

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 0590-02
Bill No.: HCS for HB 130
Subject: Business and Commerce; Consumer Protection; Contracts and Contractors;
 Employees - Employers; Licenses - Miscellaneous; Motor Carriers; Department of
 Revenue; Roads and Highways; Transportation
Type: Original
Date: January 12, 2017

Bill Summary: This proposal establishes a regulatory system for transportation network companies.

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2018	FY 2019	FY 2020
General Revenue	(\$119,408)	\$40,000	\$40,000
Total Estimated Net Effect on General Revenue	(\$119,408)	\$40,000	\$40,000

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

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 13 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*	(\$54,000)	(\$54,000)	(\$54,000)

* Proposal is specific to City of Kansas City only.

FISCAL ANALYSIS

ASSUMPTION

Oversight was unable to receive some of the agency responses in a timely manner due to the short fiscal note request time. Oversight has presented this fiscal note on the best current information that we have or on prior year information regarding a similar bill. Upon the receipt of agency responses, Oversight will review to determine if an updated fiscal note should be prepared and seek the necessary approval of the chairperson of the Joint Committee on Legislative Research to publish a new fiscal note.

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, TNCs 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 proposal, 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.

ASSUMPTION (continued)

Administrative Impact (continued)

- 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.

OA-ITSD services are required at a cost of \$159,408 in FY 2018.

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 **\$163,208** (\$1,780 + \$890 + \$240 + \$890 + \$159,408) in FY 2018.

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 Chauffeur'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)

Administrative Impact (continued)

10 records can be audited, twice per year (20 records per year, per TNC company). Based on the assumption of there being 8 TNCs operating in Missouri, there is the potential for 160 records that can be audited annually. Estimating 50% of the audited records contained violations would mean 80 possible violations annually. For purposes of appeals, one FTE will be required and will be requested through the appropriations process.

Driver License Bureau FY 2019

Appeals Referee I (2 months) \$40,848 annually = \$6,876

Driver License Bureau FY 2020

Revenue Processing Tech I - 2 @ \$40,848 annually = \$40,848

With regard to §387.735.5, the proposal does not state where any fines remitted to the Department from an applicable home rule city are to be disbursed. It is assumed the appeal process of a fine would be an uncontested informal review by an appeal's referee. Further, it is assumed that the complaint process outlined in subsection 3 is not part of an "audit" process whereby an applicable home rule city could assess appealable fines.

With regard to §387.736, the Department would rely upon the TNCs to accurately and timely report all TNC drivers involved in an applicable traffic accident or convicted of sexual misconduct, assault, or battery, so that the information could be conveyed to other TNCs holding a permit. The department would not independently confirm the validity of the information transmitted by a TNC in order to meet the requirements of §387.536.

The Department's regulatory functions would be minimal under this proposal, as there is no enforcement mechanism or disciplinary process established that would allow the Department to take action against a TNC holding a permit, and rule-making authority is limited to the provisions of §387.730. The TNC would provide basic information on the application such as business name, address, agent contact information, phone number, email for purposes of reporting TNC drivers in accordance with accordance with 387.736, and would also self-certify that the TNC would abide by all the requirements in §§387.700 to 387.736. 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.

ASSUMPTION (continued)

Administrative Impact (continued)

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 \$159,408 for OA-ITSD services.

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.

In response to a previous version, officials from the **Department of Labor and Industrial Relations (DOLIR)** assumed 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.)

ASSUMPTION (continued)

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. 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."

ASSUMPTION (continued)

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.

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.

In response to a previous version, officials from the **Office of the Secretary of State (SOS)** stated 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 **City of Kansas City** state this legislation will have a negative fiscal impact on the City of Kansas City, Missouri. Currently, Kansas City issues business licenses to drivers who provide a for-hire driving service. Kansas City charges a small fee for these licenses. This legislation, if passed, would make it impossible for Kansas City to issue such business licenses; therefore, Kansas City could not charge the business license fee. The loss of revenue to Kansas City if this legislation passed would be \$54,000.

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

In response to a previous version, officials from the **Joint Committee on Administrative Rules** stated this proposal is not anticipated to cause a fiscal impact beyond its current appropriation.

ASSUMPTION (continued)

In response to a previous version, officials from the **Department of Insurance, Financial Institutions and Professional Registration** assumed the proposal will have no fiscal impact on their organization.

In response to a previous version, officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** assumed the proposal will have no fiscal impact on their organization.

MHP stated 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.

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	FY 2019	FY 2020
	(10 Mo.)		
GENERAL REVENUE			
<u>Revenue - DOR</u> Permit fees of \$5,000 - §387.404	\$40,000	\$40,000	\$40,000
<u>Cost - DOR</u> Programming costs	(\$159,408)	\$0	\$0
ESTIMATED NET EFFECT TO GENERAL REVENUE	<u>(\$119,408)</u>	<u>\$40,000</u>	<u>\$40,000</u>

<u>FISCAL IMPACT - State Government</u>	FY 2018	FY 2019	FY 2020
(continued)	(10 Mo.)		

FEDERAL FUNDS

<u>Loss - DOLIR</u>	\$0 or	\$0 or	\$0 or
Unemployment Insurance program out of compliance	(\$39,000,000)	(\$39,000,000)	(\$39,000,000)

<u>Loss - DED</u>	\$0 or	\$0 or	\$0 or
Wagner-Peyser funds not received due to noncompliance	<u>(\$12,000,000)</u>	<u>(\$12,000,000)</u>	<u>(\$12,000,000)</u>

ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or	\$0 or	\$0 or
	<u>(\$51,000,000)</u>	<u>(\$51,000,000)</u>	<u>(\$51,000,000)</u>

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

CITY OF KANSAS CITY FUNDS

<u>Loss - loss of business license fees</u>	<u>(\$54,000)</u>	<u>(\$54,000)</u>	<u>(\$54,000)</u>
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ESTIMATED NET EFFECT ON CITY OF KANSAS CITY FUNDS	<u>(\$54,000)</u>	<u>(\$54,000)</u>	<u>(\$54,000)</u>
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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 outlines the new regulatory treatment of transportation network companies (TNCs).

The proposal further provides that, beginning August 28, 2017, a TNC will apply for an annual permit from the Department of Revenue to do business within the State of Missouri, and maintain the insurance coverage requirements provided. Criteria for fare charges and customer receipts are specified in the proposal.

The proposal specifies what information and display a TNC shall display on its software application or website and vehicles.

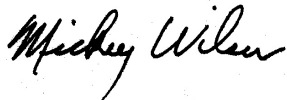
A TNC will be required to conduct a local and national criminal background check for each applicant to act as a driver. Drivers shall be independent contractors and not employees of the transportation network company if specific conditions are met. TNCs shall also adopt a nondiscrimination policy with respect to riders. All vehicles used to provide prearranged rides must meet inspection requirements.

A municipality or other local or state entity cannot impose a tax on or require a license relating to providing prearranged rides for a TNC or its drivers or vehicles. This exemption does not apply to earnings taxes.

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
City of Kansas City



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