STATE OF NEW YORK

9435

IN SENATE

May 27, 2022

Introduced by Sens. KENNEDY, MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to the deactivation of transportation network company drivers and to additional safety requirements for vehicles engaged in the transportation of passengers; and to amend the penal law, in relation to the impersonation of a transportation network company driver; and providing for the repeal of certain provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 1699 of the vehicle and traffic law is amended by adding a new subdivision 6 to read as follows:

6. (a) Using a lawful method approved by the department and established in regulations adopted by the department, transportation network companies shall contract with a single database provider to maintain a database that compiles the names of any TNC drivers whose accounts have been deactivated from a digital network due to a covered incident. The database provider shall be selected by the agreement of at least two of the largest transportation network companies whose digital networks enable the majority of trips in this state in accordance with such regulations.

(b) Following an investigation of a covered incident, if a TNC determines that the covered incident likely occurred, the TNC shall deactivate the TNC driver's account.

(c) Within five business days of deactivating a driver's account due to a covered incident, a TNC shall report the deactivation to the database provider as well as:

(i) the name of the TNC driver;

(ii) the date of birth of the TNC driver;

(iii) the issuing state and driver's license number of the TNC driver;

(iv) the type of safety incident; and

(v) the date of deactivation.

(d) In addition to the background check requirements imposed by this section, a TNC shall check the database prior to authorizing a person to

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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drive on the company's digital network and on an ongoing basis thereafter. A TNC shall deactivate a TNC driver's account after it determines that any TNC has reported a deactivation as a result of a covered incident to the database or after being notified by the database provider.

(e) A TNC that reports TNC driver information pursuant to this section shall not be subject to liability under any civil or common law claim based on:

(i) the furnishing of any information under paragraph (c) of this subdivision; or

(ii) any decision to terminate or initiate a contract with a TNC driver based on information received under paragraph (d) of this subdivision.

(f) For the purposes of this section, the following terms shall have the following meanings:

(i) "Attempted non-consensual sexual penetration" means attempting to penetrate the vagina or anus of another, without express consent, with any body part or object. Any attempted removal of another person's clothing to attempt to access a sexual body part will be classified as attempted non-consensual sexual penetration. Attempted non-consensual sexual penetration also includes attempted penetration of the user's mouth with a sexual organ or sexual body part; however, it excludes kissing with tongue or attempts to kiss with tongue.

(ii) "Covered incident" means details and specific allegations of sexual assault that occurred in connection with the TNC's digital network and was investigated by a comprehensive review, including but not limited to the following, when available:

(A) communication with drivers and riders;

(B) third-party statements;

(C) relevant trip data;

(D) timing details; and

(E) police reports.

(iii) "Database" shall mean the database maintained pursuant to paragraph (a) of this subdivision.

(iv) "Database provider" means a non-governmental third-party that has experience in identity matching, resolving consumer reporting disputes, and maintaining other industry shared databases.

(v) "Deactivate" means to permanently block or revoke a TNC driver's account and access to the TNC's digital network.

(vi) "In connection with the TNC's digital network" means an incident that occurred during a trip.

(vii) "Non-consensual kissing of a non-sexual body part" means the kissing, licking, or biting or forcing a kiss, lick, or bite on any non-sexual body part of another, without consent.

(viii) "Non-consensual kissing of a sexual body part" means the kissing or forcing a kiss on either the breast or buttocks of another without consent and include kissing on the lips or kissing while using tongue.

(ix) "Non-consensual sexual penetration" means without explicit consent from a user, someone penetrated, no matter how slight, the vagina or anus of a user with any body part or object. This includes penetration of the user's mouth with a sexual organ or sexual body part. This excludes kissing with tongue.

(x) "Non-consensual touching of a sexual body part" means without explicit consent, the touching or forcing a touch on any sexual body part of the other.

