

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 4725



Introduced by Rep. Precious Hipolito Castelo

EXPLANATORY NOTE

The worsening traffic situation in the country, along with unreliable mass transport systems that the commuting public endure day by day, makes it imperative for the government to push for initiatives that will help alleviate the urban dwellers' suffering pending the development of efficient transportation network.

Recent technological innovations saw the rise of online-enabled transportation services, otherwise known as Transportation Network Companies (TNCs), providing more options for commuters to obtain safer, cleaner, and more affordable modes to move around the metro. Using the Global Positioning System ("GPS") on smartphones, these online applications connect passengers with drivers in real time, hence eliminating the uncertainty of waiting for long hours when an available taxi would arrive. This, coupled with stories of robbery and rape committed by taxi drivers, made TNCs a popular choice among commuters.

Since the launch of these TNCs, the government has been grappling with how to regulate them, initially calling for the stoppage of their operations.¹ Taxi operators, who are subject to regulatory requirements, have been pushing for the regulation of TNCs to level the playing field. In response, the Department of Transportation and Communications issued Department Order No. 2015-011 (DO No. 2015-011), introducing a new type of public transport classification called "Transportation Network Vehicle Service" (TNVS) that allows TNCs to conform within the present regulatory framework. With this issuance, the Philippines became the first country to roll out the world's first framework of regulations for app-based ride-hailing.² However, the regulations put in place through DO No. 2015-011 might be contrary to the Public Service Act as held by the Supreme Court in the case of *Kilusang Mayo Uno Center v. Garcia, Jr. et al.*³ Further, the DO is interim in nature, as it directs the Land Transportation and Franchising Regulatory Board (LTFRB) to accredit TNCs "while awaiting guidance from the legislature regarding regulation of this new industry."

This proposed bill seeks to provide such guidance by creating a separate regulatory framework for TNCs. TNCs are classified as common carriers who, by reason of the nature of their business, should observe extraordinary diligence in the vigilance for the safety of the passengers transported by them. Other key provisions include the following:

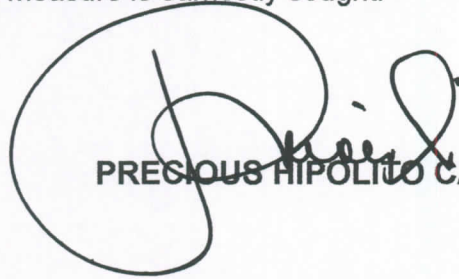
¹ Jose Bimbo F. Santos, *Stop! LTFRB not happy about latest transport apps craze Uber and Trepid*, Interaksyon, February 11, 2014, available at <http://www.interaksyon.com/motoring/stop-ltfrb-not-happy-about-latest-transport-apps-craze-uber-and-tripid>

² Sabrinna Toppa, *Uber Is Now Legal Everywhere in the Philippines*, Time, May 12, 2015, available at <http://time.com/3854958/uber-legal-philippines-ride-hailing/>

³ In this case, the Supreme Court ruled that LTFRB cannot authorize transport operators to fix its fare rates within a range prescribed by the Board, as this is tantamount to an undue delegation of legislative authority (G.R. No. 115381, 23 December 1994).

1. Prohibiting the operation of TNCs without a permit granted by the LTFRB;
2. Requirements that TNCs must comply with for the grant and maintenance of permit;
3. Standards for TNCs' operation, and penalties for the violation thereof;
4. Regulation of TNCs' dynamic pricing, otherwise known as "fare surging"; and
5. Authority for LTFRB to determine the maximum number of vehicles allowed to operate under a TNC.

The undersigned author believes that regulation of TNCs is necessary for the prevention of unfair or predatory practices by unscrupulous transportation network service providers and the promotion and protection of public safety and welfare while recognizing that a strong, viable, private sector transport industry has a role in efforts to improve transportation mobility. Thus, the approval of this proposed measure is earnestly sought.



