

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0475-01
Bill No.: SB 185
Subject: Business and Commerce; Consumer Protection; Contracts and Contractors;
 Employees - Employers; Licenses - Miscellaneous; Motor Carriers; Department of
 Revenue; Roads and Highways; Transportation
Type: #Updated
Date: January 17, 2017
 # To update with Department of Transportation assumptions.

Bill Summary: This proposal enacts provisions relating to transportation network companies.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	\$27,121	\$40,000	\$40,000
Total Estimated Net Effect on General Revenue	\$27,121	\$40,000	\$40,000

ESTIMATED NET EFFECT ON OTHER STATE FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on <u>Other</u> State Funds	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses.
 This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Unemployment Insurance Administration	\$0 or (\$39,000,000)	\$0 or (\$39,000,000)	\$0 or (\$39,000,000)
Wagner-Peyser	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)
#Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$51,000,000)	\$0 or (\$51,000,000)	\$0 or (\$51,000,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Total Estimated Net Effect on FTE	0	0	0

Estimated Net Effect (expenditures or reduced revenues) expected to exceed \$100,000 in any of the three fiscal years after implementation of the act.

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

Officials at the **Department of Revenue (DOR)** state the following regarding this proposal:

This proposal provides definitions, regulations, requirements, and restrictions for transportation network companies and transportation network company (TNC) drivers to operate in the state of Missouri.

§387.704 provides that, beginning August 28, 2017, TNC's shall be required to obtain an annual permit from the Department at a fee of \$5,000.

Administrative Impact

Motor Vehicle Bureau

The Department's regulatory functions would be minimal under this bill, as there is no enforcement mechanism or disciplinary process established that would allow the Department to take action against a TNC holding a permit. The TNC would provide basic information on the application such as business name, address, agent contact information, phone number, and would also self-certify that the TNC would abide by all the requirements in §§387.700 to 387.734, RSMo. There is no statutory basis for denying issuance of a permit or revoking a permit once it has been issued.

The proposal only requires that an annual fee be paid and does not set a time frame in which the permit itself expires.

- Procedures will need to be developed for the issuance TNC permits. This will require 80 hours for a Management Analyst Specialist I, at a cost of \$1,780 in FY 2018.
- Develop a new application for annual permit issuance for TNC. This will require 40 hours for a Management Analyst Specialist I, at a cost of \$890 in FY 2018.
- The department's website will need to be updated. This will require 10 hours for an Administrative Analyst III, at a cost of \$240 in FY 2018.
- MVB user acceptance testing for identified system modifications. 80 hours for each system modification for a total of 80 hours by a Management Analyst Specialist I at a cost of \$890 in FY 2018.

ASSUMPTION (continued)

Administrative Impact (continued)

OA-ITSD services are required at a cost of \$12,879 (171.72 hours x \$75 per hour).

The Department has identified one TNC currently operating within the state of Missouri; the Department assumes that the costs for processing applications will be absorbed with existing resources.

The Department will modify DMVConnect to facilitate the new TNC process and collect the required \$5,000 fee.

It is assumed that each TNC annual permit issued will expire twelve months from the date of issuance.

In summary, DOR assumes a cost of **\$16,679** (\$1,780 + \$890 + \$240 + \$890 + \$12,879) in FY 2018.

Oversight assumes DOR is provided with core funding to handle a certain amount of activity each year. Oversight assumes DOR could absorb the administrative costs related to this proposal and will reflect a cost of \$12,879 for OA-ITSD services.

Driver License Bureau

It is unclear whether the proposed language in §387.702 is intended to exempt TNC drivers from the requirement of having a Class E Chauffer's license. If it is the sponsors intent to exempt TNC drivers from the provisions of §302.015, which requires the Class E for-hire driver license for a person "who operates a motor vehicle in the transportation of persons or property, and who receives compensation for such services in wages, salary, commission or fare, or who as an owner or an employee operates a motor vehicle carrying passengers or property for hire..." the bill language should clearly specify the same.

