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Financial Institutions and Insurance

J-3 Kansas Transportation Network Company Services Act

On May 5, 2015, the Kansas Legislature voted to override Governor Brownback's veto of House Sub. for SB 117. The bill, known as the Kansas Transportation Network Company Services Act (Act), became effective on publication in the *Kansas Register* on May 14, 2015. The Legislature subsequently passed a second bill, SB 101, to amend the new Act. Governor Brownback signed SB 101 into law, which became effective on July 1, 2015. The majority of the provisions are already in effect, but the sections addressing lienholders' interests and insurance requirements take effect on and after January 1, 2016. The intent of this article is to serve as a comprehensive guide to Kansas ridesharing law.

Applicable Definitions

First and foremost, it is important to note the terms defined in the Act. These terms are defined as follows:

- "Transportation network company" or "TNC" means a corporation, partnership, sole proprietorship or other entity operating in Kansas that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. A TNC is not deemed to control, direct or manage the personal vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract;
- "Digital network" is defined as any online-enabled application, software, website or system offered or utilized by a TNC that enables the prearrangement of rides with TNC drivers;
- "Personal vehicle" means a vehicle that is used by a TNC driver in connection with providing a prearranged ride and is:
 - Owned, leased or otherwise authorized for use by the TNC driver; and
 - Not a taxicab, limousine or for-hire vehicle.
- "Prearranged ride" means the provision of transportation by a driver to a rider that begins when a driver accepts a ride requested by a rider through a digital network controlled by a TNC, continues through the transportation of a requesting rider, and ends when the last requesting rider departs from the personal vehicle. Transportation by taxi, limousine, or other for-hire vehicle is not included;
- "TNC driver" or "driver" is an individual who:

- Receives connections to potential passengers and related services from a TNC in exchange for payment of a fee to the TNC;
- Uses a personal vehicle to provide services for riders matched through a digital network controlled by a TNC; and
- Receives, in exchange for providing the passenger a ride, compensation that exceeds the individual's cost to provide the ride;
- “TNC rider” or “rider” is an individual who uses or persons who use a TNC's digital network to connect with a TNC driver for prearranged rides to the rider in the driver's personal vehicle between points chosen by the rider; and
- “Vehicle owner” is the owner of a personal vehicle.

Requirements and Responsibilities of a TNC

The TNC, such as Uber, Lyft, and other companies that fall under the definition of a TNC, must adhere to certain requirements to provide ridesharing services in the state. TNCs or drivers meeting the requirements of the Act are not considered motor carriers, private motor carriers, or public motor carries of passengers, nor are they determined to provide taxicab or for-hire vehicle service. A driver is not required to register a personal vehicle used for prearranged rides as a commercial or for-hire vehicle. Therefore, commercial and for-hire vehicle laws are not applicable to TNCs or TNC drivers under the Act. However, the Act does place a variety of requirements and responsibilities on the TNC, including maintaining an agent for service in the state. The TNC's responsibilities to both riders and drivers are described below.

TNC Requirements and Responsibilities— Riders

A TNC is required to provide a rider with certain disclosures and to protect the confidentiality of rider information.

Required Disclosures to Riders

A TNC is required to provide the rider with the following:

- Fare calculation method, disclosed on its digital network, for any fare charged;
- Applicable rates being charged;
- The option to receive an estimated fare before the rider enters the driver's personal vehicle;
- Driver's picture and the license plate number of the personal vehicle used for providing prearranged rides, displayed on the TNC's digital network, prior to the rider entering the driver's vehicle; and
- An electronic receipt, within a reasonable time after completion of a trip, that lists the following information regarding the trip:
 - Origin and destination;
 - Total time and distance; and
 - An itemization of the total fare paid, if any.

Confidentiality of Rider Information

The TNC is prohibited from disclosing a rider's personally identifiable information to a third party unless the rider consents or a legal obligation to disclose exists, or disclosure is required to protect or defend the terms of the use of the service or to investigate violations of terms. The TNC is allowed to share a rider's name or telephone number with the driver providing prearranged rides for the purpose of facilitating correct identification of the rider or communication between the rider and the driver.