PRECIOUS HIPOLITO CASTELO

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session
4725
HOUSE BILL NO. _____

Introduced by Rep. Precious Hipolito Castelo

AN ACT
RECOGNIZING TRANSPORTATION NETWORK COMPANIES, PRESCRIBING
REQUIREMENTS, GUIDELINES AND STANDARDS FOR THEIR OPERATION,
PROVIDING PENALTIES FOR VIOLATION THEREOF

Be it enacted in the Senate and the House of Representatives of the Philippines in Congress assembled:

CHAPTER I.
GENERAL PROVISIONS

SECTION 1. *Short Title.* This Act shall be known as the "*Transportation Network Service Act.*"

SECTION 2. *Declaration of Policy.* It is the policy of the State to provide and to promote adequate and efficient modes of transportation in the country. To this end, the State shall enact measures for the regulation of transportation network services to ensure that the paramount interest of the public is protected and conserved, while encouraging free enterprise and economic development.

SECTION 3. *Definition of Terms.* As used in this Act:

- (a) "*Board*" shall refer to the Land Transportation Franchising and Regulatory Board (LTFRB);
- (b) "*Passenger*" shall mean an individual who uses a transportation network company's service platform to connect to a driver for transportation network services, including all other persons who accompany said individual for the duration of such service;
- (c) "*Personal vehicle*" shall mean a motor vehicle that satisfies all of the following conditions: (i) owned, leased, or otherwise authorized to be used by the driver; and (ii) not a public utility vehicle as defined in Republic Act No. 10586 and other related laws;
- (d) "*Service platform*" shall mean any internet site or online-enabled application software or system that permits the pre-arrangement of transportation network services;
- (e) "*Transportation network company (TNC)*" shall mean an organization, whether a corporation, partnership, or sole proprietorship operating in the Philippines, that provides pre-arranged transportation services for compensation using an internet-based application or digital platform technology to connect passengers drivers using their personal vehicles;

- (f) "*Transportation network driver (TND)*" shall mean an individual who (i) satisfies the requirements provided in Section 15 of this Act; (ii) pays a fee to a TNC to be connected to a passenger for the purpose of engaging in transportation network services; and (iii) operates a personal vehicle to engage in transportation network services for compensation; and
- (g) "*Transportation network services (TNS)*" shall mean transportation of a passenger between points chosen by the passenger and that is pre-arranged with a TND through the use of a TNC's service platform. The TNS begins from the moment the TND accepts a request for transportation on the TNC's service platform and ends when the TND completes the transaction on the service platform or when the trip is complete and the passenger exits the TND's vehicle, whichever is later.

SECTION 4. *Nature of Transportation Network Companies and Drivers.* TNCs and TNDs are governed exclusively by this Act and shall not be subjected to any rate, entry, operational, or common carrier requirements, other than those requirements expressly set forth in this Act.

TNCs and TNDs are hereby declared as common carriers for purposes of determining the liability and degree of diligence that must be observed in the course of transportation network services, and the presumption of negligence in case of breach of contract of carriage shall likewise apply to them.

CHAPTER II. REGULATION OF TRANSPORTATION NETWORK COMPANIES

SECTION 5. *Issuance of Permits to TNCs.* A person, organization, or entity shall not be allowed to operate a transportation network company without first obtaining a Permit from the Board upon compliance with the requirements set forth by this Act and other reasonable conditions as may be provided by the Board.

SECTION 6. *Application for Permit.* The Board shall grant a Permit to a TNC upon determination that all of the following requirements are met:

- (a) Submission of application in the form prescribed by the Board. The application shall include the applicant's name, address, tax identification number, and any other information that the Board may deem necessary to assess the applicant's qualification;
- (b) Proof that the applicant is licensed to do business in the Philippines if the applicant is a foreign corporation;
- (c) Resident agent for purposes of service of process in the Philippines; and
- (d) Payment of an application fee to be set by the Board upon filing of the application.

The applicant shall notify the Board of any material change in the information included in the application not later than fifteen (15) days after the change occurs. The Board shall prescribe a form for the disclosure of material changes.

SECTION 7. *Term and Renewal of Permit.* A Permit issued by the Board shall be valid for a period of two (2) years unless sooner revoked by the Board for any of the causes provided under Section 23.

