



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 90

131st General Assembly  
(As Introduced)

**Reps.** Hackett and Bishoff, Grossman, S. O'Brien, Slesnick, Thompson, Stinziano, Leland

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## BILL SUMMARY

- Requires, generally, each transportation network company driver, or company on the driver's behalf, to maintain an automobile liability insurance policy that provides primary coverage for the driver when the driver is providing transportation network company services.
- Requires the automobile liability insurance policy to meet the proof of financial responsibility requirements for chauffeured limousines described in Ohio's Proof of Financial Responsibility Law.
- Requires a transportation network company to verify certain information if the company requires the driver to purchase an insurance rider to, or an endorsement of, the driver's personal automobile liability insurance policy, and subjects the company to civil liability for failing to verify that information.
- Requires a transportation network company to provide notice to specified persons if the company elects to purchase an automobile liability insurance policy for the driver.
- Requires a transportation network company to assume specified duties and liabilities during certain insurance claims if the company is providing primary automobile insurance for the driver.
- Requires a transportation network company to provide certain disclosures to the personal vehicle's owner and to any driver of the vehicle before the vehicle is first used to provide transportation network company services and before any change in insurance by the company.

- Requires each transportation network company to keep a record of specified information pertaining to transportation network company services provided and drivers, riders, and vehicles involved with those services.
- Prohibits a transportation network company from disclosing to a third party any personally identifiable information of a rider unless certain conditions exist.
- Prohibits a person from recklessly violating the bill's insurance and records requirements.
- Permits a personal lines primary or excess automobile insurance policy to exclude coverage for a personal vehicle or driver while the vehicle or driver is providing transportation network company services.
- States that the bill preempts any local ordinance, resolution, or other law purporting to regulate insurance for transportation network companies and the provision of transportation network company services.

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## CONTENT AND OPERATION

### Overview

The bill sets insurance and service requirements for transportation network companies. In the bill, "transportation network company" includes a business operating in Ohio that uses an online means to connect riders to transportation network company drivers for the purpose of providing transportation for compensation, other than for ride sharing.<sup>1</sup> A transportation network company driver is not required to be an employee of a transportation network company.<sup>2</sup> Two examples of transportation network companies are Uber and Lyft.

The bill's requirements do not apply to any of the following:

- A taxicab;
- A chauffeured limousine;
- Any commercially registered vehicle and commercially licensed driver;

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<sup>1</sup> R.C. 3938.01(D).

<sup>2</sup> R.C. 3938.01(E).

- A ridesharing arrangement, when any fee charged to each transported individual is in such an amount as to recover only the individual's share of the costs of operating the vehicle for that purpose.<sup>3</sup>

## Insurance requirements

The bill requires each transportation network company driver, or a transportation network company on behalf of the driver or personal vehicle owner, to maintain an automobile liability insurance policy that provides primary coverage for liability arising from the driver's use of a personal vehicle during the time the driver is providing transportation network company services.<sup>4</sup> "Transportation network company services" means services provided by a transportation network company driver in connection with the transportation network company and includes both of the following:

- The period of time when the driver is available to provide transportation network company services by logging in to the company's online system, including the time period before the driver has been matched with a rider and the time period after the driver has been matched with a rider (but before the rider occupies the vehicle);
- The period of time when a rider and any other passengers are occupying the personal vehicle.

"Transportation network company services" end when the driver logs off or disconnects from the online system or when the rider and any other passengers completely exit the personal vehicle, whichever is later.<sup>5</sup>

The policy must meet, at minimum, the proof of financial responsibility requirements for chauffeured limousines described in Ohio's Proof of Financial Responsibility Law, which are higher than the proof of financial responsibility required for ordinary automobiles.

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<sup>3</sup> R.C. 3938.01(F)(3).

<sup>4</sup> R.C. 3938.02(A)(1).

<sup>5</sup> R.C. 3938.01(F)(1) and (2).

