



# SENATE BILL 541: Regulate Transportation Network Companies

2015-2016 General Assembly

<b>Committee:</b>	Senate Finance	<b>Date:</b>	July 21, 2015
<b>Introduced by:</b>	Sens. Rabon, McKissick	<b>Prepared by:</b>	Greg Roney Committee Counsel
<b>Analysis of:</b>	PCS to Second Edition S541-CSTMxfr-38		

**SUMMARY:** *The Proposed Committee Substitute (PCS) for Senate Bill 541 would regulate transportation network companies (TNC) by requiring a State permit to operate, maintenance of liability insurance for cars, and background checks for drivers. The PCS would add TNC services to the list of activities where paid transportation is allowed without a for-hire license plate. The PCS would impose a \$5,000 application fee for the permit and a \$5,000 renewal fee.*

*Compared to the second edition of the bill the PCS makes 3 changes:*

- *Adds a requirement that a TNC have a policy of nondiscrimination based on customers' race, color, national origin, religious belief or affiliation, sex, disability, or age.*
- *Rephrases the notice a TNC must give a prospective TNC driver regarding liens on the vehicle.*
- *Removes a reference to a repealed statute.*

**[As introduced, this bill was identical to H680, as introduced by Reps. Brawley, Bradford, Saine, Hanes, which is currently in House Commerce and Job Development, if favorable, Transportation, if favorable, Finance.]**

**CURRENT LAW:** G.S. 20-4.01(27) defines for-hire passenger vehicles as any vehicles transporting persons for compensation excluding the following 7 types of vehicles: (1) vehicles operated as ambulances; (2) vehicles operated by the owner where the costs of operation are shared by the passengers; (3) vehicles operated pursuant to a ridesharing arrangement; (4) vehicles transporting students for the public school system under contract with the State Board of Education; (5) vehicles leased to the United States or its agencies on a nonprofit basis; (6) vehicles used for human service; and (7) vehicles used for human service volunteer transportation.

G.S. 20-87(1) imposes a \$78 fee for a for-hire license plate.

G.S. 20-280(b) requires taxis have liability insurance equal to \$30,000 for bodily injury to or death of 1 person in any 1 accident and, subject to said limit for 1 person, \$60,000 for bodily injury to or death of 2 or more persons in any 1 accident, and \$25,000 for injury to or destruction of property of others in any 1 accident ("30/60/25"). G.S. 20-280(c) exempts taxi operators from the liability limits if the taxi operator joined a trust fund approved by the governing body of any city with a population of over 50,000.

NC Utilities Commission Rules and Regulations, Rule R2-36(a), Passenger Equipment, requires liability insurance equal to \$1.5 million for vehicles with a seating capacity of 15 passengers or less.

Personal auto policies (PAP) in the State use uniform language. The language excludes insurance coverage when the vehicle is used for commercial purposes ("livery exclusion").

**BILL ANALYSIS:** The PCS for Senate Bill 541 would create a new Article 10A in Chapter 20, titled "Transportation Network Companies."

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New Article 10A defines 4 key terms:

- Prearranged transportation services. – Transportation services available by advance request excluding for-hire passenger vehicles soliciting passengers for immediate transportation. No minimum waiting period is required between the advance request and the provision of the transportation services.
- TNC driver. – An individual that uses a passenger vehicle in connection with a transportation network company's online enabled application or platform to connect with passengers.
- TNC service. – Prearranged transportation service provided by a TNC driver in connection with a transportation network company. The TNC service begins when the TNC driver accepts a ride request on the transportation network company's online-enabled application or platform and ends at the later of the time that the driver completes the transaction on the application or the time that all passengers exit the vehicle and complete unloading of the vehicle.
- Transportation network company. – Any person that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers.

A TNC holding a valid permit issued under new Article 10A may operate in the State. The permit must be obtained before operating in the State. The application fee is \$5,000. The annual renewal fee is \$5,000.

A TNC may charge a fee if the calculation method is disclosed by the application before a passenger makes a ride request; the application provides the option for a passenger to receive an estimated fee before the passenger makes a ride request; the TNC sends an electronic receipt to the customer that includes the location where the TNC service started and ended, the total time and distance of the TNC service, and an itemization and calculation of the total fee paid; and the fee is paid electronically.

A TNC must provide liability insurance as follows:

- During the TNC service
  - \$1,500,000 because of death of one or more persons, bodily injury to one or more persons, injury to or destruction of property of others, or any combination thereof, in any one accident ("1.5 million combined single limit").
  - \$1,000,000 of combined uninsured and underinsured motorist coverage.
- During the time such driver is available on the TNC's online-enabled application
  - \$50,000 because of bodily injury or death of 1 person in any 1 accident and, subject to said limit for 1 person, \$100,000 because of bodily injury or death of 2 or more persons in any 1 accident, and \$25,000 because of injury or destruction of property of others in any 1 accident ("50/100/25").
  - Combined uninsured and underinsured motorist coverage, with limits for combined uninsured and underinsured motorist bodily injury coverage which at least equals the bodily injury liability limits of the policy (i.e., 50/100/25).

A TNC must disclose in writing to potential TNC drivers the following before the TNC driver provides TNC service:

- The insurance coverage and limits of liability that the transportation network company provides while the TNC driver uses a private passenger vehicle to provide TNC service.