The Board shall prescribe the form and requirements necessary for the renewal of a permit.

CHAPTER III. OPERATION OF TRANSPORTATION NETWORK COMPANIES

SECTION 8. *Requirements for Transportation Network Companies.* A transportation network company shall:

- (a) Create an application process for a person to apply for registration as a transportation network driver;
- (b) Maintain an updated database of the TNC's transportation network drivers;
- (c) Maintain a website with the following information:
 - i. The TNC's customer service telephone number and/or electronic mail address;
 - ii. The TNC's zero tolerance policy established under Section 9 of this Act;
 - iii. The procedure for reporting a complaint about a TND;
- (d) Conduct, or have a third party conduct, a safety inspection of the personal vehicle that a TND will use before the motor vehicle may be used to provide transportation network services and ensure compliance with the TNC's vehicle safety policy established under Section 10 of this Act; and
- (e) Maintain an insurance policy as required under Section 17 of this Act.

SECTION 9. *Zero Tolerance for Drug or Alcohol Use.* Each TNC shall develop and implement a policy prohibiting any TND from using drugs or alcohol or any other substance that may render the TND incapable of driving safely while the TND is engaged in transportation network services for the TNC or is logged on to the TNC's service platform. The TNC shall:

- (a) Establish the complaint procedures for reports of suspected violations of the zero tolerance policy;
- (b) Conduct an investigation upon receipt of a complaint that the TND violated the zero tolerance policy required under this Section and immediately suspend a TND's access to its service platform for the duration of the investigation; and
- (c) Maintain records relevant to the requirements of this Section for the purposes of enforcement.

SECTION 10. *Vehicle Safety Policy.* TNCs shall adopt a vehicle safety policy to ensure the comfort and security of passengers using transportation network services. Such policy shall observe the following minimum standards:

- (a) The vehicle must not have a seating capacity of more than seven (7) persons, including the driver;
- (b) The transportation of passengers in numbers exceeding the manufacturer's designed seating capacity shall be prohibited, notwithstanding the state's policy of encouraging ride-sharing;
- (c) The vehicle must be road-worthy and compliant with vehicle emission standards but, in any case, not be more than seven (7) years old from date of manufacture; and
- (d) The vehicle must be equipped with proper tools and equipment.

SECTION 11. *Fare Setting and Disclosures.* A TNC is hereby authorized to set fares but shall disclose the fare calculation method, the applicable rates being charged, and the option for an estimated fare to a passenger before the passenger arranges a trip with a TND.

If a TNC utilizes dynamic pricing to incentivize drivers in an effort to maximize the supply of available vehicles on the service platform to match the demand for rides and increase reliability, the service platform must:

- (a) Provide clear and visible indication that dynamic pricing is in effect prior to requesting a trip;
- (b) Include a feature that requires passengers to confirm that they understand that dynamic pricing will be applied in order for the trip request to be completed; and
- (c) Provide a fare estimator that enables the user to estimate the cost under dynamic pricing prior to requesting the trip.

Notwithstanding the preceding paragraph, dynamic pricing shall be prohibited during periods of abnormal market disruptions, such as but not limited to any change in the ground transportation market, whether actual or imminently threatened, resulting from weather disturbances and natural calamities, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, or other cause of an abnormal disruption of the market resulting in a disaster or the declaration of a state of emergency.

SECTION 12. *Electronic Receipt.* Within a reasonable time after the completion of a trip, a TNC shall transmit an electronic receipt to the passenger's electronic mail address or mobile application containing the origin and destination of the trip; the total time and distance of the trip; and breakdown of the total fare paid, if any.

SECTION 13. *Identification of Transportation Network Drivers and Vehicles.* TNCs shall make available to each prospective passenger, on its service platform, the photograph of the TND and the license plate number and description of the TND's vehicle. TNDs shall display recognizable external markers on the vehicle at all times it is being used to provide transportation network services.

SECTION 14. *Confidentiality of Passenger Information.* TNCs shall not disclose a passenger's personally identifiable information to any other person unless:

- (a) The passenger consents to the disclosure;
- (b) The disclosure is required by a legal obligation; and
- (c) The disclosure is necessary to protect or defend the terms of use of the service or to investigate a violation of those terms.