<b>Ohio Proof of Financial Responsibility Amounts</b>		
	<b>Ordinary automobiles</b>	<b>Chauffeured limousines</b>
Bodily injury or death to one person	\$25,000	\$100,000
Bodily injury or death to two or more persons	\$50,000	\$300,000
Injury to property	\$25,000	\$50,000

The liability insurance must be one of the following:

- A commercial automobile liability insurance policy that provides primary coverage for transportation network company services similar in all material respects to coverage for chauffeured limousines;
- An insurance rider to, or an endorsement of, the transportation network company driver's personal automobile liability insurance obtained to satisfy the proof of financial responsibility requirements required by Ohio's Proof of Financial Responsibility Law. The rider or endorsement can be combined with an excess policy provided by the transportation network company so that the combined limits of the policies meet those required for chauffeured limousines by Ohio's Proof of Financial Responsibility Law.
- A commercial automobile liability insurance policy purchased by the transportation network company, which provides primary coverage for the period of time when a transportation network company driver is providing transportation network company services. The policy must also provide first party coverage to the personal vehicle's owner at the same limits, deductibles, and coverage options purchased by the owner's personal automobile policy.<sup>6</sup>

The automobile liability insurance policy must attach and provide coverage regardless of whether a transportation network company driver has agreed to waive coverage or has entered into an agreement with the transportation network company to hold harmless or indemnify the company.

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<sup>6</sup> R.C. 3938.02(A)(2) and R.C. 4509.01(K), 4509.101, and 4509.80, not in the bill.

This required liability insurance may be obtained from either (1) a domestic, foreign, or alien insurance company authorized to issue such a policy under Ohio's Insurance Law or (2) an insurer not holding a license in Ohio if the policy is obtained through an individual holding an Ohio surplus lines broker's license.<sup>7</sup>

The bill requires a transportation network company to provide all data and records associated with the personal vehicle while the vehicle is available to provide transportation network company services at the request of the owner's personal automobile insurer.<sup>8</sup>

### **Verification for certain policies**

If a transportation network company requires the transportation network company driver to purchase an insurance rider to, or an endorsement of, the driver's personal automobile liability insurance policy, the bill requires the company to verify all of the following information:

- That the driver or the owner of the personal vehicle has purchased the insurance rider or endorsement before allowing the driver to provide transportation network company services;
- That the insurance rider or endorsement remains in force continuously during the time the driver is providing transportation network company services;
- That the insurance rider or endorsement covers transportation network company services during the time the driver is providing those services.

If the company fails to verify this information and if the driver fails to have the required insurance, the company is liable for any harm that would have been covered by the required policy had the policy been in force when the harm occurred.<sup>9</sup>

### **Transportation network company policies**

As described above, the bill permits a transportation network company to purchase a commercial automobile liability insurance policy to cover a transportation network company driver's use of the personal vehicle when the driver is providing transportation network company services (see "**Insurance requirements**"). If a

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<sup>7</sup> R.C. 3938.02(A)(2) and (3) and (C).

<sup>8</sup> R.C. 3938.04(D).

<sup>9</sup> R.C. 3938.02(D).

transportation network company elects to purchase an automobile liability insurance policy for a driver, the company must provide documentation evidencing the purchase of the policy to the Registrar of Motor Vehicles within 30 days after the policy's effective date.<sup>10</sup>

The transportation network company also must provide direct notice that it is providing this coverage to the driver, personal vehicle owner, and the owner's personal lines automobile insurer (1) before the first use of the vehicle for transportation network company services and (2) upon the termination of the driver's participation in the transportation network company.<sup>11</sup>

### **Duties during insurance claims**

If the transportation network company is providing primary automobile insurance, the bill requires the company to assume liability, including the costs of defense and indemnification, for a claim in which a dispute exists as to whether the harm occurred while transportation network company services were being provided. The company must notify the owner and the owner's insurer of any such dispute within 25 business days after receiving notice of the accident giving rise to the claim.

