

State of Wisconsin



2015 Assembly Bill 143

Date of enactment: **May 1, 2015**
Date of publication*: **May 2, 2015**

2015 WISCONSIN ACT 16

AN ACT *to amend* 194.01 (1) and 194.01 (2); and *to create* 340.01 (23g) (b) 4., 440.08 (2) (a) 69m. and subchapter IV of chapter 440 [precedes 440.40] of the statutes; **relating to:** regulation of transportation network companies, providing an exemption from emergency rule procedures, granting rule-making authority, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 194.01 (1) of the statutes is amended to read:

194.01 (1) "Common motor carrier" means any person who holds himself or herself out to the public as willing to undertake for hire to transport passengers or property by motor vehicle upon the public highways. The transportation of passengers in taxicab service or in commuter car pool or van pool vehicles that are designed to carry less than 8 passengers, including the driver, or in a school bus under s. 120.13 (27) or in a motor vehicle being used to provide transportation network services, as defined in s. 440.40 (7), is not transportation by a common motor carrier.

SECTION 2. 194.01 (2) of the statutes is amended to read:

194.01 (2) "Contract motor carrier" means any person engaged in the transportation by motor vehicle over a regular or irregular route upon the public highways of property for hire, including the transportation of buildings, as defined in s. 348.27 (12m) (a) 1. The transportation of property in a motor vehicle being used subject to subch. IV of ch. 440 is not transportation by a contract motor carrier.

SECTION 3. 340.01 (23g) (b) 4. of the statutes is created to read:

340.01 (23g) (b) 4. A motor vehicle being used to provide transportation network services, as defined in s. 440.40 (7).

SECTION 4. 440.08 (2) (a) 69m. of the statutes is created to read:

440.08 (2) (a) 69m. Transportation network company: March 1 of each odd-numbered year.

SECTION 5. Subchapter IV of chapter 440 [precedes 440.40] of the statutes is created to read:

CHAPTER 440

SUBCHAPTER IV

TRANSPORTATION NETWORK COMPANIES

440.40 Definitions. In this subchapter:

(1) "Digital network" means any Internet site or online-enabled application, software, or system that permits the prearrangement of transportation network services.

(2) "Licensed company" means a transportation network company that is licensed under s. 440.415.

(3) "Participating driver" means an individual who does all of the following:

(a) Pays a fee to a transportation network company to be connected to a passenger for the purpose of engaging in transportation network services.

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(b) Uses a personal vehicle to engage in transportation network services for compensation.

(4) "Passenger" means an individual who uses a transportation network company's digital network to connect to a participating driver for transportation network services, and, unless the context requires otherwise, includes all other persons in that individual's party who accompany that individual in the participating driver's personal vehicle in connection with those transportation network services.

(5) "Personal vehicle" means a motor vehicle that satisfies all of the following conditions:

(a) A participating driver owns, leases, or is otherwise authorized to use the motor vehicle.

(b) The motor vehicle is not a taxicab, limousine, shuttle, or other for-hire vehicle or a commercial motor vehicle, as defined in 49 CFR 390.5.

(6) "Transportation network company" means a business that, for compensation, uses a digital network to connect passengers to participating drivers for the purpose of providing transportation network services to those passengers. "Transportation network company" does not include a taxicab, limousine, shuttle, or other for-hire vehicle service.

(7) "Transportation network services" means transportation provided to a passenger in the participating driver's personal vehicle. A participating driver is considered to be engaged in transportation network services beginning when the participating driver accepts a passenger's request for transportation received through a transportation network company's digital network, continuing while the participating driver transports that passenger in the participating driver's personal vehicle, and ending when that passenger, or the last person in that passenger's party, whichever occurs later, exits the participating driver's personal vehicle. "Transportation network services" does not include transportation in a taxicab, limousine, shuttle, or other for-hire vehicle.

440.41 License required. (1) No person may operate a transportation network company in this state unless the transportation network company is a licensed company.

(2) No person may engage in transportation network services in this state unless the person is a participating driver for a licensed company. A licensed company is not considered to control, direct, or manage a participating driver or that participating driver's personal vehicle used for engaging in transportation network services, except as provided in this subchapter or in a written agreement between the licensed company and the participating driver.

