

- SUBJECT:** Regulating transportation network companies primarily at the state level
- COMMITTEE:** Transportation — favorable, without amendment
- VOTE:** 9 ayes — Morrison, Martinez, Burkett, Goldman, Minjarez, Phillips, Simmons, E. Thompson, Wray
- 2 nays — Y. Davis, Israel
- 2 absent — Pickett, S. Thompson
- WITNESSES:** For — April Mims, Lyft; Dorene Ocamb, Mothers Against Drunk Driving; Josiah Neeley, R Street Institute; Angela Preston, Sterling Talent Solutions; Bryan Mathew, Texas Public Policy Foundation; Trevor Theunissen, Uber Technologies; Tim Ryle, Williamson County Sheriff's Office; Ellen Troxclair; (*Registered, but did not testify*: Kelly Curbow, AT&T; Ray Hunt, Houston Police Officers Union; Caroline Joiner, TechNet; Daniel Gonzalez, Texas Association of Realtors; Miranda Goodsheller, Texas Association of Business; Robert Flores, Texas Association of Mexican American Chambers of Commerce; Dana Harris, Greater Austin Chamber of Commerce; Noel Johnson, Texas Municipal Police Association; Amy Bresnen, Chris Hosek, Kyle Hoskins)
- Against — David Wittie, ADAPT of Texas; Steve Adler and Lee Davila, City of Austin; Snapper Carr, City of El Paso; Jeff Coyle, City of San Antonio; David Piperno, Fasten; Regina Radulski, GetMe; Kathryn Bruning, City of Houston Mayor's Office; Heather Lockhart, Texas Municipal League; Sandy Greyson, City of Dallas; David Butts; (*Registered, but did not testify*: Guadalupe Cuellar, City of El Paso; Roberto Trevino, City of San Antonio; Jesse Ozuna, City of Houston Mayor's Office; Melissa Miles, City of Dallas; William Busby; Matt Hersh; Laura Morrison)
- On — Heiwa Salovitz, ADAPT of Texas; Chase Bearden, Coalition of Texans with Disabilities; Jean Langendorf, Disability Rights Texas; Brian Francis, Texas Department of Licensing and Regulation

**BACKGROUND:** Insurance Code, ch. 1954, established by the 84th Legislature through HB 1733 by Smithee and in effect since January 2016, requires transportation network company (TNC) drivers or owners to maintain primary auto insurance that is active any time the driver is logged into the TNC's network. It also establishes minimum coverages that increase when the driver has accepted a ride. If the driver's insurance has lapsed or is insufficient, a TNC is required to provide coverage beginning with the first dollar of the claim against the driver.

**DIGEST:** HB 100 would preempt local regulations on transportation network companies (TNCs) and establish a statewide regulatory and licensing procedure through the Texas Department of Licensing and Regulation (TDLR).

**Definition and state authority.** The bill would define a TNC as an entity that enables a passenger to prearrange a ride with a driver exclusively through the entity's digital network. The term would not include an entity that provided street-hail taxicabs, carpools, or limousine services that could be arranged through a method other than a digital network.

HB 100 would give the state exclusive authority to regulate TNCs. Localities would be prohibited from imposing a licensing requirement, regulating entry to the market, or imposing a tax on TNCs or their operations. However, an airport operator could establish certain regulations and a reasonable fee for TNCs that provide services at the airport.

**State permit.** A TNC would be required to apply for and receive a permit before operating in the state. Permit holders would have to meet the requirements of the bill and pay an annual fee of \$5,000 to TDLR. Requirements for maintaining the permit would include:

- maintaining insurance as required by Insurance Code, ch. 1954;
- disclosing to passengers an estimated fare if requested;
- accepting payments only through the digital network and

- prohibiting cash transactions;
- providing an itemized electronic receipt at the end of a ride; and
- adopting a policy that prohibited a TNC driver from any amount of intoxication while logged in to the company's digital network.

**Requirements for drivers.** HB 100 would prohibit TNCs from allowing a driver to log into the digital network until the TNC confirmed that the individual:

- was at least 18 years old;
- had a valid driver's license; and
- had proof of registration and insurance on each vehicle to be used for TNC services.

TNCs also would be required to review a potential driver's driving record and perform a background check on each driver that searched the national sex offender registry and criminal records in multiple states and jurisdictions. Anyone found in the national sex offender registry would not be permitted to log in as a driver to the digital network. Drivers would be disqualified if they had a certain number of previous convictions within varying periods of time. Specifically, a TNC could not allow a driver to log in who had been convicted of:

- more than three moving violations in past three years;
- fleeing or attempting to elude a police officer, reckless driving or driving without a valid driver's license in the past three years;
- driving while intoxicated, fraud, property damage, theft, use of a motor vehicle to commit a felony, or an act of terrorism or violence in the past seven years.

