

Title 12 – DEPARTMENT OF REVENUE
Division 10 – Director of Revenue
Chapter 23 – Motor Vehicle

PROPOSED RULE

12 CSR 10-23.600 Complaint, Inspection, and Disciplinary Process for Transportation Network Companies

PURPOSE: This rule clarifies application, inspection, and disciplinary processes and procedures related to transportation network companies.

(1) As used herein, the following terms mean:

(A) "Commission", the regional taxicab commission established pursuant to section 67.1804;

(B) "Department", the Missouri department of revenue;

(C) "Director", the director of the Missouri department of revenue or a hearing officer or appeals referee duly appointed by the director;

(D) "Home rule city", any home rule city with more than four hundred thousand inhabitants and located in more than one county;

(E) "Transportation network company" or "TNC", a corporation, partnership, sole proprietorship, or other entity that is licensed pursuant to sections 387.400 to 387.440 and operating in the state of Missouri, that uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides;

(2) Applicants for initial TNC licensure or renewal shall apply to the department by completing an application and providing the following:

(A) The registered name, address, and contact information of the applicant, including a phone number and e-mail address;

(B) The name of the registered agent within the state who will accept service of process and notifications as required by section 387.406, and direct contact information for the agent including physical address, phone number, e-mail address, and regular business hours;

(C) The name and e-mail address for an account administrator designated by the applicant for purposes of creating and maintaining an account which will meet all reporting requirements contained in section 387.436;

(D) The five-thousand dollar (\$5,000) application fee; and

(E) A copy of the applicant's privacy policy as required by, and in accordance with, section 387.425.

Applicants shall certify that they will comply with all requirements contained in sections 387.400 to 387.440, sections 379.1700 to 379.1708, and all regulations promulgated by the department that are consistent with sections 387.400 to 387.440 pursuant to the authority delegated to the department under section 387.430. Applicants shall further certify that their privacy policy, as provided to the department, meets all the requirements contained in section 387.425. Applicants for renewal shall meet all of the above requirements except that applicants shall

only be required to resubmit the applicant's privacy policy if the policy has changed or is different from the privacy policy on file with the department.

(3) Upon approval of an application for TNC licensure, the designated account administrator of the TNC will be sent an electronic notification by the department containing instructions on how to create and maintain an electronic reporting account with the department for purposes of complying with section 387.436. The TNC's account shall be created prior to the TNC doing business as a licensee and shall be maintained throughout the duration of the license.

(4) TNCs shall cooperate with any investigation or audit by the department related to sections 387.400 to 387.440 and sections 379.1700 to 379.1708. TNCs shall permit an employee or agent of the department to inspect, during normal business hours, any and all records which are required to be maintained pursuant to sections 387.400 to 387.440 if related to an investigation as described above. If a third party is utilized in accordance with section 387.420, all records gathered and supplied by the third party shall be maintained and available for inspection by the department. Any records which may be reviewed by a home rule city or the commission must also be made available to the department for inspection purposes upon request. TNCs shall make requested records available for review or provide electronic copies of records within fifteen (15) business days in order to comply with the provisions of this section.

(5) The department may refuse to issue or renew any license required pursuant to sections 387.400 to 387.440 for a specified period of time for any one or any combination of causes stated in this subsection. The department shall notify the applicant or licensee in writing at their last known address of the reasons for the refusal to issue or renew the license and shall advise the applicant or licensee of their right to file an appeal with the administrative hearing commission as provided in chapter 621.

(A) The following acts constitute cause for refusal to issue or renew a license:

1. Any violation of sections 387.400 to 387.440, sections 379.1700 to 379.1708, or any rule promulgated under the authority delegated to the department under section 387.430;

2. The applicant or license holder was previously the holder of a license issued under sections 387.400 to 387.440, which license was suspended or denied for cause and was never reissued by the department;

3. The applicant or license holder was previously a partner, stockholder, director, or officer controlling or managing a partnership or corporation whose license issued under sections 387.400 to 387.440 was suspended or denied for cause and was never reissued;

4. Use of fraud, deception, misrepresentation, or bribery in securing a license issued pursuant to sections 387.400 to 387.440; and

5. Failure to cooperate with the department or failure to timely respond to a request for records by the department in connection with an investigation.

