

Date of Hearing: July 5, 2023

ASSEMBLY COMMITTEE ON COMMUNICATIONS AND CONVEYANCE

Tasha Boerner, Chair

SB 429 (Bradford) – As Amended June 19, 2023

SENATE VOTE: 38-0

SUBJECT: Transportation network companies: participating drivers: vehicle inspections

SUMMARY: This bill would establish vehicle inspection requirements for vehicles used on a transportation network company (TNC) platform. Specifically, **this bill:**

- 1) Requires a TNC to require a vehicle to satisfy the vehicle inspection requirements established by the California Public Utilities Commission (CPUC) and every 12 months or 50,000 in-app miles thereafter, whichever occurs first.
- 2) Requires the vehicle inspection to be performed by a mechanic affiliated with a facility licensed by the Bureau of Automotive Repair on location, virtually, or remotely.
- 3) Requires a TNC to compensate a participating driver for time spent completing a vehicle inspection.
- 4) Provides that nothing in this section prohibits the CPUC from exercising its authority to adjust the mileage threshold for vehicle inspections.

EXISTING LAW:

- 1) Establishes definitions for relevant terms [Public Utilities Code § 5431]:
 - a) Defines “participating driver” or “driver” to mean any person who uses a vehicle in connection with a TNC’s online-enabled application or platform to connect with passengers.
 - b) Defines a “Transportation network company” to mean an organization, including, but not limited to, a corporation, limited liability company, partnership, sole proprietor, or any other entity, operating in California that provides prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.
 - c) Defines a “personal vehicle” to mean a vehicle that is used by a participating driver to provide prearranged transportation services for compensation that meets specific requirements, including meeting all inspection and other safety requirements imposed by the CPUC.
- 2) Provides that violations of CPUC regulations by a TNC driver is subject to a penalty of not more than two thousand dollars (\$2,000) for each offense. (Public Utilities Code § 5413)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) *Author's statement.* “Thousands of Californians choose to earn money as a driver for a TNC’s—some on a regular basis—and many on an intermittent and flexible basis. Regardless of the frequency, all are required to receive a vehicle inspection from a Bureau of Automotive Repair (BAR) certified facility annually. SB 429 will modernize the vehicle inspection requirement for TNC drivers. SB 429 would authorize drivers to meet existing vehicle inspection requirements by use of remote and virtual inspections, making work opportunities more accessible to drivers while ensuring drivers are compensated for the time taken to complete the inspection.”
- 2) *TNC Background.* Pursuant to existing law under the Passenger Charter-Party Carriers Act, the California Public Utilities Commission has regulatory and safety oversight authority over TNCs. TNCs are companies that offer patrons prearranged transportation services through an app on their smartphone or computer. Although TNC service has become widely available in metropolitan areas, the TNC industry is still fairly young compared to other forms of transportation. It was only in 2013 that the CPUC adopted its first rules and regulations for TNCs, which were referred to then as “New Online Enabled Transportation Services”. There are various TNCs authorized to operate in the state, however over 99.9% of all TNC trips occur through the Uber and Lyft platforms.
- 3) *Overview of the CPUC's Existing Safety Requirements and Rulemaking.* Pursuant to statutory requirements and CPUC authority, the CPUC has adopted various safety requirements for TNCs, TNC drivers, and vehicles used on TNC platforms. For example, TNCs are required to obtain from the CPUC a permit to operate, criminal background checks for each driver, establish a driver training program, implement a zero-tolerance policy on drugs and alcohol, and require minimum levels of insurance coverage. Similarly, vehicles used on TNC platforms are also required to be inspected at specified intervals by a qualified facility licensed by the California Bureau of Automotive Repair. Additionally, to ensure proper regulatory oversight of TNC operations, the CPUC also requires each TNC to annually submit comprehensive reports covering a breadth of data including accident reports, law-enforcement citations, zero-tolerance violations, and instances of assault or harassment.

Additionally, in an ongoing and active rulemaking¹ the CPUC is currently addressing issues relevant to the operation of TNCs in California, including autonomous-vehicles. For example, the scope of the proceeding includes addressing TNC data confidentiality and sharing, transportation of minors, and general safety including insurance requirements, vehicle safety, driver safety, and passenger safety.

- 4) *This bill would establish vehicle inspections requirements that are different than existing requirements.* CPUC General Order 157-E² requires a vehicle to undergo a 19-point vehicle inspection at a facility licensed by the California Bureau of Automotive Repair prior to initial operation and every 12 months or 50,000 thereafter. While the existing regulatory requirement is similar, it is different in two distinct and important ways.

¹ Rulemaking R.12-12-011. Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New Online-Enabled Transportation Services.

https://apps.cpuc.ca.gov/apex/f?p=401:56:0::NO:RP,57,RIR:P5_PROCEEDING_SELECT:R1212011

² CPUC General Order 157-E. <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M322/K150/322150628.pdf>

The first difference is that this bill specifies that vehicle inspections must occur at an interval based on in-app miles, whereas the existing regulatory requirement does not account for whether the vehicle miles are in-app or off the application. The in-app inspection threshold proposed by this bill could, arguably, reduce the frequency of vehicle inspections and therefore safety. To illustrate this point, take the example of a TNC driver who drives a total of 55,000 miles per year on their personal vehicle, which is only occasionally used on a TNC platform. Under existing regulations, following the 50,000th mile the vehicle would be required to be inspected, regardless of whether those miles were in-app or off-app. Under this bill, an inspection after the 50,000th mile would not be required more frequently than every year if the total miles driver were not specifically while using the app. In turn, this may lead to vehicles being inspected less frequently. Lastly, the specification of in-app is more difficult to account for when considering that TNC drivers may use different platforms concurrently and therefore log in-app miles among various applications.

