

## **BILL ANALYSIS**

C.S.H.B. 1733  
By: Smithee  
Insurance  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties observe that technological advances have driven major innovations in the vehicle-for-hire service sector, which has resulted in new transportation network companies (TNCs) now providing services in many cities across Texas. The rapid growth of this industry has revealed the need for innovation in both the automobile insurance market and insurance regulations in order to ensure public safety. According to the parties, under current law, drivers for TNCs are dependent on their personal automobile insurance policy as their primary insurance when they are driving and using a TNC application to search for riders. There are concerns that most insurers consider this a commercial activity and exclude coverage under a "livery exclusion" that is standard in most private passenger auto policies. C.S.H.B. 1733 seeks to address issues relating to automobile liability insurance coverage for TNC drivers.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1733 amends the Insurance Code to require a transportation network company driver, or transportation network company on the driver's behalf, to maintain primary automobile insurance as required by the bill's provisions. The bill requires insurance maintained for transportation network company drivers to allow a transportation network company driver to use a personal vehicle to transport transportation network company riders for compensation and cover the driver while the driver is logged on to the transportation network company's digital network or the driver is engaged in a prearranged ride.

C.S.H.B. 1733 requires insurance maintained for transportation network company drivers to comply with the law applicable to personal automobile insurance in Texas. The bill establishes that the bill's coverage requirements may be satisfied by automobile insurance maintained by the transportation network company driver, automobile insurance maintained by the transportation network company, or a combination of both. The bill authorizes insurance required under the bill's provisions to be placed with an automobile insurer authorized to engage in business in Texas or with an eligible surplus lines insurer.

C.S.H.B. 1733 sets the minimum amounts of automobile insurance coverage at the time a transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation network requests but is not engaged in a prearranged ride at \$50,000 for bodily injury to or death for each person in an incident, \$100,000

for bodily injury to or death of a person per incident, and \$25,000 for damage to or destruction of property of others in an incident. The bill requires the automobile insurance policy, at the time a transportation network company driver is engaged in a prearranged ride, to provide, at minimum, coverage with a total aggregate limit of liability of \$1 million for death, bodily injury, and property damage for each incident.

C.S.H.B. 1733 requires a transportation network company to provide the coverage required under the bill's provisions beginning with the first dollar of a claim against the driver if an insurance policy maintained by a transportation network company driver has lapsed or does not provide the required coverage. The bill establishes that coverage under an automobile insurance policy maintained by a transportation network company is not contingent on a transportation network company driver's personal automobile insurer initially denying a claim.

C.S.H.B. 1733 establishes that insurance satisfying the requirements of the bill's provisions satisfies the financial responsibility requirement for an automobile under the Texas Motor Vehicle Safety Responsibility Act. The bill requires a transportation network company driver to carry proof of insurance that satisfies the bill's insurance requirements between prearranged rides and insurance requirements during prearranged rides with the driver when the driver uses a vehicle in connection with a transportation network company's digital network. The bill requires a driver, in the event of an accident, to provide the proof of insurance to a directly interested person, automobile insurer, and investigating peace officer on request under Texas Motor Vehicle Safety Responsibility Act provisions relating to evidence of financial responsibility. The bill requires a driver, on request, to disclose to a directly interested person, automobile insurer, and investigating peace officer whether the driver, at the time of the accident, was logged on to the company's digital network or engaged in a prearranged ride.

C.S.H.B. 1733 requires a transportation network company, before a transportation network company driver is authorized to accept a request for a prearranged ride on a transportation network company's digital network, to disclose in writing the insurance policy that the company provides while a driver uses a personal vehicle in connection with the company's digital network and that the driver's personal automobile insurance policy may not provide coverage, depending on the policy's terms, while the driver is logged on to the company's digital network and is available to receive transportation requests or is engaged in a prearranged ride. The bill establishes that a transportation network company does not control, direct, or manage a personal vehicle or a transportation network company driver who connects to the company's digital network except as agreed by written contract.