Additionally, if a personal vehicle's owner, the owner's insurer, or a transportation network company driver is named as a defendant in a civil action for any harm that occurs while transportation network company services were being provided, the company has the duty to defend and indemnify the personal vehicle's owner, driver, and the owner's insurer. The company and its insurer must cooperate with the insurer of the personal vehicle's owner or transportation network company driver.<sup>12</sup>

### **Disclosures to transportation network company drivers**

Before a personal vehicle is first used to provide transportation network company services and before any change in insurance by the company, the transportation network company must provide written disclosures to the personal vehicle's owner and to any driver of the vehicle. The disclosures must contain all of the following information:

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<sup>10</sup> R.C. 3938.02(B).

<sup>11</sup> R.C. 3938.04(C).

<sup>12</sup> R.C. 3938.04(E).

- A full and clear description of the insurance coverage and limits provided under the company's primary insurance policy along with the insurer's name, address, and telephone number;
- Notice that the private passenger automobile policy of the owner or driver may exclude all coverage for any harm and may exclude the duty to defend or indemnify any person or organization for liability for any harm that occurs during the time transportation network company services are being provided.

The transportation network company must place the disclosures prominently in the prospective transportation network company driver's written terms of service and obtain the driver's acknowledgement of the terms of service by electronic or written signature.<sup>13</sup>

### **Records requirements**

The bill requires each transportation network company to maintain a record of all personal vehicles that are used to provide transportation network company services. The record must include all of the following information:

- The name, address, driver's license number, and telephone number of each transportation network company driver;
- The license plate number, make, model, year, and color of each personal vehicle being used by each transportation network company driver;
- The number of hours and miles that each transportation network company driver is providing transportation network company services.

The bill also requires each transportation network company to maintain an electronic record of each transportation network company service provided by a transportation network company driver with all of the following information:

- The license plate number of the personal vehicle used;
- The names of the transportation network company driver and the rider;
- The date the transportation network company service was provided;

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<sup>13</sup> R.C. 3938.04(A) and (B).

- The time the transportation network company driver was matched with the rider;
- The time the transportation network company service began and ended;
- The number of miles of the transportation network company service;
- The addresses of the transportation network company service;
- The total compensation paid, if any.

A transportation network company must maintain these records for three years.<sup>14</sup>

### **Disclosure of rider information**

The bill prohibits a transportation network company from disclosing to a third party any personally identifiable information of a rider gathered in connection with providing or receiving transportation network company services unless one of the following conditions exists:

- The rider knowingly consents to the disclosure;
- The disclosure is made pursuant to a legal obligation, including as part of any accreditation, licensing, or registration requirement;
- The disclosure is made to the Superintendent of Insurance. A disclosure made pursuant to this exception is not a public record.<sup>15</sup>

### **Prohibitions**

The bill prohibits a person from recklessly violating the bill's insurance and records requirements. A person who violates this prohibition is guilty of a first degree misdemeanor (punishable by a fine up to \$1,000 and a jail term of up to 180 days).<sup>16</sup>

Failure to maintain an automobile liability insurance policy as required under the bill is a violation by both the transportation network company and the transportation network company driver.

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<sup>14</sup> R.C. 3938.05(A) and (B).

<sup>15</sup> R.C. 3938.05(C) and (D).

<sup>16</sup> R.C. 3938.06 and 3938.99 and R.C. 2929.24 and 2929.28, not in the bill.



## Personal lines insurers

Under the bill, a personal lines primary or excess automobile insurance policy can exclude coverage for a personal vehicle or driver while the vehicle or driver is providing transportation network company services. "Personal lines" means a policy of property or casualty insurance issued to a natural person primarily for personal or familial protection for personal, automobile, homeowner's, tenant's, mobile-homeowner's, noncommercial dwelling fire, or personal umbrella coverage.<sup>17</sup>

Under the bill, notwithstanding any law or insurance policy provision to the contrary, a personal lines insurer providing primary or excess coverage to the owner of a personal vehicle can exclude coverage and the duty to defend and indemnify afforded under a personal lines insurance policy for any harm occurring while an insured personal vehicle or transportation network company driver is providing transportation network company services. This right to exclude applies to all coverage provided by the insurer of the driver or the owner of the personal vehicle, including all of the following:

- Liability and physical damage coverage;
- Uninsured and underinsured motorist coverage;
- Uninsured and underinsured motor vehicle property damage coverage;
- Medical payments coverage for persons using or occupying the personal vehicle;
- Comprehensive physical damage coverage;
- Collision physical damage coverage.