The Department would assume the language, as written, would exempt TNC drivers from the requirement of having a Class E license for purposes of transporting persons for compensation.

ASSUMPTION (continued)

Revenue Impact

The Department is aware of one TNC currently operating within the state of Missouri. Additional research has identified other potential TNCs in operation in the United States and other countries. However, it is unknown as to when, or even if, their services or any other companies offering similar services falling under the provisions of this proposal will be available in Missouri.

Based on the one TNC currently operating in Missouri, there will be an increase of \$5,000 each year from the issuance of a TNC license. The Department assumes this increase will be deposited into General Revenue.

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal adds a new section 387.414, which indicates that drivers shall be independent contractors and not employees of the transportation network company (TNC) if certain conditions are met. This proposal also adds section 387.432.1, which indicates that TNC drivers shall not be considered employees of the TNC for purposes of Chapters 285, 287, 288, and 290 (certain labor laws, including employment security and workers' compensation) unless there is a written employment agreement.

A TNC is "a corporation, partnership, sole proprietorship, or other entity that is licensed and operating in Missouri that uses a digital network to connect transportation network corporation riders to transportation network corporation drivers who provide prearranged rides."

Each year, on October 31, the Secretary of Labor certifies the state unemployment insurance programs that conform and comply substantially with federal law. (26 U.S.C. § 3304.) If, and only if, a state's unemployment insurance program is certified to be in conformity with Federal requirements, employers within the state are eligible to receive a credit against their Federal Unemployment Tax Act (FUTA) taxes. (26 U.S.C. § 3302.)

This proposal may raise an issue with federal law since section 387.414 indicates that drivers shall be considered independent contractors and not employees of the TNC if certain conditions are met.

Section 387.432.1 specifically provides, for the purposes of Chapter 288, that a TNC shall not be considered the employer of a driver, and that a driver shall not be considered the employee of a TNC, unless there is a written contract.

ASSUMPTION (continued)

The designation of independent contractor status for services performed for a TNC that may include entities required to be covered under 3304(a)(6)(c)(7), FUTA) and certain nonprofit organizations (Section 3306(c)(8), FUTA) must be covered under the UC system if an employer/employee relationship exists.

Section 3304(a)(6)(A), FUTA, requires as a condition of certification of the unemployment compensation (UC) program that unemployment compensation (UC) be payable based on certain services that are not subject to the FUTA tax. Services performed for state and local governmental entities and Indian Tribes (Section 3306(c)(7), FUTA) and certain nonprofit organizations (Section 3306(c)(8), FUTA) must be covered under the UC system if an employer/employee relationship exists.

Section 3306(I), FUTA, references the definition of an employee in Section 3121(d) of the Internal Revenue Code (IRC) of 1986. Section 3121(d)(2), IRC, specifies that employee means "any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee." Regulations implementing Section 3306(I), FUTA, are found at 26 C.F.R. 31.3306(i)-1.

These regulations specify that an individual is an employee if the relationship between the individual and the person for whom services are performed has the legal relationship of employer and employee:

"Generally such a relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the results to be accomplished by the work but also as to the details and means by which that result is accomplished."

The regulations go on to point out that "it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if [the employer] has the right to do so." Concerning independent contractors, the regulations are not permissive; if an employer-employee relationship exists, "it is of no consequence that the employee is designated as a partner, co-adventurer, agent, independent contractor, or the like."

Thus, the basic determinant of whether or not service is performed by an independent contractor is the right of direction and control, whether or not it is exercised.

ASSUMPTION (continued)

While this proposal does not amend the Missouri UI law, the provision in the proposal that an independent contractor relationship exists may preclude the Division of Employment Security from applying the common law of agency right to control test for determination of an employment relationship as provided in Section 288.034.5 RSMo. Missouri UI law must contain a test for an employment relationship at least as strict as the test used by the IRS. The classification of an independent contractor relationship in this bill could result in the exclusion of coverage under the Missouri UI law. Certain individuals could be classified as independent contractors regardless of the outcome of a determination on employment using the common law of agency right to control test. As a result, their services would not be covered under Section 3304(a)(6)(A), FUTA.