C.S.H.B. 1733 authorizes an insurer to exclude from coverage under a personal automobile insurance policy issued to an owner or operator of a personal vehicle any loss or injury that occurs while a transportation network company driver using the personal vehicle is logged on to a transportation network company's digital network or is engaged in a prearranged ride. The bill makes such an authorized exclusion from coverage applicable to any coverage included in a personal automobile insurance policy. The bill makes such an authorized exclusion from coverage applicable notwithstanding a financial responsibility requirement under the Texas Motor Vehicle Safety Responsibility Act. The bill establishes that its provisions relating to personal automobile insurance may not be construed to invalidate or limit an exclusion contained in a policy form that excludes coverage for automobiles used to carry persons or property for compensation or available for hire by the public.

C.S.H.B. 1733 establishes that its provisions relating to personal automobile insurance do not require a personal automobile insurance policy to cover a transportation network company driver while the driver is logged on to a transportation network company's digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a vehicle to transport passengers for compensation. The bill establishes that such provisions do not prevent an insurer from providing coverage that may be excluded if the insurer elects to provide the coverage in the policy or by endorsement.

C.S.H.B. 1733 establishes that an automobile insurer that issues a personal automobile insurance policy that includes an exclusion from coverage authorized by the bill does not have a duty to defend or indemnify a claim arising from an event subject to the exclusion. The bill grants an automobile insurer that defends or indemnifies a claim against a transportation network company driver for which coverage is excluded under the terms of the policy as authorized by the bill's provisions relating to personal automobile insurance a right of contribution against another insurer that provides automobile insurance to the driver in satisfaction of the bill's insurance coverage requirements between prearranged rides and insurance coverage requirements during prearranged rides, as applicable.

C.S.H.B. 1733 requires a transportation network company and any insurer providing insurance coverage for transportation network company drivers, in an insurance claim investigation, to assist each insurer involved in the claim by providing information to directly interested persons and an insurer of the transportation network company driver. The bill requires such information to include the precise times that a driver logged on and off of the transportation network company's digital network in the 12-hour period immediately preceding and the 12-hour period immediately following the accident and a clear description of the coverage, exclusions, and limits provided under an automobile insurance policy maintained for transportation network company drivers.

C.S.H.B. 1733 applies to automobile insurance policies in Texas, including a policy issued by a Lloyd's plan, a reciprocal or interinsurance exchange, and a county mutual insurance company.

**EFFECTIVE DATE**

September 1, 2015.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1733 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

SECTION 1. Subtitle C, Title 10, Insurance Code, is amended by adding Chapter 1954 to read as follows:

CHAPTER 1954. TRANSPORTATION NETWORK SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1954.001. DEFINITIONS. In this chapter:

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Subtitle C, Title 10, Insurance Code, is amended by adding Chapter 1954 to read as follows:

CHAPTER 1954. INSURANCE FOR TRANSPORTATION NETWORK COMPANY DRIVERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1954.001. DEFINITIONS. In this chapter:

(1) "Digital network" means any online-enabled application, software, website, or system offered or used by a transportation network company that enables a prearranged ride with a transportation network company driver.

(2) "Personal vehicle" means a vehicle that is used by a transportation network company driver and is:

(1) "Participating driver" means an individual who operates a motor vehicle that is owned, leased, or otherwise authorized for use by the individual and provides transportation network services.

(2) "Passenger" means an individual who receives transportation network services.

(3) "Transportation network company" means an entity operating in this state that provides prearranged transportation network services for compensation through an online-enabled application or platform that connects a passenger with a participating driver.

(4) "Transportation network insurance" means an automobile liability insurance policy that covers a participating driver

(A) owned, leased, or otherwise authorized for use by the driver; and

(B) not a taxicab, limousine, or similar for-hire vehicle.

(3) "Prearranged ride" means transportation provided by a transportation network company driver to a transportation network company rider, beginning at the time a driver accepts a ride requested by a rider through a digital network controlled by a transportation network company and ending at the time the last requesting rider departs from the driver's personal vehicle. The term does not include transportation provided using a taxicab, limousine, or similar for-hire vehicle.

(See Sec. 1954.001(5), below.)

(4) "Transportation network company" means a corporation, partnership, sole proprietorship, or other entity operating in this state that uses a digital network to connect a transportation network company rider to a transportation network company driver for a prearranged ride.

(5) "Transportation network company driver" means an individual who:

(A) receives connections to potential transportation network company riders and related services from a transportation network company in exchange for payment of a fee to the company; and

(B) uses a personal vehicle to offer or provide a prearranged ride to a transportation network company rider on connection with the rider through a digital network controlled by the company in exchange for compensation or payment of a fee.

