted as defining violations simply as “proposed acts.”
- 5) Subsection 23(B) provides that a TNC found to commit a “continuing violation” may be charged separately for each day the violation occurred. This approach may raise problems with interpretation and enforcement. First, a “continuing violation” is not a defined term and it additional description or specific parameters may be helpful to understand whether there is a difference between violations that occurred over a period of time or constitute “continuing.” Conceivably, this provision could be used as a means to charge a TNC for each day any violation occurred. It is unclear whether this provision was intended for specific circumstances. Alternatively, if there is intent to permit increased fines for repeat offenses, other language could be incorporated to permit the PRC to assess different fines for certain egregious violations by the amount of time the violation was known and not rectified.
- 6) Section 23 only contemplates the completion of an investigation and issuance of fines for violations. There is no inclusion of a hearing, either before or after the issuance of the final order, and there is no contemplated opportunity for a TNC to appeal any fine or other disciplinary order issued by the PRC. Furthermore, as currently written the Bill only permits the PRC to take action against TNCs, not TNC drivers. It would be helpful to review the Bill and clarify its language to prevent confusion regarding the PRC’s limited jurisdiction over the TNCs, which hold the license issued by the state.
- 7) Section 23 should be amended to clarify the authority of the PRC in regards to fines and suspension. In reading Section 23 alongside Section 24, it appears that the PRC can only fine TNCs for initial violations, except that a TNC license may be suspended immediately for failing to maintain appropriate insurance. Otherwise, the PRC can only suspend a license if a TNC fails to pay a fee (see Section 24(A)(2)). As currently written, the PRC has no recourse

for unpaid fines assessed under Section 23. It should be clarified as to what additional administrative, disciplinary authority the PRC has and what process it must follow.

- 8) Section 24 should be clarified in several ways.
- a. First, the title, “Involuntary Suspension and Revocation,” is redundant and should be changed. “Suspension” and “revocation” are synonyms, and the term “revocation” is not used once in the text of the section. It would be more appropriate to change the title to “Involuntary Suspension and Reinstatement”, as “reinstatement” is actually discussed in the text.
  - b. It is conceivable that the PRC can suspend a license before conducting an administrative hearing, but that should require the PRC to demonstrate sufficient evidence of a violation.
  - c. Clause (2) contemplates PRC action against a TNC for its failure to pay fees or for its drivers to pay fees. This seems to be the only location in the Bill that contemplates fees levied on TNC drivers, which would very much change the scope of the PRC’s authority. The reference should be removed.
  - d. Subsection 24(B) provides TNCs with an opportunity to request a hearing before the PRC if its licensee has been suspended prior to a hearing. There are no guidelines or requirements regarding this hearing, which would be beneficial. At minimum, the Bill should provide guidance to the PRC for conducting appeals and set forth a time requirement for allowing a hearing. Without such direction, the PRC would have no obligation to hold a hearing within any set amount of time.

#### **PERFORMANCE IMPLICATIONS**

N/A

#### **ADMINISTRATIVE IMPLICATIONS**

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

#### **TECHNICAL ISSUES**

See issues, above.

#### **OTHER SUBSTANTIVE ISSUES**

The effective date of HB 272 is July 1, 2015. Consideration should be made to whether there is sufficient time to allow for drafting, review, notice, and implementation of the new regulations that will be required from the Commission.

#### **ALTERNATIVES**

N/A

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo

#### **AMENDMENTS**

N/A