TNC Requirements and Responsibilities— Drivers

The Act outlines the actions a TNC must take prior to permitting an individual to act as a TNC driver, which include reviewing the individual's application and driving history report. Individuals who meet certain conditions are disqualified from becoming a TNC driver. The Act specifies it is the TNC's responsibility to bar an individual from acting as a

driver on its digital network if he or she meets any of the disqualifying events.

Required Actions Prior to Permitting and Individual to Act as a TNC Driver

The TNC is required to take the following actions prior to allowing an individual to act as a driver on its digital network:

- Require the individual to submit an application to the TNC, including information regarding the applicant's address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC; and
- Obtain and review the applicant's driving history research report.

SB 101 removed the requirement for a TNC to obtain a local and national criminal background check on the individual conducted by the Kansas Bureau of Investigation. (H. Sub. for SB 117, as enacted, did not provide for a state regulatory agency; the Insurance Conference Committee was advised the criminal history record check could not be completed without a designated agency.)

Driver Disqualifications

The Act contains a list of disqualifying events that prohibit a TNC from permitting an individual to act as a driver on its digital network. The list of disqualifying events includes permanent disqualifications and disqualifications occurring within an established period of time.

A TNC is prohibited from permitting an individual to act as a TNC driver on its digital network who:

- Does not possess a valid driver's license;
- Does not possess proof of registration for the motor vehicle or motor vehicle used to provide a prearranged ride;
- Does not possess proof of automobile liability insurance for the personal vehicle or personal vehicles used to provide a prearranged ride;
- Is not at least 19 years of age;

- Has a permanent disqualification, as described below; or
- Has a disqualification that occurred within a specified time frame, described below as staged disqualifications.

Permanent Disqualifications

An individual is permanently disqualified as a TNC driver if he or she:

- Has been convicted of:
 - Any person felony described in statute in Article 34 or Article 54 of Kansas Statutes Annotated Chapter 21 (*i.e.*, capital murder, first or second degree murder, voluntary or involuntary manslaughter, assisting suicide, kidnapping or aggravated kidnapping, or aggravated assault);
 - Any sex offense described in statute in Article 35 or Article 55 of KSA Chapter 21 (*i.e.*, rape, criminal or aggravated criminal sodomy, sexual or aggravated sexual battery, indecent or aggravated indecent liberties with a child, indecent or aggravated indecent solicitation of a child, unlawful sexual relations, electronic solicitation, sexual exploitation of a child), or KSA 2014 Supp. 21-6419 through 21-6422 (*i.e.*, any sexual offense that is a crime against the public morals);
 - Identity theft, as described in KSA 2010 Supp. 21-4018, or KSA 2014 Supp. 21-6107;
 - Any attempt, conspiracy, or solicitation of any crime described above; or
 - A crime under the law of another jurisdiction that is substantially the same as the crimes described above; or
 - Is registered on the National Sex Offender Registry, the Kansas Offender Registry, or any similar registry of any other jurisdiction.

Staged Disqualifications

An individual is disqualified as a TNC driver for a set period of time if he or she has:

- A combined total of more than three moving violations in Kansas or any other jurisdiction within the past three years;
- A traffic violation in Kansas or any other jurisdiction within the past three years of attempting to evade the police, reckless driving, or driving on a suspended license; or
- A conviction, adjudication, or placement on diversion, within the past seven years, of:
 - Driving under the influence of drugs or alcohol in Kansas or any other jurisdiction;
 - Any crime involving controlled substances, as described in KSA 2010 Supp. 21-36a01 through 21-36a17 or in statute in Article 57 of Chapter 21, or any violation of any provision of the Uniform Controlled Substances Act prior to July 1, 2009;
 - Theft, as described in KSA 2009 Supp. 21-3701 or KSA 2014 Supp. 21-5801;
 - Any crime involving fraud, dishonesty, or deceit, as described by the Kansas Criminal Code;
 - Any attempt, conspiracy, or solicitation of any crime described above; or
 - A violation of the law or ordinance of another jurisdiction, including any municipality, which is substantially the same as the crimes described above.

Other Requirements

The Act requires the motor vehicle used by a driver to provide prearranged rides to meet the equipment requirements applicable to private motor vehicles under the state Uniform Act Regulating Traffic. The driver is allowed to provide only prearranged rides and is not allowed to solicit or accept street hails.