(6) "Transportation network company rider" means an individual who uses a transportation network company's digital network to connect with a transportation network company driver who provides a prearranged ride to the individual in the driver's personal vehicle between points chosen by the individual.

while the driver is providing transportation network services.

(5) "Transportation network services" means transportation of a passenger between points chosen by the passenger and prearranged with a participating driver through the use of a transportation network company's online-enabled application or platform. Unless context otherwise requires, the term includes services beginning at the time the driver logs on to the transportation network company's online-enabled application or platform and ending at the time the driver logs off of the application or platform.

Sec. 1954.002. APPLICABILITY OF CHAPTER. This chapter applies to automobile liability insurance policies in this state, including policies issued by a Lloyd's plan, a reciprocal or interinsurance exchange, and a county mutual insurance company.

Sec. 1954.003. REQUIRED AND PROHIBITED DISCLOSURES. A transportation network company shall provide to a participating driver a written disclosure, as part of the agreement between the company and the driver, of the company's transportation network insurance policy and the policy's limits of liability. The disclosure must notify the driver that the driver's personal automobile liability insurance policy does not provide coverage to the driver while the driver is providing transportation network services from the time the driver logs on to the company's online-enabled application or platform until the time the driver logs off of the application or platform.

#### SUBCHAPTER B. INSURANCE REQUIREMENTS

Sec. 1954.051. INSURANCE REQUIREMENTS IN GENERAL. A transportation network company and a participating driver shall maintain transportation network insurance as provided by this chapter.

Sec. 1954.002. APPLICABILITY OF CHAPTER. This chapter applies to automobile insurance policies in this state, including policies issued by a Lloyd's plan, a reciprocal or interinsurance exchange, and a county mutual insurance company.

No equivalent provision. (But see Sec. 1954.101 below.)

#### SUBCHAPTER B. INSURANCE REQUIREMENTS

Sec. 1954.051. GENERAL INSURANCE REQUIREMENT. (a) A transportation network company driver or transportation network company on the driver's behalf shall maintain primary automobile insurance as required by this subchapter. (b) Insurance maintained under this subchapter must allow a transportation network company driver to use a personal vehicle to transport transportation network

company riders for compensation and cover the driver while:

(1) the driver is logged on to the transportation network company's digital network as provided by Section 1954.052;

or

(2) the driver is engaged in a prearranged ride as provided by Section 1954.053.

(c) Insurance maintained under this subchapter must comply with the law applicable to personal automobile insurance in this state, including this subtitle and Chapter 601, Transportation Code.

(d) The coverage requirements of this subchapter may be satisfied by:

(1) automobile insurance maintained by the transportation network company driver;

(2) automobile insurance maintained by the transportation network company; or

(3) a combination of Subdivisions (1) and (2).

(e) Insurance required under this subchapter may be placed with an automobile insurer authorized to engage in business in this state or with an eligible surplus lines insurer.

Sec. 1954.052. NETWORK INSURANCE PRIMARY. Transportation network insurance is the primary insurance as to the participating driver while the driver is providing transportation network services.

No equivalent provision.

Sec. 1954.053. REQUIRED POLICY PROVISIONS. (a) Except to the extent of a conflict with this chapter, transportation network insurance coverage must satisfy the requirements of Subchapter D, Chapter 601, Transportation Code.

No equivalent provision.

(b) Transportation network insurance must include uninsured or underinsured motorist coverage under Subchapter C, Chapter 1952, and personal injury protection coverage under Subchapter D, Chapter 1952.

(c) Unless a participating driver's personal motor vehicle liability insurer is also providing transportation network insurance for the driver, transportation network insurance must contain collision physical damage coverage and comprehensive physical damage coverage if the driver's personal automobile liability insurance policy contains those coverages.

Sec. 1954.054. INSURANCE REQUIREMENTS: FROM RIDE

No equivalent provision. *(But see Sec. 1954.053 below.)*

ACCEPTANCE TO COMPLETION. A transportation network company shall maintain transportation network insurance that covers each participating driver beginning at the time the driver accepts a ride request on the company's online-enabled application or platform and ending at the later of:

- (1) the time the driver completes the transaction on the application or platform; or
- (2) the time the passenger is no longer occupying the driver's vehicle.