In the event that there is the right of direction and control of the services performed by the individual, and the employer is a TNC that is a state and local governmental entity, certain nonprofit organizations, and Indian tribes, the services must be covered under UI law, or a conformity issue would be raised.

Review of this proposal by the United States Department of Labor (USDOL) has identified an issue that may affect certification of Missouri's unemployment insurance (UI) program.

The federal and state governments are jointly responsible for administering the UI system. State laws must meet certain federal requirements for the state agency to receive the administrative grants needed to operate its UI program and for employers to qualify for certain tax credits.

This proposal may create a conformity issue with the Federal UC laws. Non-conformity with federal law would jeopardize the certification of Missouri's UI program. If the program fails to be certified, Missouri would lose approximately \$38 million in federal funds the state receives each year to administer the UI program. Additionally, Missouri would lose the approximately \$12 million in federal funds each year the Department of Economic Development, Division of Workforce Development (DED) uses for Wagner-Peyser re-employment services.

The FUTA imposes a 6.0% percent payroll tax on employers. Most employers never actually pay the total 6.0% percent due to credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. FUTA allows employers tax credits up to a maximum of 5.4% percent against the FUTA payroll tax if the state UI law is approved by the Secretary of Labor.

ASSUMPTION (continued)

However, if this bill causes Missouri's program to be out of compliance or out of conformity, Missouri employers would pay the full 6.0% percent, or approximately an additional \$917 million per year.

Oversight will range the fiscal impact of this proposal from \$0 (does not put Missouri out of compliance) to a loss of \$51 million in federal funds (if it is found by the federal government that Missouri is out of compliance with the federal requirements for certification of Missouri's Unemployment Insurance program) in FY '18, FY '19 and FY '20.

Officials from the **Office of the Secretary of State (SOS)** state many bills considered by the General Assembly include provisions allowing or requiring agencies to submit rules and regulations to implement the act. The SOS is provided with core funding to handle a certain amount of normal activity resulting from each year's legislative session. The fiscal impact for this fiscal note to the SOS for Administrative Rules is less than \$2,500. The SOS recognizes that this is a small amount and does not expect that additional funding would be required to meet these costs. However, the SOS also recognizes that many such bills may be passed by the General Assembly in a given year and that collectively the costs may be in excess of what the office can sustain with the core budget. Therefore, the SOS reserves the right to request funding for the cost of supporting administrative rules requirements should the need arise based on a review of the finally approved bills signed by the governor.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process.

Officials from the **Joint Committee on Administrative Rules** state this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

#Officials from the **Department of Transportation** assume the proposal will have no fiscal impact on their organization.

Officials from the **Department of Insurance, Financial Institutions and Professional Registration** and **Department of Public Safety - Missouri Highway Patrol** each assume the proposal will have no fiscal impact on their respective organizations.

MHP states they receive \$22 in revenue per background check provided (\$2 from FBI background checks and \$20 from state background checks). MHP also stated that it is unknown how many transportation network companies will require background checks.

ASSUMPTION (continued)

Oversight conducted some research and found several such transportation network companies (Uber, Lyft, Sidecar, Flywheel, Curb, Hailo, Summon, and Shuddle) that could apply for an annual permit to operate in Missouri. Therefore, Oversight will reflect revenues of \$40,000 (assumed 8 companies x \$5,000 annual permit fee per §387.404) in FY 2018, FY 2019 and FY 2020 for this proposal.

This proposal will increase total state revenue.