TNC Required Policies

The TNC is required to set forth various policies, including a zero tolerance policy on the use of drugs or alcohol, a prohibition on soliciting or accepting cash payments, a non-discrimination policy, and a records maintenance policy.

Zero Tolerance Policy on Use of Drugs or Alcohol

The TNC is required to implement a zero tolerance policy on the use of drugs or alcohol while a driver is providing a prearranged ride or logged into the digital network, but not providing a prearranged ride. The TNC is required, on its website, to provide notice of the zero tolerance policy and procedures for a rider to report a complaint about a driver with whom the rider is matched and reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

Upon receipt of a complaint regarding an alleged violation of the zero tolerance policy, the TNC is required to immediately suspend the driver's access to the digital network and to conduct an investigation. The suspension lasts the duration of the investigation. The TNC is required to maintain records pertaining to the enforcement of the zero tolerance policy for at least two years from the date of receipt of a passenger complaint.

Policy Prohibiting Solicitation or Acceptance of Cash Payments

The TNC is required to adopt a policy prohibiting solicitation or acceptance of cash payments from riders and notify the drivers of the policy, and the drivers are required to follow the policy. Only electronic payments using the TNC's digital network are allowed.

Policy of Non-Discrimination

The TNC is required to adopt a policy of non-discrimination with respect to riders and potential riders and notify the drivers of the policy. The drivers are required to comply with all applicable laws regarding non-discrimination against riders

or potential riders and relating to accommodation of service animals. The driver is not allowed to impose additional charges for providing services to individuals with physical disabilities because of those disabilities.

The TNC is required to provide riders an opportunity to indicate the need for a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC services, it is required to direct the rider to an alternate provider of such service, if available.

Records Maintenance

The TNC is required to maintain individual trip records for at least one year from the date the trip is provided. In addition, the TNC is required to maintain driver records at least until the one-year anniversary of the date on which the driver's activation on the digital network ends.

Automobile Insurance Provisions

A major focus of the Kansas ridesharing law concerns automobile insurance. Insurance requirements, the responsibilities of the parties, disclosures by the TNC to drivers regarding insurance, and allowable exclusions by insurance companies are described below.

Insurance Requirements

On and after January 1, 2016, a TNC driver or vehicle owner or TNC on the driver's behalf is required to maintain primary automobile insurance that recognizes the driver is a TNC driver and covers the driver while logged on to the TNC's digital network, engaged in a prearranged ride, or transporting a passenger for compensation.

The coverage requirements for Periods 1 and 2, as described below, are satisfied by automobile insurance maintained by the TNC driver or vehicle owner or by the TNC, or by a combination of both. [Note: According to a representative of the Kansas Association of Insurance Agents (KAIA), the KAIA understands the law to provide that a driver's individual automobile insurance policy covers the

described Period 1, as long as the driver maintains an endorsement for ridesharing. Additionally, the representative indicated the TNC's insurance policy would cover Period 2.]

Period 1

While a TNC driver is logged on to the digital network and available to receive transportation requests but not engaged in a prearranged ride, the following automobile insurance requirements apply:

- Primary automobile insurance of at least \$50,000 for death and bodily injury per person and \$100,000 per incident, and \$25,000 for property damage; and
- Primary automobile liability insurance that meets the minimum coverage requirements where required by statutes relating to uninsured and underinsured motorist coverage and motor vehicle liability insurance coverage.

Period 2

While a TNC driver is engaged in a prearranged ride, the following automobile insurance requirements apply:

- Primary automobile insurance that provides at least \$1,000,000 for death, bodily injury, and property damage; and
- Primary automobile liability insurance that meets the minimum coverage requirements where required by statutes relating to uninsured and underinsured motorist coverage and motor vehicle liability insurance coverage.

If the insurance maintained by the driver or vehicle owner, as described in Periods 1 and 2 above, has lapsed or does not provide the required coverage, the insurance maintained by the TNC provides the coverage required beginning with the first dollar of a claim, and the TNC has the duty to defend the claim. Coverage by an automobile insurance policy maintained by the TNC does not depend on a personal automobile insurer first denying a claim, nor is a personal automobile insurance policy required to first deny a claim.