Drivers could not provide or solicit rides that had not been negotiated through the TNC's digital network. They would be required to have access to digital identification stored on the TNC digital network that contained photos of the vehicle and the driver, insurance information, and details about the vehicle's make, model, and license plate number.

Drivers would be classified as independent contractors, as long as both the driver and the TNC agreed to the classification in writing and the TNC did not impose certain limitations on drivers' hours, driving territory, or engaging in other occupations.

**Vehicle requirements.** The bill would require that vehicles used to provide TNC services have four doors, have passed a state inspection, and have a maximum capacity of eight occupants, including the driver. Additionally, a vehicle also used as a taxicab or limousine would not be allowed to provide TNC services.

**Accessibility and nondiscrimination.** TNCs would be required to adopt a policy prohibiting drivers from discriminating on the basis of a passenger's location or destination, race, religion, sex, disability, or age. The policy would have to prohibit a driver from declining service to a passenger with a service animal unless the driver had a medically documented condition that prevented the driver from transporting an animal.

The bill also would prohibit a TNC from imposing an additional charge for transportation of individuals with physical disabilities because of those disabilities. If a passenger required a wheelchair-accessible vehicle, the bill would require TNCs either to provide service or direct the passenger to an alternative provider if one were available.

**Recordkeeping.** HB 100 would require a TNC to maintain records showing compliance with the provisions in the bill for two years, individual ride records for at least one year after the date of the ride, and driver records for at least one year after a driver became inactive. The bill would prohibit a TNC from disclosing a passenger's personally identifiable information to a third party unless:

- the passenger consented;
- the disclosure was required by a legal obligation; or
- the disclosure was required to protect or defend the TNC's terms of use or to investigate a violation of those terms.

TDLR could not disclose records from the TNC to a third party, except in compliance with a court order or subpoena, and would be required to take all reasonable measures to secure the information.

**Enforcement.** TDLR would be allowed to suspend or revoke the permit of a TNC that did not meet the requirements of the bill.

**Effective date.** Under HB 100, any conflicting local ordinances would become ineffective beginning on the bill's effective date. This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2017.

SUPPORTERS  
SAY:

HB 100 would eliminate the patchwork of local rules that limit the number of transportation network company (TNC) drivers and thereby would increase transportation options for Texans. In place of these local rules, the bill would establish common-sense statewide regulations that maintained public safety while securing the economic and societal benefits that come with increased transportation options.

**State authority.** The bill would eliminate burdensome local regulations, which would give citizens easier access to a source of income when needed. The average TNC driver seeks to work part time to supplement or temporarily replace income. These drivers may not make enough to offset large upfront costs, such as for fingerprinting and driver physicals, which drivers often are expected to pay for themselves. State preemption of such rules would allow citizens to quickly supplement income after a job loss or other economic setback.

Under the bill, drivers could serve multiple cities without applying for a new driver permit in each one. TNCs and drivers currently need city-specific permits in many municipalities. However, it is not unusual for TNC drivers to travel from one city to another for major events or across metropolises during a day, and the regulatory framework should reflect that reality. HB 100 would establish a more efficient statewide market.

This bill would increase access to transportation, which benefits consumers, businesses, and public safety. Local rules create barriers to entry in each market, reducing the number of available drivers, and can cause demand for transportation to overwhelm supply, resulting in long wait times and acting as a bottleneck on the economic benefits of TNCs. Similarly, more transportation options provide extensive societal benefits. A Temple University study found the least expensive level of Uber service alone led to a reduction of up to 5 percent in motor vehicle homicides, largely caused by drunk driving, per quarter in California.

The bill would be an acceptable infringement on local control because current municipal regulations are eroding, not protecting liberty. Local control is a tool to increase freedoms, rather than an end goal in and of itself. Unlike the state's relationship to the federal government, Texas municipalities are creations of the state, which grants their powers, so it would be acceptable for the state to limit local control of TNC rules.

**Requirements for drivers.** No transportation option is entirely safe, and the bill would eliminate burdensome local regulations that force consumers to accept the higher costs associated with fingerprint background checks. Instead, TNCs would be able to use internal policies to hire drivers, and allow consumers to choose services that protect riders and avoid those that do not.

Fingerprint-based background checks add costs without improving passenger safety. TNCs already use accredited multi-state commercial background checks and screen against the national sex offender registry. Additionally, security features built into TNCs, including GPS tracking, driver photos, and standards based on rider reviews, provide acceptable rider safety.