The second difference of this bill compared to existing regulations is the ability to inspect a vehicle remotely or virtually. Whereas the existing regulation requires a vehicle inspection at a facility licensed by the California Bureau of Automotive Repair, this bill specifies that a mechanic affiliated with such a facility may perform the inspection remotely or virtually. This distinction is the underlying rationale that supporters argue the change is necessary. According to Uber, in-person vehicle inspections at an authorized facility is time consuming for drivers and creates a bottleneck for more vehicles being added to the platform. With this change, drivers could more conveniently satisfy the vehicle inspection and in turn more quickly begin serving customers on the TNC platforms.

- 5) *Driver compensation for vehicle inspections.* As was established above, existing regulations require a TNC to ensure vehicles are inspected prior to being utilized on the platform. Given that drivers are not considered employees of the TNC platforms, drivers are not currently compensated for the time or cost of undergoing a necessary vehicle inspection. This bill would require a TNC to compensate a driver, although it does not specify at what rate. The bill does not attempt to address whether the cost of the vehicle inspection would be borne by the driver or the TNC, which is currently absorbed by the driver. On one hand, the changes in this bill arguably improve the status-quo situation for drivers because a vehicle inspection is costly and time consuming. At a minimum, this bill would require some level of compensation and could reduce the time spent undergoing an inspection if it is completed virtually or remotely. While opponents of the bill argue that if the TNC drivers were employees the time spent undertaking a vehicle inspection would be compensated as wages, that is not necessarily accurate. For example, potential employees are not regularly compensated for the time it takes for a pre-employment drug screening, although typically the cost of such diagnostics are covered fully by the prospective employer. Similarly to the comparison of a pre-employment drug screening, a vehicle inspection is akin to a pre-employment requirement that is not typically compensated time.

Nonetheless, on the other hand, without firm guidance or requirements on the appropriate level of compensation this bill may further entrench the pay and benefit inequality experienced by TNC drivers. For example, under this bill a TNC could pay a driver less than minimum wage for the time taken for a vehicle inspection or a TNC may decide that appropriate compensation includes non-wage benefits. Further, the bill arguably avoids addressing the biggest cost of all – the cost of the inspection – which may run \$40 or more

per platform. Under this bill, as is the case with existing regulations, that cost would continue to be passed onto the driver. Ultimately, while the bill as written would at a minimum provide a marginal improvement for drivers, there is also an opportunity to go further to provide more concrete benefits for drivers.

- 6) *Prop 22 is the elephant in the room.* Under Proposition 22, a ballot initiative passed by California voters in 2022, TNC drivers are considered independent contractors and not employees of the TNC platforms. While this bill does not purport to implicate the relevancy of the independent-contractor status of TNC drivers under the law, the subtext of the opposition's position on driver benefits is that TNC drivers ought to be conferred the benefits of employee-status. If TNC drivers were employees, it is very likely the TNC would be liable to pay a TNC driver for the costs of the vehicle inspection and ongoing costs of the driver's time. However, as independent contractors TNC drivers are not automatically entitled to those same rights and benefits. Instead, under existing law established by Prop 22, the relationship between a TNC driver and the platform is more akin to a business to business relationship. As such, while the costs of the inspection and time are not reimbursable to the driver by the TNC, those costs would be considered a business expense of the driver and could be written off as such on income tax filings. Notably, the California Supreme Court has agreed to hear a case supported by some drivers and labor unions challenging the constitutionality of the initiative. While the case is pending, drivers will continue to be considered independent contractors and the TNC platforms will continue to have the discretion to decide the appropriate level of compensation for the drivers as independent-contractors. If Prop 22 is ultimately overturned, the portions of this bill requiring a TNC to compensate a driver for a vehicle inspection would then need to be read under paradigm of an employee-employer relationship, and thus the compensation would be a more clearly defined benefit.
- 7) *Arguments in support.* TechNet, a technology business organization, argues that SB 429 "would ensure that the [existing] vehicle inspection requirement does not become a barrier to the driver community accessing work." Further, they posit that "the current requirement is deterring more than 10,000 Californians from accessing work and impacting differently across the state."
- 8) *Arguments in opposition.* Several labor organizations oppose this bill unless amended, arguing that this bill would "shift the burden of maintaining a safe, serviceable fleet of vehicles from the companies onto the individual drivers." Further, the opposition notes that the required "compensation could be a flat dollar amount far below minimum wage, or not necessarily provided as monetary compensation."
- 9) *Related/similar legislation.* AB 2716 (Grayson, 2022) would have required drivers to complete a driver safety course every 2 years and required similar vehicle inspection requirements to this bill. The bill was vetoed by the Governor.
- 10) *Committee amendments.* The committee recommends striking portions of this bill that specify the particular frequency of vehicle inspections, thus avoiding discrepancies between the existing regulatory requirements and the requirements of this bill. Secondly, the committee recommends striking the language clarifying the authority of the CPUC to adjust the inspection thresholds, as this clause is moot given the first committee amendment.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
Silicon Valley Leadership Group
Technet-technology Network

Opposition

California Labor Federation, Afl-cio
California Teamsters Public Affairs Council
Ufcw - Western States Council

Analysis Prepared by: Emilio Perez / C. & C. / (916) 319-2637