

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. No.: 5990-02
Bill No.: Perfected HCS for HB 2330
Subject: Motor Vehicles; Revenue, Department of
Type: Original
Date: April 5, 2016

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

FISCAL SUMMARY

ESTIMATED NET EFFECT ON GENERAL REVENUE FUND			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
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 2017	FY 2018	FY 2019
Insurance Dedicated Fund	Up to \$2,000	\$0	\$0
Total Estimated Net Effect on <u>Other</u> State Funds	Up to \$2,000	\$0	\$0

Numbers within parentheses: () indicate costs or losses.

This fiscal note contains 12 pages.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
Unemployment Insurance Administration	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)	\$0 or (\$38,000,000)
Wagner-Peyser	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)	\$0 or (\$12,000,000)
Federal Highway Funds	\$0 or (\$6,650,000)	\$0 or (\$6,650,000)	\$0 or (\$6,650,000)
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0 or (\$56,650,000)	\$0 or (\$56,650,000)	\$0 or (\$56,650,000)

ESTIMATED NET EFFECT ON FULL TIME EQUIVALENT (FTE)			
FUND AFFECTED	FY 2017	FY 2018	FY 2019
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 2017	FY 2018	FY 2019
Local Government	\$0	\$0	\$0

FISCAL ANALYSIS

ASSUMPTION

In a previous response, officials from the **Department of Transportation (MoDOT)** stated the proposal could impact MoDOT - Motor Carrier Services. Missouri will have a new variance with federal motor carrier safety regulations subjecting Missouri to possible loss of Federal Highway Administration funding and Federal Motor Carrier Safety Administration funding. The loss of funds to MoDOT would be 5% (\$33 million) in the first year and 10% (\$66 million) thereafter.

However, officials from MoDOT now state the proposal could impact MoDOT - Motor Carrier Services. The loss of funds to MoDOT for the Motor Carrier Safety Assistance Program and New Entrant Program would be \$6.65 million each year.

Oversight will range the fiscal impact of this proposal from \$0 (does not put Missouri out of compliance) to a loss of \$6.65 million in federal funds in FY '17 and thereafter (if it is found by the federal government that Missouri is out of compliance).

Officials from the **Department of Revenue (DOR)** assume 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.

§387.604 provides that, beginning August 28, 2016, TNC's shall be required to obtain an annual permit from the Department at a fee of \$5,000.

Administrative Impact:

Motor Vehicle Bureau

- 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 2017.
- 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 2017.
- 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 2017.

ASSUMPTION (continued)

- 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 2017.

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 application.

The Department assumes that the insurance requirements in this proposal are in addition to all other insurance requirements under Chapter 303.

Driver License Bureau

- Procedures will need to be updated for the insurance information in Chapter 303 for TNC. This will require 10 hours for a Revenue Band Manager I, at a cost of \$260 in FY 2017.
- Procedures will need to be updated for the insurance information in Chapter 303 for TNC. This will require 10 hours for an Appeals Referee I, at a cost of \$220 in FY 2017.
- OA-ITSD services are required at a cost of \$12,879 (171.72 hours x \$75 per hour).

In summary, DOR assumes a cost of \$17,159 (\$1,780 + \$890 + \$240 + \$890 + \$260 + \$220 + \$12,879) for this proposal.

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.

ASSUMPTION (continued)

Officials from the **Department of Labor and Industrial Relations (DOLIR)** assume this proposal adds a new section 387.620, which indicates that drivers shall be independent contractors and not employees of the transportation network company (TNC) if certain conditions are met. This bill also adds section 387.634.1, 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 387.620 indicates that drivers shall be considered independent contractors and not employees of the TNC if certain conditions are met.

Section 387.634.1 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.

ASSUMPTION (continued)

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, coadventurer, 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.

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.

ASSUMPTION (continued)

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 reemployment 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.

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 \$50 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 '17, FY '18 and FY '19.

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.