In addition, a TNC shall be permitted to share a passenger's name and telephone number with a TND for the sole purpose of facilitating communication between the passenger and the driver regarding prearranged trips. TNCs shall prohibit the use by TNDs of a passenger's name, telephone number, or other personal information for any purpose other than those listed in this Section.

SECTION 15. *Requirements for Transportation Network Drivers.* An individual may submit an application to a TNC for registration as a TND.

- (a) Before approving an application, a TNC shall:
 - (i) Require the individual to submit an application that includes at least all of the following:
 - a. The individual's name, address, and age;
 - b. Information on the individual's driver's license;
 - c. Proof of motor vehicle registration for the personal vehicle the individual will use to provide TNS through the TNC;
 - d. Proof of availability of an off-street parking space for the vehicle that he will use to provide TNS; and

- e. Proof of motor liability insurance coverage as required under Section 17 of this Act.
 - (ii) Conduct a review of the individual's driving history; and
 - (iii) Conduct, or have a third party conduct, a criminal background check for the individual.
- (b) A TNC shall not approve an application submitted under subsection (a) of this Section and shall permanently disqualify an applicant who:
- (i) Is below twenty-one (21) years of age;
 - (ii) As shown in the criminal background check required under subsection (a)(iii) of this Section, has been convicted within the past five (5) years of any felony;
 - (iii) As shown in the driving record review required under subsection (a)(ii) of this Section, has been found to have committed, within three (3) years prior to the application, any violation of laws, rules and regulations governing land transportation;
 - (iv) Does not possess a valid driver's license;
 - (v) Does not possess proof of motor vehicle registration; and
 - (vi) Does not possess proof of motor vehicle liability insurance.

A person whose application as TND has been approved shall be issued a TND Certificate which shall contain the name, address and picture of the driver, and the registration plate number of the vehicle that he will use. The form of the certificate shall be approved by the Board.

Nothing in this Section shall be interpreted to prevent a TNC from imposing additional standards.

SECTION 16. *Drivers as Independent Contractors.* TNDs shall be independent contractors and not employees of the TNC if all of the following conditions are met:

- (a) The TNC does not prescribe specific hours during which a TND must be logged into the TNC's platform;
- (b) The TNC does not assign a TND a particular territory in which to operate;
- (c) The TNC does not restrict a TND from engaging in any other occupation or business; and
- (d) The TNC and the TND agree in writing that the driver is an independent contractor of the TNC.

SECTION 17. *Insurance Requirements.* TNCs and TNDs shall both maintain insurance policies to cover claims for incidents involving vehicles and drivers while they are providing transportation network services. The Board shall determine, upon consultation with stakeholders, the insurance coverage, including the types of coverage and the limits for each coverage, that TNCs shall maintain during the validity of their permit.

In every instance where insurance maintained by a TND has lapsed, failed to provide the required coverage, denied a claim for the required coverage, or otherwise ceased to exist, the insurance maintained by a TNC shall provide the required coverage.

A TNC shall neither require nor include a hold harmless or indemnification clause in the terms of agreement with a TND. Such clause, if included in the agreement, shall be an absolute nullity.

In the event of an accident, a TND shall provide insurance coverage information directly to interested parties, insurers, and investigating police officers, upon request.

SECTION 18. *Street Hails.* A TND may not solicit or accept street hails or otherwise provide transportation for compensation that are not pre-arranged through a TNC's service platform.

SECTION 19. *Cash Payments.* A TND may not solicit or accept cash payments or tips over and above the fare calculated by the TNC's service platform and reflected in the electronic receipt required under Section 12.

SECTION 20. *Fleet Service.* TNCs shall not be allowed to have their own fleet service or be authorized to enter into an agreement with a fleet operator to provide transportation network services. For purposes of this Act, a person who operates more than one motor vehicle shall be considered a "fleet operator" and shall not be registered by the TNC with its service platform.