Under the bill, such a primary or excess insurer may notify the insured person that the insurer has no duty to defend or indemnify any individual or organization for liability for any loss that occurs while that personal vehicle is providing transportation network company services.<sup>18</sup>

## Authority of municipal corporations and other political subdivisions

The bill states that the regulation of insurance related to transportation network company services and the provision of transportation network company services is a matter of general statewide interest that requires statewide regulation. The bill is a

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<sup>17</sup> R.C. 3938.03(B) and (C).

<sup>18</sup> R.C. 3938.03(A).

comprehensive legislative enactment, regulating all aspects of insurance for transportation network companies and the provision of transportation network company services. The bill further states that it is intended to preempt any local ordinance, resolution, or other law purporting to regulate insurance for transportation network companies and the provision of transportation network company services (see **COMMENT**).<sup>19</sup>

## Definitions

As used in the bill:

- "Chauffeured limousine" means a motor vehicle that is designed to carry nine or fewer passengers and is operated for hire pursuant to a prearranged contract for the transportation of passengers on public roads along a route under the control of the person hiring the vehicle and not over a defined and regular route. "Prearranged contract" means an agreement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine. "Chauffeured limousine" does not include any vehicle that is used exclusively in the business of funeral directing.
- "Owner" means the person whose name appears on the personal vehicle's registration.
- "Personal vehicle" means a vehicle that is used by a transportation network company driver in connection with providing transportation network company services.
- "Rider" means an individual who, through the use of a transportation network company, is connected with a transportation network company driver to obtain transportation network company services in a personal vehicle. "Rider" includes goods that an individual has arranged to be transported by a transportation network company driver in a personal vehicle, regardless of whether that individual is occupying that personal vehicle at the same time as the goods being transported.
- "Ridesharing arrangement" means the transportation of persons in a motor vehicle where the transportation is incidental to another purpose of a volunteer driver, and includes ridesharing arrangements known as carpools, vanpools, and buspools.

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<sup>19</sup> R.C. 3938.07.

- "Transportation network company driver" or "driver" means an individual who uses a personal vehicle to provide transportation network company services.<sup>20</sup>

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## COMMENT

Section 3 of Article XVIII of the Ohio Constitution grants municipal corporations the "municipal home rule" power of local self-government and the power to adopt and enforce local police, sanitary, and other similar regulations that are not in conflict with general laws. The Ohio Supreme Court has outlined a four part test defining what constitutes a "general law" for purposes of home rule analysis. The statute must (1) be part of a statewide and comprehensive legislative enactment, (2) apply to all parts of the state alike and operate uniformly throughout the state, (3) set forth police, sanitary, or similar regulations, rather than merely grant or limit the legislative power of a municipal corporation, and (4) prescribe a rule of conduct upon citizens generally.<sup>21</sup> In determining whether a local ordinance is in conflict with a general law, courts will analyze whether the ordinance "permits or licenses that which the statute forbids and prohibits, and vice versa."<sup>22</sup> Courts use this conflict analysis on a case-by-case basis to determine whether a municipality's home rule authority can be precluded or superseded.

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## HISTORY

ACTION	DATE
Introduced	02-25-15

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<sup>20</sup> R.C. 3938.01 and, by reference, R.C. 4501.01(LL) and 4921.01(H), not in the bill.

<sup>21</sup> *Canton v. State*, 95 Ohio St.3d 149, 2002-Ohio-2005 ¶ 21.

<sup>22</sup> *Village of Struthers v. Sokol*, 108 Ohio St. 263 (1923).

