

SUBJECT: Attesting that damages exceeded coverage in certain claims against TNCs

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Leach, Krause, Middleton, Schofield, Smith

4 nays — Davis, Dutton, Julie Johnson, Moody

WITNESSES: For — (*Registered, but did not testify*: Fernando Trevino, Lyft, Inc; Servando Esparza, TechNet; Lee Parsley, Texans for Lawsuit Reform; Lisa Kaufman, Texas Civil Justice League; Dana Harris, The Greater Austin Chamber of Commerce)

Against — Jim Perdue, Texas Trial Lawyers Association; (*Registered, but did not testify*: Ware Wendell, Texas Watch)

BACKGROUND: Some have raised concerns about frivolous lawsuits being brought against transportation network companies (TNCs) and recommend requiring certain civil actions and arbitration proceedings against a TNC to include proof that the damages exceeded the insurance coverage.

DIGEST: CSHB 2788 would require certain civil action or arbitration procedures involving transportation network companies (TNCs) to attest that damages suffered exceeded the insurance coverage limit.

Applicability. The bill would apply only to an action or arbitration proceeding in which:

- a transportation network company was a defendant;
- the claimant was seeking recovery of damages for loss of property, bodily injury, or death;
- the claim arose out of the ownership, use, operation, or possession of a personal vehicle while the driver or passenger was logged on to a TNC's digital network; and
- the theory of recovery for which damages were sought was based

on the ownership, operation, design, manufacture, or maintenance of a digital network accessed by a driver or passenger or the affiliation or interaction with a driver logged on to a TNC's network.

Required affidavit. At the time a claimant initially named a TNC as a party in an action or proceeding, the claimant would have to, as applicable, file with the petition or provide to the arbitration tribunal and each other party at the initiation of the arbitration an affidavit by the claimant's counsel attesting that the damages suffered by the claimant exceeded the applicable insurance coverage limit.

The contemporaneous filing requirement under the bill would not apply to any action or arbitration proceeding in which the limitations period expired within 10 days of the date of filing and, because of the time constraints, a claimant alleged that the required affidavit could not be prepared. A claimant would have to supplement the pleadings with the affidavit by 30 days after the date the petition was filed or the arbitration initiated. The trial court or arbitration tribunal could, on a motion by a party, after hearing and for good cause, extend the deadline for supplementing the pleadings as the court or tribunal determined justice required.

A defendant in the action or arbitration proceeding would not be required to file an answer to the petition or arbitration request until 30 days after the date the affidavit was filed.

The bill could not be construed to extend any applicable period of limitation or repose.

Dismissal for failure to provide affidavit. A court or arbitration tribunal would have to dismiss with prejudice a complaint against a TNC with respect to which the claimant failed to file an affidavit in accordance with this bill. An order granting or denying an order for dismissal would be immediately appealable as an interlocutory order or grounds to file an application to a court to review the order.

Limitation of liability. A TNC could not be held vicariously liable for damages in an action or arbitration proceeding under the bill if the company did not commit a state or federal crime and had fulfilled all of its obligations with respect to the TNC driver.

The bill would take effect September 1, 2021, and apply only to a cause of action that accrued on or after that date.