<u>FISCAL IMPACT - State Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
GENERAL REVENUE			
<u>Revenue - DOR</u> Permit fees of \$5,000 - §387.404	\$40,000	\$40,000	\$40,000
<u>Cost - DOR</u> Administrative and programming costs	<u>(\$12,879)</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT TO GENERAL REVENUE	<u>\$27,121</u>	<u>\$40,000</u>	<u>\$40,000</u>
FEDERAL FUNDS			
<u>Loss - DOLIR</u> Unemployment Insurance program out of compliance	\$0 or <u>(\$39,000,000)</u>	\$0 or <u>(\$39,000,000)</u>	\$0 or <u>(\$39,000,000)</u>
<u>Loss - DED</u> Wagner-Peyser funds not received due to noncompliance	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>	\$0 or <u>(\$12,000,000)</u>
#ESTIMATED NET EFFECT TO FEDERAL FUNDS	<u>\$0 or</u> <u>(\$51,000,000)</u>	<u>\$0 or</u> <u>(\$51,000,000)</u>	<u>\$0 or</u> <u>(\$51,000,000)</u>

<u>FISCAL IMPACT - Local Government</u>	FY 2018 (10 Mo.)	FY 2019	FY 2020
	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

FISCAL IMPACT - Small Business

Small transportation businesses could be impacted by this proposal.

There are over 141,000 small businesses (less than 50 employees) covered under Missouri's unemployment insurance system. Because Missouri's UI program is certified in conformity with Federal UI laws, most employers never actually pay the total 6.0% in FUTA taxes due to the credits they receive for the payment of state unemployment taxes and for paying reduced rates under an approved experience rating plan. However, this proposal could cause Missouri employers to pay the full 6.0%, which could result in additional costs of \$917 million per year.

FISCAL DESCRIPTION

This proposal enacts a regulatory scheme for "Transportation network companies" ("TNCs"). It provides that TNCs and TNC drivers are not common carriers, contract carriers, motor carriers, taxicab service or association, or for-hire vehicle services. TNC drivers need not register their vehicles as commercial or for-hire.

Transportation network companies may not operate within the state without first paying a \$5,000 annual fee and obtaining a permit from the Department of Revenue, but no per-car or per-driver fees shall be assessed. TNCs must maintain agents for service of process within the state of Missouri.

TNCs may charge fares, but must disclose the fare or fare structure on its website or digital network. If the fare is based on actual time and distance traveled, the TNC on its website shall also provide riders the applicable rates being charged and the option to receive an estimated fare before the rider enters the vehicle.

The TNC's digital network shall display a picture of the TNC driver and the license plate number of the vehicle before the rider enters the vehicle. The TNC must provide a detailed electronic receipt to the rider within a reasonable time following a trip.

TNC drivers shall be independent contractors and not employees under certain circumstances. TNC drivers are not agents of the TNC unless agreed to in writing.

FISCAL DESCRIPTION (continued)

TNCs must adopt a zero tolerance policy toward drivers using intoxicating substances. This act also requires an investigation and maintenance of related records.

This proposal prescribes driver eligibility requirements, including background checks and registration with the TNC. Transportation network company vehicles must meet Missouri's motor vehicle safety inspection requirements.

TNC drivers shall not solicit or accept street hails. TNCs shall adopt nondiscrimination policies with respect to riders, and shall notify drivers of such policy.

TNCs shall maintain individual trip records of riders for one year following each trip, and individual records of TNC drivers for one year following the end of the TNC's relationship with the driver.

This proposal provides that it is the sole body of law governing TNCs and TNC drivers, and provides that the Department of Revenue may promulgate rules to administer the provisions.

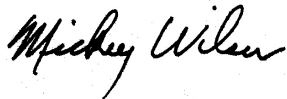
This proposal provides that TNCs shall not be considered employers of TNC drivers unless agreed to by written contract. TNCs must keep the appropriate agencies informed of such contracts and any changes to them.

This proposal provides that the statutes relating to regional taxicab districts shall not apply to TNCs, TNC drivers, or TNC services.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations
Department of Transportation
Department of Revenue
Office of the Secretary of State
Joint Committee on Administrative Rules
Department of Public Safety - Missouri Highway Patrol
Department of Insurance, Financial Institutions and Professional Registration



Mickey Wilson, CPA
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