
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 880 **Hearing Date:** July 9, 2019
Author: Obernolte
Version: June 11, 2019
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Transportation Network Companies: Participating Drivers:
Criminal Background Checks*

HISTORY

Source: Author

Prior Legislation: AB 2986 (Cunningham), Ch. 286, Stats. of 2018
AB 1289 (Cooper), Ch. 740, Stats. of 2016

Support: Unknown

Opposition: None known

Assembly Floor Vote: 73 - 0

PURPOSE

The purpose of this bill is to prohibit a transportation network company (TNC) from contracting with, employing, or retaining drivers who have been convicted of human trafficking offenses.

Existing law establishes the “Passenger Charter-Party Carriers Act,” which authorizes the California Public Utilities Commission (CPUC) to supervise and regulate every charter-party carrier of passengers (CPC) in the State and may do all things, necessary and convenient in the exercise of such power and jurisdiction, including issuing permits or certificates, investigating complaints against carriers, and cancel, revoke, or suspend permits and certificates for specific violations. (Pub. Util. Code, § 5381, et seq.)

Existing law defines “charter-party carrier of passengers” to mean every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. (Pub. Util. Code, § 5360.)

Existing law 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. (Pub. Util. Code, § 5431)

Existing law requires a TNC to conduct, or have a third party conduct, a local and national criminal background check for each participating driver, as specified. (Pub. Util. Code, § 5445.2, subd. (a)(1).)

Existing law prohibits a TNC from contracting with, employing, or retaining a driver if he or she meets either of the following criteria:

- 1) Is currently registered on the United States Department of Justice National Sex Offender Public Web site; or
- 2) Has been convicted of specified violent felonies or acts of terrorism and offenses related to weapons of mass destruction and biological agents. (Pub. Util. Code, § 5445.2, subd. (a)(2).)

Existing law prohibits a TNC from contracting with, employing, or retaining a driver if he or she has been convicted of any of the following offenses within the previous seven years:

- 1) Misdemeanor assault or battery;
- 2) A domestic violence offense;
- 3) Driving under the influence of alcohol or drugs; or,
- 4) Other specified felony violations. (Pub. Util. Code, § 5445.2, subd. (a)(3).)

Existing law subjects a TNC that violates, or fails to comply with, the specified requirements, to a penalty of not less than \$1,000 nor more than \$5,000 for each offense. (Pub. Util. Code, § 5445.2, subd. (b).)

Existing law authorizes the Department of Justice (DOJ) to furnish state summary criminal history information to specified entities, if needed in the course of their duties and, when specifically authorized, federal-level criminal history information, upon showing of a compelling need, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity in fulfilling employment, certification, or licensing duties, as specified. (Pen. Code, § 11105, subs. (b) & (c).)

This bill prohibits a TNC from contracting with, employing, or retaining drivers who have been convicted of human trafficking offenses.

This bill deletes erroneous cross-references to code sections specified in existing law.

COMMENTS

1. Need for This Bill

According to the author:

In 2016 with the passage of AB 1289 (Cooper) (Chapter 740, Statutes of 2016) the Legislature imposed a requirement in statute that TNCs conduct background checks on drivers, and identified a list of offenses that disqualify individuals from operating as a TNC driver. There were a number of omissions and inadvertent errors in that bill. One such omission was the fact that a conviction for felony human trafficking, which has a direct nexus to the safety of consumers who use these services, was not included in this list. This bill would correct that omission

by including felony human trafficking in the list of crimes that prevent a person from driving for a TNC, which reflects the current practices of much of the industry.

2. Crimes and TNC Drivers

AB 1289 (Cooper), Ch. 740, Stats. of 2016 prohibited TNCs from contracting, employing, or retaining any person convicted of the following offenses:

- 1) Violent felonies;
- 2) Sexual offenses;
- 3) Non-felony violent crimes;
- 4) Identity theft;
- 5) Acts of fraud;
- 6) Acts of terror; or
- 7) Any of the following offenses if they were committed within the previous seven years:
 - a) Crimes involving property damage;
 - b) Theft crimes; or
 - c) Driving under the influence of alcohol or drugs.

The provisions of SB 1289 also required transportation network companies (Uber, Lyft, etc.) to conduct a “comprehensive criminal background check” for each participating driver. The background check was mandated to include local, state and federal law enforcement records.

This bill would add crimes of human trafficking to the list of offenses that would prohibit a TNC from contracting, employing, or retaining an offender as a driver.

3. Human Trafficking and TNCs

Some TNCs have adopted voluntary policies to train their drivers to spot signs that a passenger is a victim of human trafficking and take steps to help the passenger escape trafficking. TNCs may voluntarily adopt policies against human trafficking, and existing law prohibits individuals who are on a sex offender registry from driving for a TNC. However, existing law does not clearly disqualify a person from driving for a TNC if that person has a conviction for a crime closely associated with sex offenses and other violent felonies, including convictions for coerced or forced labor and trafficking of individuals for forced labor or commercial sexual exploitation. As a result, requirements for screening for human trafficking convictions during background checks is currently unclear. This bill will correct this lack of clarity by ensuring that TNCs must screen for human trafficking convictions.

4. Corrects Erroneous References

This bill is one of several recent pieces of legislation aimed at clarifying the code regarding TNC driver disqualifying crimes and background check requirements for TNC drivers. Removal of the erroneous cross references regarding disqualifying crimes for TNC drivers ensures that code regarding requirements for background checks remains clear. The list articulated by AB 1289 (Cooper) included some erroneous cross references, including a reference to Penal Code section 18500, which is not a crime.