(xi) "Sexual assault" means:

(A) non-consensual kissing of a non-sexual body part;
(B) non-consensual kissing of a sexual body part;
(C) non-consensual touching of a sexual body part;
(D) attempted non-consensual sexual penetration; and
(E) non-consensual sexual penetration.
(xii) "Sexual body parts" means the mouth, female breasts, buttocks, or genitalia. The phrase "between the legs" is considered to reference a sexual body part. All other body parts are characterized as non-sexual.
(g) Nothing in this subdivision shall be construed to create a private right of action against a TNC.
(h) The department shall have sole authority to issue any rules or regulations necessary to review a transportation network company's implementation of and compliance with this section, including but not limited to a timeline for the review of covered incidents and process for the independent review of covered incidents.

§ 2. The vehicle and traffic law is amended by adding a new section 1229-e to read as follows:

§ 1229-e. Additional safety requirements for vehicles engaged in the transportation of passengers. 1. Any entity that provides a digital network or application accessible by a handheld device to facilitate prearranged transportation services provided in TNC vehicles shall provide a system of interactive electronic match verification for the passenger. Such system shall allow a passenger to confirm the prearranged match upon the arrival of such a vehicle or prior to entering the vehicle.
2. Subdivision one of this section shall not apply to any trip via a transportation network company vehicle, for-hire vehicle, or other commercial vehicle engaged in the for-hire transportation of passengers in which:
(i) a third party, including any third party business, non-profit, or government entity, facilitates the trip for a passenger; or
(ii) compliance with this section is impracticable due to circumstances beyond the control of a transportation network company or for-hire vehicle or service, including, but not limited to instances where a passenger's personal mobile device has failed to operate or there is degraded, reduced, or otherwise insufficient cellular connectivity in order for the system to properly operate.

§ 3. The penal law is amended by adding two new sections 190.28 and 190.29 to read as follows:

§ 190.28 Criminal impersonation of a transportation network company driver in the second degree.
1. A person is guilty of criminal impersonation of a transportation network company driver when he or she:
(a) Impersonates a transportation network company driver and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another; or
(b) Pretends to be a transportation network company driver and falsely expresses by his or her words or actions that he or she is acting with approval or authority of a transportation network company or that the person is responding to a passenger ride request for a transportation network company, including without limitation through use of a false statement or a false display of distinctive signage or emblems known as a trade dress, trademark, branding or logo of the transportation network company.

2. As used in this section, "transportation network company" shall have the same meaning as such term is defined in article forty-four-B of the vehicle and traffic law.

Criminal impersonation of a transportation network company driver in the second degree is a class A misdemeanor.

§ 190.29 Criminal impersonation of a transportation network company driver in the first degree.

1. A person is guilty of criminal impersonation of a transportation network company driver in the first degree when he or she commits the crime of criminal impersonation of a transportation network company driver in the second degree during commission of a separate felony offense.

2. As used in this section, "transportation network company" shall have the same meaning as such term is defined in article forty-four-B of the vehicle and traffic law.

Criminal impersonation of a transportation network company driver in the first degree is a class E felony.

§ 4. Severability. If any clause, sentence, subdivision, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, or if any federal agency determines in writing that this act would render New York state ineligible for the receipt of federal funds, such judgment or written determination shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, subdivision, paragraph, section or part thereof directly involved in the controversy in which such judgment or written determination shall have been rendered.

§ 5. This act shall take effect immediately; provided, however, that sections one and two of this act shall take effect one year after it shall have become a law; provided, further, that this act shall be deemed repealed if any federal agency determines in writing that this act would render New York state ineligible for the receipt of federal funds or any court of competent jurisdiction finally determines that this act would render New York state out of compliance with federal law or regulation; provided, further, that the provisions of section two of this act shall expire and be deemed repealed upon the enactment into law by the federal government of legislation on interactive electronic match verification that meets or exceeds the requirements of such section; and provided that the commissioner of transportation shall notify the legislative bill drafting commission upon the occurrence of the provisions of this act or upon the occurrence of the enactment of legislation by the federal government provided for in section two of this act in order that the commission may maintain an accurate and timely effective data base of the official text of the laws of the state of New York in furtherance of effectuating the provisions of section 44 of the legislative law and section 70-b of the public officers law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.