Sec. 1954.055. INSURANCE REQUIREMENTS: BETWEEN RIDES. A transportation network company, a participating driver, or a combination of both shall maintain transportation network insurance that covers each driver for the periods:

- (1) beginning at the time a driver logs on to the company's online-enabled application or platform and ending at the time the driver accepts a ride request; and
- (2) beginning at the later of the time the driver completes a transaction on the company's online-enabled application or platform or the time the passenger is no longer occupying the driver's vehicle and ending at the later of the time the driver accepts another ride request on the application or platform or the time the driver logs off of the company's application or platform.

No equivalent provision. (But see Sec. 1954.054 above.)

Sec. 1954.056. TERMINATION OF COVERAGE. If a transportation network insurance policy is maintained by a participating driver and the coverage terminates for any reason, the driver's transportation network company shall provide coverage as required by this chapter beginning at the time the driver's coverage terminates.

Sec. 1954.052. INSURANCE REQUIREMENTS: BETWEEN PREARRANGED RIDES. At the time a transportation network company driver is logged on to the transportation network company's digital network and is available to receive transportation network requests but is not engaged in a prearranged ride, the minimum amounts of automobile insurance coverage are:

- (1) \$50,000 for bodily injury to or death for each person in an incident;
- (2) \$100,000 for bodily injury to or death of a person per incident; and
- (3) \$25,000 for damage to or destruction of property of others in an incident.

Sec. 1954.053. INSURANCE REQUIREMENTS: DURING PREARRANGED RIDES. At the time a transportation network company driver is engaged in a prearranged ride, the automobile insurance policy must provide, at minimum, coverage with a total aggregate limit of liability of \$1 million for death, bodily injury, and property damage for each incident.

Sec. 1954.054. LAPSE OF OR INSUFFICIENT COVERAGE. If an insurance policy maintained by a transportation network company driver under this subchapter has lapsed or does not provide the coverage required by this subchapter, the transportation network company shall provide the coverage required by this subchapter beginning with the first dollar of a claim against the driver.

Sec. 1954.057. RELATION TO PERSONAL AUTOMOBILE LIABILITY INSURANCE. (a) Coverage under a transportation network insurance policy is not contingent on a participating driver's personal automobile liability insurer initially denying a claim.  
(b) This chapter does not require a personal automobile liability insurance policy to cover a participating driver when the driver provides transportation network services.  
(c) Except as expressly provided by the policy or an endorsement to the policy, a participating driver's or motor vehicle owner's personal automobile liability insurance policy does not provide liability insurance coverage or require the insurer to defend or indemnify a driver or vehicle owner while the vehicle is being used to provide transportation network services. An insurer shall charge a separate premium for an endorsement described by this section.  
(d) An insurer may not offer a personal automobile liability insurance policy or an endorsement to that policy that provides the coverage described by Subsection (c) for a private passenger vehicle or similar vehicle that has a capacity of greater than eight persons.

No equivalent provision.

Sec. 1954.055. RELATION TO PERSONAL AUTOMOBILE INSURANCE. Coverage under an automobile insurance policy maintained by the transportation network company is not contingent on a transportation network company driver's personal automobile insurer initially denying a claim.

Sec. 1954.056. FINANCIAL RESPONSIBILITY. (a) Insurance satisfying the requirements of this subchapter satisfies the financial responsibility requirement for an automobile under Chapter 601, Transportation Code.  
(b) A transportation network company driver shall carry proof of insurance that satisfies Sections 1954.052 and 1954.053 with the driver when the driver uses a vehicle in connection with a transportation network company's digital network. In the event of an accident, a driver shall provide the proof of insurance to a directly interested person, automobile insurer, and investigating peace officer on request under Section 601.053, Transportation Code. On request, a driver shall also disclose to a directly interested person, automobile insurer, and investigating peace officer whether, at the time of the accident, the driver was:  
(1) logged on to the company's digital network; or  
(2) engaged in a prearranged ride.



SUBCHAPTER C. RELATIONSHIP BETWEEN TRANSPORTATION NETWORK COMPANY AND TRANSPORTATION NETWORK COMPANY DRIVER

No equivalent provision. (But see Sec. 1954.003 above.)