The Act provides that the required insurance may be placed with an insurer licensed under state law or with an eligible surplus lines insurer. Insurance meeting the requirements of the Act is deemed to satisfy the financial responsibility requirement for a personal vehicle under the Kansas Automobile Injury Reparations Act.

At all times during the use of a vehicle in connection with a TNC's digital network, the driver is required to carry proof of insurance meeting the requirements of the Act. In the event of an accident and upon a request pursuant to statutes relating to insurance verification, the driver is required to provide to the directly interested parties, automobile insurers, and investigating police officers the insurance coverage information and whether the driver was logged on to the digital network or on a prearranged ride at the time of the accident.

TNC Required Disclosures to Drivers Regarding Insurance

The following information is required to be disclosed in writing by the TNC to the driver before the driver is allowed to accept a request for a prearranged ride on the digital network:

- Insurance coverage, including the types of coverage and limits for each coverage, provided by the TNC to the driver using a personal vehicle in connection with the digital network; and
- Notice that the driver's own automobile insurance policy, depending on its terms, might not provide any coverage while the driver is logged on to the digital network and available to receive transportation requests or is engaged in a prearranged ride (Periods 1 and 2).

Insurers' Allowable Exclusions

Insurers writing automobile insurance in the state are allowed to exclude any and all coverage under the driver's or vehicle owner's insurance policy for any loss or injury occurring while the driver is logged on to a TNC's digital network or providing a prearranged ride. The Act provides a list of the coverage included in the automobile insurance

policy an insurer is allowed to exclude. The exclusions apply regardless of any requirement under the Kansas Automobile Injury Reparations Act.

The Act does not imply or require a personal automobile insurance policy to provide coverage while the driver is logged on to a digital network, engaged in a prearranged ride, or otherwise using a vehicle to transport passengers for compensation. An insurer is allowed to provide coverage for the TNC driver's vehicle, if the provider chooses to do so by contract or endorsement.

Automobile insurers excluding coverage have no duty to defend or indemnify any claim expressly excluded. The Act is not deemed to invalidate or limit an exclusion contained in a policy. An automobile insurer defending or indemnifying a claim against a driver excluded under the terms of its policy, as allowed under the Act, has the right of contribution against other insurers providing automobile insurance to the same driver in satisfaction of the required coverage under the automobile insurance requirements portions of the Act at the time of loss.

In a claims coverage investigation, the Act requires TNCs and any insurer potentially providing coverage under the Act's automobile insurance requirements to cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the TNC driver if applicable, including precise times the driver logged on and off the digital network in the 12-hour period immediately preceding and the 12-hour period immediately following the accident and to disclose to one another a clear description of the coverage, exclusions, and limits provided under any automobile insurance maintained under the Act.

Lienholders' Interest

House Sub. for SB 117 contains a requirement that if an individual's personal vehicle is subject to a lien, the individual must provide proof to the lienholder and the TNC of comprehensive and collision insurance coverage on the vehicle that would cover the period when the individual

is logged on to a TNC's digital network but not engaged in a prearranged ride (Period 1) and when the individual is engaged in a prearranged ride (Period 2).

The provision requiring an individual whose personal vehicle is subject to a lien to provide proof to the lienholder and the TNC of comprehensive and collision insurance coverage for Periods 1 and 2 is no longer required because SB 101 amended the Act to strike this provision. Current law requires a TNC to disclose prominently, with a separate acknowledgment of acceptance, to its drivers in the prospective TNC drivers' written terms of service the following before the drivers are allowed to accept a request for TNC services on the TNC's digital platform: "If you are required by agreement

with the lienholder to maintain comprehensive and collision insurance on the vehicle, using the vehicle for TNC services without such insurance coverage may violate your legal obligation to the lienholder under Kansas law."

In addition, if the vehicle used by a TNC driver is subject to a lien and the lienholder requires comprehensive and collision insurance in its agreement, the Act requires the TNC driver to ensure that such insurance is in effect and covers the periods when the TNC driver is logged on to a TNC's digital network but not engaged in a prearranged ride (Period 1) and when the TNC driver is engaged in a prearranged ride (Period 2).

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