ASSUMPTION (continued)

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 Insurance, Financial Institutions and Professional Registration (DIFP)** state insurers would be required to submit amendments to their policies to comply with the proposal. Policy amendments must be submitted to the department for review along with a \$50 filing fee. One time additional revenues to the Insurance Dedicated Fund are estimated to be up to \$2,000.

Additional staff and expenses are not being requested with this single proposal, but if multiple proposals pass during the legislative session which require policy form reviews the department will need to request additional staff to handle increase in workload.

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** assume the proposal will have no fiscal impact on their organization.

MHP state they receive \$22 in revenue per background check provided (\$2 from FBI background checks and \$20 from state background checks). MHP also states 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 §387.604) in FY 2017, FY 2018 and FY 2019 for this proposal.

This proposal will increase total state revenue.

ASSUMPTION (continued)

House Amendment 1

Oversight notes this amendment clarifies that the annual permit fee of \$5,000 for transportation network companies is non-refundable. Oversight assumes this amendment will not have a fiscal impact.

Officials from the **Department of Public Safety - Missouri Highway Patrol, Department of Insurance, Financial Institutions and Professional Registration, Department of Revenue** and **Department of Labor and Industrial Relations** state the amendment does not change the fiscal impact of their previous responses.

<u>FISCAL IMPACT - State Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
GENERAL REVENUE			
<u>Revenue - DOR</u> Permit fees of \$5,000 - §387.604	\$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>
INSURANCE DEDICATED FUND			
<u>Revenue - DIFP</u> \$50 filing fee for policy amendments	<u>Up to \$2,000</u>	<u>\$0</u>	<u>\$0</u>
ESTIMATED NET EFFECT TO THE INSURANCE DEDICATED FUND	<u>Up to \$2,000</u>	<u>\$0</u>	<u>\$0</u>

<u>FISCAL IMPACT - State Government</u> (continued)	FY 2017 (10 Mo.)	FY 2018	FY 2019
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FEDERAL FUNDS

<u>Loss - DOLIR</u>	\$0 or	\$0 or	\$0 or
Unemployment Insurance program out of compliance	(\$38,000,000)	(\$38,000,000)	(\$38,000,000)

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

<u>Loss - MoDOT</u>	\$0 or	\$0 or	\$0 or
Federal Highway funds not received due to noncompliance	<u>(\$6,650,000)</u>	<u>(\$6,650,000)</u>	<u>(\$6,650,000)</u>

ESTIMATED NET EFFECT TO FEDERAL FUNDS	\$0 or <u>(\$56,650,000)</u>	\$0 or <u>(\$56,650,000)</u>	\$0 or <u>(\$56,650,000)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2017 (10 Mo.)	FY 2018	FY 2019
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<u>FISCAL IMPACT - Small Business</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
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Small transportation businesses could be impacted by this proposal.

There are over 138,000 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), providing that the provisions within the proposal exclusively govern TNCs.

It provides that TNCs are not common carriers or for-hire vehicle services, and that TNCs are not required to register any vehicle a driver may use to provide prearranged rides.

The proposal further provides that, beginning August 28, 2016, 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.

A TNC driver or the TNC company, on the driver's behalf, is required to maintain primary automobile insurance coverage as specified in the proposal. The policy of insurance must recognize that the driver uses the vehicle to transport riders for compensation while logged onto the TNC's digital network.

The company is required to notify a TNC driver of the insurance coverage provided by the TNC and to also notify a driver that his or her own personal automobile insurance policy may not provide coverage because the driver uses a vehicle in connection with the TNC service.

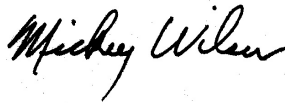
Automobile insurers in Missouri may exclude or limit any and all insurance coverage provided to owner's or operator's of personal vehicles while logged into a TNC's digital network for the purpose of transporting persons or property for compensation.

A TNC company will not allow anyone to act as a TNC driver if he or she has more than three moving violations or one major violation in the past three years, has been convicted of any enumerated crimes in the past seven years, is on the National Sex Offender Registry, does not possess a driver's license, does not have proof of vehicle registration or automobile liability insurance, or is not at least 19 years old.

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



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