440.415 Licensure of transportation network companies. (1) INITIAL LICENSE. The department shall grant a license to operate a transportation network company in this state to an applicant for licensure if the

department determines that all of the following requirements are met:

(a) The applicant submits an application to the department on a form prescribed by the department. The application shall include the applicant's name, address, tax identification number, and any other information required by the department by rule.

(b) The applicant is a transportation network company.

(c) The applicant demonstrates to the satisfaction of the department that it satisfies all applicable requirements under ss. 440.42, 440.44, 440.45, and 440.48.

(d) Notwithstanding s. 440.03 (9) (a), the applicant pays an initial licensure fee of \$5,000.

(2) RENEWAL. (a) The renewal date for a license granted under sub. (1) is specified in s. 440.08 (2) (a) 69m. A renewal application shall be submitted to the department on a form prescribed by the department and shall include any information required by the department by rule.

(b) The renewal application for a licensed company shall include a renewal fee of \$5,000 or the renewal fee determined by the department under s. 440.03 (9) (a), if any, whichever is less.

440.42 Agent. Each licensed company shall maintain an agent for service of process in this state.

440.425 Fare disclosures. Each licensed company shall do all of the following:

(1) Disclose its fare calculation method on its Internet site.

(2) Inform each prospective passenger or the prospective passenger's authorized representative of all applicable fare rates.

(3) Give each prospective passenger or the prospective passenger's authorized representative the option to receive an estimated fare before the passenger enters a participating driver's personal vehicle for transportation network services.

440.43 Identification of participating drivers. Each licensed company shall make available to each prospective passenger or the prospective passenger's authorized representative, on the licensed company's digital network, a photograph of the participating driver and the license plate number of the participating driver's personal vehicle before the passenger enters the participating driver's personal vehicle for transportation network services.

440.435 Electronic receipt. Within a reasonable time after transportation network services have been provided, the licensed company facilitating the services shall transmit an electronic receipt for the services to the passenger or the passenger's authorized representative that contains all of the following:

(1) The origin and destination of the trip.

(2) The total time and distance of the trip.

(3) An itemization of the total fare paid, if any.

440.44 Zero tolerance for use of drugs or alcohol.

(1) **POLICY.** Each licensed company shall develop, implement, and make available on its Internet site a policy prohibiting any participating driver from using alcohol, or any other intoxicant that may render the participating driver incapable of safely driving, while the participating driver is engaged in transportation network services for the licensed company or is logged on to the licensed company's digital network.

(2) **COMPLAINTS.** (a) Each licensed company shall develop, implement, and make available on its Internet site, complaint procedures for reports of suspected violations of the policy under sub. (1).

(b) Upon receipt of a complaint concerning a violation of a licensed company's policy under sub. (1), the licensed company shall immediately suspend the participating driver and investigate the complaint. The suspension shall continue until the complaint is resolved.

(c) Each licensed company shall maintain all records of each investigation under par. (b), including the results of that investigation and any action taken based on that investigation, for at least 2 years after the date the complaint was received by the licensed company.

440.445 Certain requirements for participating drivers and their personal vehicles. (1) **APPLICATION.**

Before a licensed company allows an individual to be a participating driver for the licensed company, the licensed company shall do all of the following:

(a) Require the individual to submit an application to the licensed company that includes at least all of the following:

1. The individual's name, address, and age.
2. A copy of the individual's driver's license.
3. The individual's driving history.
4. Proof of motor vehicle registration for each personal vehicle the individual will use to engage in transportation network services through the licensed company.

5. A copy of the individual's automobile liability insurance policy for each personal vehicle the individual will use to provide transportation network services through the licensed company.

(b) Conduct, or have a 3rd party conduct, a local and national criminal background check for the individual that includes all of the following:

1. A multistate and multijurisdictional criminal records locator or other similar commercial nationwide database with validation.

2. A national sex offender registry database.

(c) Obtain and review a driving history research report for the individual.