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- The TNC driver may not have coverage under their personal insurance policy while using the transportation network company's online-enabled application.
- The following in a distinctive clause: "If the vehicle with which you provide transportation network company services has a lien against it, you must notify the lienholder prior to providing transportation network company services of your intent to provide transportation services with the vehicle. You may disclose to the lienholder all insurance coverage information provided to you by the transportation network company. If you fail to provide the required insurance coverage under the terms of your contract with the lienholder or show evidence to the lienholder of the coverage provided by the transportation network company, you may violate the terms of your contract."

A TNC must conduct a local and national criminal background check for each applicant to be a TNC driver.

Brokering transportation network companies are TNC that exclusively dispatches TNC drivers that operate either for-hire passenger vehicles regulated under G.S. 160A-304 (i.e., taxis) or for-hire passenger vehicles regulated under G.S. 62-260(f) and subject to the requirements for security for protection of the public and safety of operation established for regulated motor common carriers (i.e., limousines with \$1.5 million liability insurance). Brokering transportation network companies are exempt from the insurance requirements and background checks.

The Division of Motor Vehicles is authorized to issue regulations to implement new Article 10A.

A rebuttable presumption exists that a TNC driver is an independent contractor and not an employee. The presumption may be rebutted by application of the common law test for determining employment status.

Airport operators are given the following specific regulatory authority over TNC:

- Charge TNC and TNC drivers a reasonable fee for use of the airport's facility.
- Require an identifying decal be displayed by TNC drivers.
- Require the purchase and use of equipment or establish other appropriate mechanisms for monitoring and auditing compliance, including having a TNC provide data.
- Designate a location where TNC drivers may stage on the airport's facility, drop off passengers, and pick up passengers.

New Article 10A is the exclusive regulation of TNC services, and no local authority is authorized to impose fees, require licenses, limit the operation of TNC services, or otherwise regulate TNC services. TNC services remain subject to all ordinances and local laws outside the scope of Article 10A including parking and traffic regulation. Any contract provision or term of service contrary to new Article 10A is void as against public policy.

**EFFECTIVE DATE:** The Proposed Committee Substitute (PCS) for Senate Bill 541 would become effective October 1, 2015.

**BACKGROUND:** TNC use smartphone applications ("apps") to match customers with drivers. The apps use the smartphone's GPS functions to identify the location of the customer and the TNC driver. The TNC driver uses an unmarked, private passenger vehicle with a standard license plate to transport the customer. TNC drivers do not have for-hire license plates.

Three TNC are known to operate in the State: Uber, Lyft, and Sidecar. Uber operates in at least 10 cities in the State.

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Brokering transportation network companies also operate in the State. These companies dispatch vehicles that are licensed in the local jurisdiction. For example, Uber Black service operates in Charlotte and dispatches limousines that are regulated by the City of Charlotte. Other apps exist that dispatch licensed taxis in multiple states.

According to the National Association of Insurance Commissions (NAIC), TNC are voluntarily providing the following insurance coverages:

TNC	Insurer	Period 1 (Pre-match)	Periods 2 & 3 (Match accepted, passenger pick up, Passenger occupying the vehicle)
Raiser LLC/UberX	James River	Contingent Liability (\$50,000 per person/\$100,000 per accident/\$25,000 property damage)	Commercial auto liability and uninsured motorist/underinsured motorist coverage up to \$1 million per occurrence  Contingent collision and comprehensive equal to the amount maintained by the driver in PAP (\$1,000 deductible)  [In NC, Uber reports providing \$1.5 million in liability coverage and \$1.5 million in uninsured coverage]
LYFT (valid in all states except New York)	James River	Contingent Liability (\$50,000 per person/\$100,000 per accident/\$25,000 property damage)	Commercial auto liability and uninsured motorist/underinsured motorist coverage up to \$1 million per occurrence  Contingent collision and comprehensive up to \$50,000 per accident (\$2,500 deductible)
SIDECAR (liability limits differ for the state of Washington and for Chicago)	Nautilus Insurance Company		Commercial auto liability and uninsured motorist/underinsured motorist coverage up to \$1 million per occurrence  Liability limits (\$50,000 per person/\$100,000 per accident/\$30,000 property damage)  Contingent collision \$50,000 per accident (\$500 deductible)

On March 31, 2015, the TNC industry (Uber, Lyft), insurance industry trade groups (NAMIC, PCI), and some national insurers endorsed a compromise model bill on TNC services. The model language only addresses insurance coverage issues. The model bill contains the following terms:

- Mandates primary insurance coverage during the pre-match period of 50/100/25 and includes all state-mandated coverages (e.g., uninsured and underinsured). The mandate does not include comprehensive or collision.

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- Mandates primary insurance of \$1 million in liability coverage, as well as any other coverage mandated by the state's financial responsibility laws, once a driver has accepted a ride request and while the fare-paying passenger is in the vehicle.
- These coverage mandates can be satisfied by a policy maintained by the TNC driver, by the TNC itself, or a combination of both.
- The primary TNC coverage shall not be dependent upon a personal auto policy denying a claim before coverage is triggered.
- TNC drivers will be required to carry proof of TNC insurance coverage.
- TNC must disclose to their drivers that their current personal auto policy may not provide any coverage for TNC-related driving.
- After an accident, TNC drivers must disclose whether they were logged into the TNC system.
- TNC and insurers will be compelled to cooperate in coverage investigations.

The PCS does not adopt the model language in its entirety. The PCS imposes insurance coverage requirements of \$1.5 million versus \$1 million in the model bill.