Sec. 1954.101. REQUIRED DISCLOSURES. Before a transportation network company driver may accept a request for a prearranged ride on a transportation network company's digital network, the company shall disclose in writing the following:

- (1) the insurance policy, including the types of coverage and the limits for the policy, that the company provides while a driver uses a personal vehicle in connection with the company's digital network; and
- (2) that the driver's personal automobile insurance policy may not provide coverage, depending on the policy's terms, while the driver is logged on to the company's digital network and is available to receive transportation requests or is engaged in a prearranged ride.

No equivalent provision.

Sec. 1954.102. CONTROL OF TRANSPORTATION NETWORK COMPANY DRIVERS. A transportation network company does not control, direct, or manage a personal vehicle or a transportation network company driver who connects to the company's digital network except as agreed by written contract.

SUBCHAPTER D. PERSONAL AUTOMOBILE INSURANCE

No equivalent provision.

Sec. 1954.151. AUTHORIZED EXCLUSIONS FROM COVERAGE. (a) An insurer may exclude from coverage under a personal automobile insurance policy issued to an owner or operator of a personal vehicle any loss or injury that occurs while a transportation network company driver using the personal vehicle:

- (1) is logged on to a transportation network company's digital network; or
  - (2) is engaged in a prearranged ride.
- (b) Subsection (a) applies to any coverage included in a personal automobile insurance policy, including:
- (1) liability coverage for bodily injury and property damage;
  - (2) personal injury protection coverage

under Subchapter D, Chapter 1952;  
(3) uninsured and underinsured motorist coverage;  
(4) medical payment coverage;  
(5) comprehensive physical damage coverage; and  
(6) collision physical damage coverage.  
(c) An exclusion authorized under this section applies notwithstanding a financial responsibility requirement under Chapter 601, Transportation Code.  
(d) This subchapter may not be construed to invalidate or limit an exclusion contained in a policy form, including a policy form in use or approved for use in this state before September 1, 2015, that excludes coverage for automobiles used to carry persons or property for compensation or available for hire by the public.

No equivalent provision.

Sec. 1954.152. COVERAGE UNDER PERSONAL AUTOMOBILE INSURANCE NOT REQUIRED. (a) This subchapter does not require a personal automobile insurance policy to cover a transportation network company driver while:  
(1) the driver is logged on to a transportation network company's digital network;  
(2) the driver is engaged in a prearranged ride; or  
(3) the driver otherwise uses a vehicle to transport passengers for compensation.  
(b) This section does not prevent an insurer from providing coverage that may be excluded under this section if the insurer elects to provide the coverage in the policy or by endorsement.

No equivalent provision.

Sec. 1954.153. DEFENSE OR INDEMNIFICATION OF CLAIM. (a) An automobile insurer that issues a personal automobile insurance policy that includes an exclusion from coverage authorized by Section 1954.151 does not have a duty to defend or indemnify a claim arising from an event subject to the exclusion.  
(b) An automobile insurer that defends or indemnifies a claim against a transportation network company driver for which coverage is excluded under the terms of the policy as authorized by this subchapter has a right of contribution against another insurer that provides automobile insurance to the driver in satisfaction of the coverage requirements

under Section 1954.052 or 1954.053, as applicable.

Sec. 1954.058. ASSISTANCE IN CLAIM INVESTIGATION. In an insurance claim investigation, a transportation network company shall assist each insurer involved in the claim by providing information, including the date and time at which an accident occurred and the precise time at which a participating driver logged on to or off of the company's online-enabled application or platform.

Sec. 1954.154. ASSISTANCE IN CLAIM INVESTIGATION. In an insurance claim investigation, a transportation network company and any insurer providing coverage under Subchapter B shall assist each insurer involved in the claim by providing information to directly interested persons and an insurer of the transportation network company driver. Information provided under this section must include:  
(1) the precise times that a driver logged on and off of the transportation network company's digital network in the 12-hour period immediately preceding and the 12-hour period immediately following the accident; and  
(2) a clear description of the coverage, exclusions, and limits provided under an automobile insurance policy maintained under Subchapter B.

SECTION 2. The change in law made by this Act applies only to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2016. A policy delivered, issued for delivery, or renewed before January 1, 2016, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

No equivalent provision.

SECTION 3. This Act takes effect September 1, 2015.

SECTION 2. Same as introduced version.