(2) **WHO MAY NOT BE A PARTICIPATING DRIVER.** (a) A licensed company may not allow any of the following individuals to be a participating driver for the licensed company:

1. An individual who has had more than 3 moving violations, as defined in s. 343.01 (2) (cg), in the past 3 years, or one conviction in the past 3 years for an offense listed under s. 351.02 (1) (a).

2. An individual who, in the last 7 years, committed an offense that resulted in a suspension, revocation, or other conviction counted under s. 343.307 (1) or was convicted of a sex offense, as defined in s. 301.45 (1d) (b), or of any crime involving fraud, theft, damage to property, violence, acts of terror, or the use of a motor vehicle in the commission of a felony.

3. An individual whose information is contained in the sex offender registry under s. 301.45 or on the National Sex Offender Public Website.

4. An individual who does not possess a valid driver's license.

5. An individual who does not possess proof of motor vehicle registration for each personal vehicle the individual intends to use to engage in transportation network services.

6. An individual who does not possess proof of automobile liability insurance for each personal vehicle the individual intends to use to engage in transportation network services.

7. An individual who is not at least 19 years of age.

(b) A participating driver who is convicted of any moving violation or of any felony or misdemeanor anywhere shall immediately notify the licensed company for which the participating driver engages in transportation network services of the conviction.

(3) **VEHICLE SAFETY AND EMISSIONS.** Each licensed company shall ensure that each motor vehicle a participating driver uses to provide transportation network services for the licensed company is a personal vehicle that satisfies all state vehicle safety and emissions standards for private motor vehicles.

(4) **NO STREET HAILS.** A participating driver may not solicit or accept street hails or otherwise provide rides for compensation that are not prearranged through a transportation network company on the company's digital network.

(5) **NO CASH TRIPS.** (a) A participating driver may not solicit or accept any cash payment to engage in transportation network services.

(b) All passenger payments for transportation network services shall be made electronically using the transportation network company's digital network.

440.45 Nondiscrimination; accessibility. (1) **NON-DISCRIMINATION POLICY.** Each licensed company shall adopt a policy of nondiscrimination on the basis of trip origin or destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity with respect to passengers and prospective passengers and notify all of its participating drivers of the nondiscrimination policy.

(2) A participating driver may not discriminate against any passenger or prospective passenger on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.

(3) Each participating driver shall permit service animals to accompany passengers in connection with transportation network services.

(4) A licensed company may not impose additional charges for providing transportation network services to persons with disabilities because of those disabilities.

(5) Each licensed company shall provide each prospective passenger an opportunity to indicate whether the passenger requires a wheelchair-accessible vehicle. If a licensed company cannot arrange wheelchair-accessible transportation network services for a prospective passenger who requires wheelchair-accessible services, the licensed company shall refer the prospective passenger to an alternate provider of wheelchair-accessible transportation, if available.

440.455 Records. Each licensed company shall do all of the following:

(1) Maintain passenger trip records for at least one year from the date of each trip.

(2) Maintain all records concerning each participating driver for at least one year after the date on which the participating driver ceases to engage in transportation network services for the licensed company.

440.46 Personally identifiable information. A licensed company may not disclose a passenger's or prospective passenger's personally identifiable information to any other person, unless any of the following is true:

(1) The passenger or prospective passenger consents to the disclosure.

(2) The disclosure is required by law.

(3) The disclosure is necessary to protect or defend the terms of use of the licensed company's transportation network services or to investigate a violation of those terms.

(4) The disclosure is to the participating driver, is limited to the passenger's name and telephone number, and is for the sole purpose of facilitating the participating driver's transportation network services for that passenger.

440.465 Limitations on local and other regulation.

(1) Section 349.24 does not apply to a transportation network company or to a participating driver engaged in transportation network services or the participating driver's personal vehicle used for those services. No city, village, town, or county may enact or enforce an ordinance or adopt or enforce a resolution that regulates a transportation network company or its participating drivers and their personal vehicles in connection with transportation network services.

(1m) Notwithstanding sub. (1), a city, village, town, or county may do any of the following:

(a) To the extent necessary to comply with assurances under 49 USC 47107, impose fees or charges under s. 114.14 (1) for the use of an airport by participating drivers engaged in transportation network services. Any such fees or charges shall be imposed on transportation network companies and may not exceed fees or charges imposed under s. 114.14 (1) for the use of an airport by taxicabs, limousines, shuttles, or other for-hire vehicles.