SECTION 21. *Tax Treatment.* The Bureau of Internal Revenue shall determine the tax liability of TNCs and TNDs and provide the appropriate guidelines for compliance therewith.

CHAPTER IV. ENFORCEMENT

SECTION 22. *Regulatory Authority.* The authority of the Board shall be limited to the issuance of permit to and regulation of TNCs to ensure compliance by TNCs with the provisions of this Act. Such authority shall not include jurisdiction to adjudicate private causes of action arising from the provision of transportation network services.

SECTION 23. *Disciplinary Proceedings.* The Board, after due notice and hearing, may deny an application for a permit, limit, suspend, or revoke a permit if the TNC:

- (a) Makes a material misrepresentation in any application filed under this Act or rules of the Board;
- (b) Fails to comply with the provisions of this Act or any rule promulgated pursuant to this Act;
- (c) Violates any other law that substantially relates to the operation of TNCs;
- (d) Fails to cooperate with the Board, or fails to timely respond to a request for information by the Board, in connection with an investigation pursuant to this Act; or
- (e) Fails to maintain the qualifications for a permit.

In addition to denial of application or other action under the immediately preceding paragraph, the Board may assess against a TNC for each violation enumerated thereunder, a fine not exceeding One Hundred Thousand Pesos (P100,000.00).

SECTION. 24. *Limits on Number of Transportation Network Drivers (TNDs).* The Board shall be authorized to determine the maximum number of TNDs allowed to provide transportation network services. TNCs who apply for permits in excess of the cap set by the Board under this Section shall be required to prove public necessity in a hearing to be conducted by the Board for such purpose.

SECTION 25. *Penalties.* The Board shall determine the amount of the administrative penalty to be imposed on a person, firm, corporation or entity found violating the provisions of this Act, after considering the following factors:

- (a) The seriousness of the violation or failure to comply, including the nature, circumstances, extent, and gravity of the violation, and the harm or injury that may arise as a result of the violation;

- (b) The history of contraventions of or failures to comply;
- (c) The efforts made to correct the violation; and
- (d) Any other factor that may be just and reasonable under the circumstances.

SECTION 26. *Fees and Other Charges.* The TNCs shall be subject to an annual supervision fee, to be determined by the Board and subject to the approval of the Secretary of the Department of Transportation. The Board shall promulgate rules and regulations governing the collection of such fees, which shall likewise be reviewed periodically and any proposed increase shall be published in two (2) newspapers of general circulation.

SECTION 27. *Records.* All TNCs shall maintain passenger trip records for at least one (1) year from the date the trip was completed. TNCs shall also maintain all records concerning each TND for at least two (2) years after the date on which the TND ceases to engage in transportation network services for the TNC.

The Board shall have the authority to examine the records of TNCs for the purpose of enforcement of this Act, including a random sample of the TNCs' records related to prearranged rides and TNDs. Such examinations shall be conducted during working hours and shall not occur more than two times per year unless necessary to investigate a complaint. Records obtained by the Board pursuant to this Section shall be kept confidential, except as may be required by law.

SECTION 28. *Reportorial Requirement.* A transportation network company shall transmit a quarterly report to the Board providing an accounting of the number of vehicles it has registered to operate, number of trips provided, estimated number of passengers served, gross revenue, and any other information that the Board may deem necessary for the effective enforcement of this Act.

CHAPTER V. FINAL PROVISIONS

SECTION 29. *Implementing Rules and Regulations.* Within sixty (60) days from the effectivity of this Act, the Board shall promulgate the implementing rules and regulations as may be necessary to ensure the efficient and effective implementation of this Act.

SECTION 30. *Separability Clause.* If any provision or part hereof is held invalid or unconstitutional, the remainder of the provision not otherwise affected shall remain valid and subsisting.

SECTION 31. *Repealing Clause.* Any law, presidential decree or issuance, executive order, letter of instruction, administrative order, rule or regulation contrary to, or inconsistent with, the provisions of this Act is hereby repealed, modified or amended accordingly.

SECTION 32. *Effectivity.* This Act shall take effect after fifteen (15) days following its publication in at least two (2) newspapers of general circulation.

Approved,