**Vehicle requirements.** The bill appropriately would require vehicles used for TNCs to have four doors in order to ensure that passengers, some of whom may be elderly or disabled, were able to easily exit or enter the vehicle. However, TNCs are able to set their own standards on vehicle

appearance, so the state does not need to codify that practice in law.

**Applicability.** While taxicabs and limousines theoretically could be regulated at the state level, the nature of TNC services makes the state rather than municipal level of government the most appropriate place for TNCs to be regulated.

OPPONENTS  
SAY:

HB 100 would reduce public safety, unnecessarily harm fundamental principles of government like local control, negatively impact people who are disabled, and unfairly disadvantage taxicab and limousine companies that compete with TNCs.

**State authority.** The bill would harm the ability of localities to maintain a level of public safety that suits their citizens. Local regulations ensure that TNCs, which can be large, multinational corporations worth billions of dollars, are held strictly accountable to local standards. City officials are closer to constituents and better able to create policies reflecting local values. Austin voters showed support for local rules by defeating a referendum that would have nullified the city's fingerprint background check requirement, and the Legislature should not second-guess the will of the voters with the bill.

Municipal regulations are not an excessive burden. TNCs operate and expand in cities with stringent requirements, and these cities have not experienced a shortage of drivers. Moreover, local rules do not substantially slow the process of signing up to drive. Most municipalities that require drivers to have licenses issued by the city also issue provisional ones that allow a driver to drive temporarily while completing the application process. Provisional licenses allow a driver to begin work quickly and increase the availability of drivers. Therefore, the bill is unnecessary as it would not result in additional societal benefits such as further reductions in drunk driving.

Local control itself is a valuable objective, and this bill would increase the distance between regulators and those affected by TNCs. Local regulators are more responsive to individual concerns and thus more effective at

holding TNCs accountable and ensuring public safety.

**Requirements for drivers.** The bill would eliminate municipal ordinances that voters and localities have selected to increase public safety. City-mandated fingerprint background checks reduce risk to passengers and therefore are worth the added cost.

Fingerprint background checks are considered the gold standard because they involve more records and reveal more information than other methods. Other forms of background checks may be vulnerable to fraud and misidentification, but fingerprints nearly eliminate the chance of failing to identify someone with a criminal record. Commercial background checks search for court records only in specific jurisdictions and can miss those not searched. The city of Houston has reported that several applicants for vehicle-for-hire licenses who passed a commercial, multi-state background check were later found by a fingerprint background check to have committed serious crimes. This bill would preempt mandates made by cities in response to these concerns.

**Accessibility and nondiscrimination.** The bill would do away with municipal regulations that have proven to be effective at increasing availability of wheelchair-accessible services, which could leave citizens with disabilities stranded. Furthermore, the bill would reduce the competitiveness of taxis, which more commonly provide wheelchair-accessible services. This could increase shortages of affordable wheelchair-accessible vehicles in the long run.

**Applicability.** The bill would exacerbate the effects of an unfair playing field by preempting regulations on TNCs but not on taxicabs, which provide the same basic public service. Taxicabs generally are heavily regulated at the local level and subject to limits on fares, vehicle appearance, and number of vehicles, putting them at a disadvantage compared to TNCs, which would not be subject to such restrictions under the bill.

OTHER  
OPPONENTS  
SAY:

**Vehicle requirements.** HB 100's requirements for TNC vehicles should be more expansive. The bill would only require vehicles to pass a state inspection, have four doors, and have a capacity of 8 occupants including the driver. But TNC vehicles, which frequently serve airports, can be the first image of a city and Texas that visitors see. Therefore, these vehicles should be subject to basic requirements beyond those covered in state inspections, such as mandating working heating and air conditioning and prohibiting vehicles with major cosmetic damage.

The bill also would pick winners and losers by prohibiting TNCs from using certain types of vehicles. While sedans are the usual vehicles currently used for TNC services, there is no reason that all TNC vehicles should be required to have four doors. Similarly, the bill should not unreasonably prohibit vehicles also used as a taxi or limo from being used for TNC services.

**Applicability.** Instead of preempting only regulations on TNCs, the Legislature should preempt all regulations on vehicles-for-hire, enabling consumer choice to regulate the market. This would ensure taxicabs and limousines were able to compete on an even playing field with TNCs.

NOTES:

In its fiscal note, the Legislative Budget Board estimates that the bill would have a negative impact of \$128,000 through fiscal 2018-19 if the effective date of the bill was June 1, 2017, or a negative impact of \$163,000 through fiscal 2018-19 if the effective date was September 1, 2017.

A companion bill, SB 176 by Schwertner, was left pending in the Senate Committee on Business and Commerce after a public hearing on March 14.