(b) Require a transportation network company to comply with a permit developed by an airport and issued to the transportation network company regarding the manner of operation on airport property by participating drivers engaged in transportation network services. A single permit under this paragraph shall be issued to each transportation network company and shall apply to all of the participating drivers for the company.

(2) The requirements under chs. 340 to 349 applicable specifically to commercial motor vehicles or for-hire vehicles do not apply to personal vehicles used by participating drivers engaged in transportation network services.

(3) The requirements under ss. 342.06 (1) (h) and (3), 342.10 (3) (a), and 342.33 do not apply to personal vehicles used by participating drivers engaged in transportation network services.

440.48 Insurance. (1) DRIVER REQUIREMENTS. (a) A participating driver, or a transportation network company on the driver's behalf, shall maintain primary automobile insurance that does all of the following:

1. Recognizes that the driver is a participating driver, or otherwise uses a motor vehicle to transport passengers for compensation.

2. Covers the participating driver at any of the following times:

a. While the driver is logged on to the transportation network company's digital network.

b. While the driver is engaged in transportation network services.

(b) The following automobile insurance requirements apply while a participating driver is logged on to the transportation network company's digital network and is available to receive transportation requests but is not engaged in transportation network services:

1. The insurance is primary automobile liability insurance in the amount of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage.

2. The insurance provides primary uninsured motorist coverage in accordance with the requirements under s. 632.32 (4) (a) 1.

3. The coverage requirements under this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the participating driver.

b. Automobile insurance maintained by the transportation network company.

c. Any combination of insurance specified in subd. 3. a. and b.

(c) The following automobile insurance requirements apply while a participating driver is engaged in transportation network services:

1. The insurance is primary automobile liability insurance in the amount of at least \$1,000,000 for death, bodily injury, and property damage.

2. The insurance provides primary uninsured motorist coverage in accordance with the requirements under s. 632.32 (4) (a) 1.

3. The coverage requirements under this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the participating driver.

b. Automobile insurance maintained by the transportation network company.

c. Any combination of insurance specified in subd. 3. a. and b.

(d) If insurance maintained by the participating driver under par. (b) or (c) has lapsed or does not provide the required coverage, insurance maintained by a transportation network company shall provide the coverage required under this subsection beginning with the first dollar of a claim and have the duty to defend the claim.

(e) Coverage under an automobile insurance policy maintained by the transportation network company shall not be dependent on a personal automobile insurer first denying a claim nor shall a personal automobile insurance policy be required to first deny a claim.

(f) Insurance required under this subsection may be placed with an insurer authorized to do business in this state or with a surplus lines insurer.

(g) Insurance satisfying the requirements of this subsection shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under ch. 344.

(h) A participating driver shall carry proof of coverage satisfying pars. (b) and (c) with him or her at all times during his or her use of a vehicle in connection with a transportation network company's digital network. In the event of an accident, a participating driver shall provide this insurance coverage information to the directly interested parties, automobile insurers, and investigating police officers, upon request in accordance with s. 344.62. Upon request, a participating driver shall also disclose to directly interested parties, automobile insurers, and investigating police officers whether he or she was logged on to the transportation network company's digital network or engaged in transportation network services at the time of the accident.

(2) DISCLOSURES REQUIRED REGARDING INSURANCE COVERAGE. A transportation network company shall disclose in writing to participating drivers all of the following before they are allowed to accept a request for transportation network services on the transportation network company's digital network:

(a) The insurance coverage, including the types of coverage and the limits for each coverage, that the transportation network company provides while the participating driver uses a personal vehicle in connection with a transportation network company's digital network.

(b) That the participating driver's own automobile insurance policy might not provide any coverage while the participating driver is logged on to the transportation network company's digital network and is available to receive transportation requests or is engaged in transportation network services depending on its terms.

