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AB-1289 Transportation network companies: participating drivers: penalties. (2015-2016)

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Assembly Bill No. 1289

CHAPTER 740

An act to add Section 5445.2 to the Public Utilities Code, relating to transportation.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1289, Cooper. Transportation network companies: participating drivers: penalties.

(1) The Passenger Charter-party Carriers' Act defines a transportation network company as an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using an online-enabled platform to connect passengers with drivers using their personal vehicles. A transportation network company is subject to regulation by the Public Utilities Commission, which requires, among other things, a criminal background check of each participating driver. A transportation network company is also required to have a specified certificate or permit, as appropriate, from the commission, and is subject to various other requirements. A violation of the act is generally a misdemeanor and subject to a fine of not less than \$1,000 and not more than \$5,000 or by imprisonment in a county jail for not more than 3 months, or by both that fine and imprisonment.

This bill would require a transportation network company to conduct, or have a 3rd party conduct, a local and national criminal background check for each participating driver, as specified. The bill would prohibit a transportation network company from contracting with, employing, or retaining a driver if he or she, among other things, is currently registered on the United States Department of Justice National Sex Offender Public Website, has been convicted of any of certain terrorism-related felonies or a violent felony, as defined, or, within the previous 7 years, has been convicted of any misdemeanor assault or battery, any domestic violence offense, driving under the influence of alcohol or drugs, or any of a specified list of felonies.

The bill would additionally provide that a transportation network company that violates, or fails to comply with, its provisions is subject to a penalty of not less than \$1,000 nor more than \$5,000 for each offense.

(2) Existing law provides that an investigative consumer reporting agency shall furnish an investigative consumer report only under specified circumstances and, except as specified, existing law also prohibits an investigative consumer reporting agency from making or furnishing any investigative consumer report containing certain items of information, including, among other things, records of an arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedates the report by more than 7 years.

This bill would, notwithstanding these provisions, authorize an investigative consumer reporting agency to furnish an investigative consumer report to a transportation network company about a person seeking to become a participating driver, regardless of whether the participating driver is to be an employee or an independent contractor of the transportation network company. The bill would provide that the prohibition on including the criminal history information referenced above in an investigative consumer report does not apply to a report furnished to a transportation network company under these provisions.

(3) Because a violation of the act is a crime, and this bill would expand the scope of the act, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5445.2 is added to the Public Utilities Code, to read:

5445.2. (a) (1) A transportation network company shall conduct, or have a third party conduct, a local and national criminal background check for each participating driver that shall include both of the following:

(A) A multistate and multijurisdiction criminal records locator or other similar commercial nationwide database with validation.

(B) A search of the United States Department of Justice National Sex Offender Public Web site.

(2) A transportation network company shall not contract with, employ, or retain a driver if he or she meets either of the following criteria:

(A) Is currently registered on the United States Department of Justice National Sex Offender Public Web site.

(B) Has been convicted of any of the following offenses:

(i) A violent felony, as defined in Section 667.5 of the Penal Code.

(ii) A violation of Section 11413, 11418, 11418.5, or 11419 of the Penal Code.

(3) A transportation network company shall not contract with, employ, or retain a driver if he or she has been convicted of any of the following offenses within the previous seven years.

(A) Misdemeanor assault or battery.

(B) A domestic violence offense.

(C) Driving under the influence of alcohol or drugs.

(D) A felony violation of Section 18540 of the Elections Code, or of Section 67, 68, 85, 86, 92, 93, 137, 138, 165, 518, 530, or 18500 of, subdivision (a) of Section 484 of, subdivision (a) of Section 487 of, or subdivision (b) of Section 25540 of, the Penal Code.

(4) Paragraphs (2) and (3) shall apply regarding a conviction of any offense committed in another jurisdiction that includes all of the elements of any of the offenses described or defined in those paragraphs.

(5) Nothing in this section shall be interpreted to prevent a transportation network company from imposing additional standards.

(b) A transportation network company that violates, or fails to comply with, this section is subject to a penalty of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) for each offense.

(c) (1) Notwithstanding Section 1786.12 of the Civil Code, an investigative consumer reporting agency may furnish an investigative consumer report to a transportation network company about a person seeking to become a participating driver, regardless of whether the participating driver is to be an employee or an independent contractor of the transportation network company.

(2) Paragraph (7) of subdivision (a) of Section 1786.18 of the Civil Code shall not apply to an investigative consumer report furnished to a transportation network company pursuant to paragraph (1).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.