(3) INSURER PROVISIONS. (a) Notwithstanding any coverage requirements under s. 632.32, an insurer that writes automobile insurance in this state may exclude any and all coverage afforded under a policy owner's insurance policy for any loss or injury that occurs while a participating driver is logged on to a transportation network company's digital network or is engaged in transportation network services. This right to exclude all coverage may apply to any coverage included in a motor vehicle insurance policy, including all of the following:

1. Liability coverage for bodily injury and property damage.

2. Uninsured and underinsured motorist coverage.

3. Medical payments coverage.

4. Comprehensive physical damage coverage.

5. Collision physical damage coverage.

(b) 1. Exclusions under par. (a) shall apply notwithstanding any requirement under ch. 344. Nothing in this subsection implies or requires that a personal automobile insurance policy provide coverage while the driver is logged on to the transportation network company's digital network, while the driver is engaged in transportation network services, or while the driver otherwise uses a vehicle to transport passengers for compensation.

2. Nothing shall be deemed to preclude an insurer from providing coverage for the participating driver's vehicle, if the insurer so chooses to do so by contract or endorsement.

(c) 1. Automobile insurers that exclude coverage as permitted in this subsection shall have no duty to defend or indemnify any claim expressly excluded. Nothing in this section shall be deemed to invalidate or limit an exclusion contained in a policy, including any policy in use, or approved for use, in this state before the effective date of this subdivision [LRB inserts date], that excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public.

2. An automobile insurer that defends or indemnifies a claim against a participating driver that is excluded under the terms of its policy as permitted in this subsection shall have a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements of sub. (1) at the time of loss.

(d) In a claims coverage investigation, transportation network companies and any insurer potentially providing coverage under sub. (1) shall cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the participating driver if applicable, including the precise times that a participating driver logged on and off the transportation network company's digital network in the 12-hour period immediately preceding, and in the 12-hour period immediately following, the accident, and disclose to one another a clear description of the coverage, exclusions, and limits provided under any automobile insurance maintained under sub (1).

(e) If a transportation network company's insurer covers a claim under a policy's comprehensive or collision coverage, the insurer shall issue the payment for the claim to either of the following, as directed by the transportation network company:

1. Jointly to the owner of the personal vehicle and the primary lienholder.

2. Directly to the person repairing the personal vehicle in satisfaction of completion of repairs as payment in full.

440.49 Disciplinary proceedings and actions. (1) INVESTIGATIONS AND HEARINGS. Subject to the rules promulgated under s. 440.03 (1), the department may conduct investigations and hold hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter or a violation of any other law that substantially relates to the operation of a transportation network company or to transportation network services has occurred.

(2) DISCIPLINE. Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a licensed company or deny, limit, suspend, or revoke a license granted under s. 440.415 if the department finds that an applicant for licensure or a licensed company has done any of the following:

(a) Intentionally made a material misstatement in an application for a license or license renewal.

(b) Advertised in a manner that is false or misleading.

(c) Obtained or attempted to obtain compensation through fraud or deceit.

(d) Violated this subchapter or any rule promulgated under this subchapter or violated any other law that substantially relates to the operation of a transportation network company or to transportation network services.

(e) Failed to cooperate with the department, or failed to timely respond to a request for information by the department, in connection with an investigation under this section.

(3) FORFEITURES. In addition to or in lieu of a reprimand or other action under sub. (2), the department may assess against a licensed company, for the violations enumerated under sub. (2), a forfeiture of not more than \$1,000 for each separate offense.

440.495 Penalties. Any person who violates this subchapter or any rule promulgated under this subchapter may be fined not more than \$1,000.

SECTION 6. Nonstatutory provisions.

(1) EMERGENCY RULES. The department of safety and professional services may promulgate emergency rules under section 227.24 of the statutes implementing subchapter IV of chapter 440 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection remain in effect until June 30, 2017, or the date on which permanent rules take effect, whichever is sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 7. Effective dates. This act takes effect on the day after publication, except as follows:

(1) LICENSURE REQUIREMENT. The treatment of section 440.41 of the statutes takes effect on the first day of the 4th month beginning after publication.

(2) DRIVER INSURANCE REQUIREMENTS. The treatment of section 440.48 (1) of the statutes takes effect on July 1, 2015, or on the day after publication, whichever is later.