(6) To the extent permitted by section 387.440, a home rule city or the commission may assess a fine of up to five-hundred dollars (\$500) to a TNC for failure to comply with sections 387.400 to 387.440 and shall comply with all notification requirements contained in this subsection.

(A) The home rule city or the commission shall send a notice to the TNC's registered agent which includes the amount of the fine, a brief statement of facts establishing the TNC's failure to comply with any requirement in section 387.400 to 387.440, and a statement indicating the right of appeal in substantially the following language: "If you are adversely affected by this notice, you may appeal to the department of revenue. To appeal, you must file a request for hearing with the Department of Revenue, P.O. Box 703, Jefferson City, Missouri 65105, within thirty (30) days after the date this notice was mailed or the date it was delivered, whichever date was earlier. If any such request for hearing is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the department of revenue." A copy of the notice must be provided to the department upon issuance by mailing it to Department of Revenue, P.O. Box 703, Jefferson City, 65105 or by sending it electronically to mvbmail@dor.mo.gov.

1. Any TNC fined by a home rule city or the commission shall be entitled to a hearing before the director by filing a request for hearing with the department within thirty (30) days after the date this notice was mailed or the date it was delivered, whichever date was earlier. If the request for hearing is sent by registered mail or certified mail, it will be deemed filed on the date it is mailed; if it is sent by any method other than registered mail or certified mail, it will be deemed filed on the date it is received by the department of revenue.

2. Failure to file a timely request for hearing will be considered a waiver of the right to an administrative hearing and will establish and make final, for the purposes of administrative appeal, the home rule city or the commission's factual findings and fines.

(B) Hearings will be held in Jefferson City, Missouri, and shall be considered contested cases as that term is defined in chapter 536. Hearings will be placed on an administrative docket in the order in which they are received.

(C) Parties will be notified by first class mail of the date and time of the hearing. A copy of the notice will be sent to each party or the party's attorney of record.

(D) Parties may be allowed one (1) continuance at the discretion of the director provided good cause is shown. All requests for continuances shall be made in writing, state good cause for the continuance, and be signed and verified by the party making the request or their attorney of record. All requests for continuance must be filed at least five (5) days prior to the date of the scheduled hearing.

(E) The department will make a record of the proceedings and evidence presented. Hearing procedures shall be substantially as follows:

1. The home rule city or the commission will have the initial burden of proof and must present, by a preponderance of the evidence, facts establishing the TNC's failure to comply with sections 301.400 to 301.440;

2. The TNC may present any evidence establishing or suggesting compliance with the provisions of sections 301.400 to 301.440 or any rebuttal evidence;

3. Parties may present testimony by notarized affidavit or by stipulation of the parties. Affidavits or stipulations may be filed at the time of hearing or any time prior to the hearing;

4. The department will receive oral testimony, and any live witnesses will be subject to cross examination;

5. Failure to appear at the hearing at the stated time may result in a default finding and decision against the absent party; and

6. When not inconsistent with this subsection, the provisions of chapter 536 shall apply to hearings held in accordance with section 387.440.

(F) The director shall consider all the evidence presented, make written findings of fact and conclusions of law, and enter a final decision at or within sixty (60) days from the date of the hearing. All parties will be mailed a copy of the findings of fact, conclusions of law, and final decision. No decision will be entered at the time of the hearing.

(G) The effective date of the director's final decision shall be thirty (30) days from the date the final decision is entered.

(H) Any fines paid by a TNC in accordance with the provisions of section 387.440 shall be remitted to the department within fifteen (15) days from the effective date of the final decision of the director or any final decision or order entered by a court of law having jurisdiction over the appeal of such fine.

(I) Any fines remitted to, or collected by, the department in accordance with sections 387.439 and 387.440 will be distributed in accordance with Article IX, Section 7 of the Missouri Constitution.

(7) License suspensions under subsection 4 of section 387.439 shall be for a period of thirty (30) days per violation.

*AUTHORITY: section 387.430, RSMo, TAFP SS NO. 2 SCS HCS HB 130 enacted by the 99th General Assembly, 2017. **Emergency rule filed July 6, 2017, effective July 16, 2017, expires January 11, 2018.** A proposed rule covering this same material is published in this issue of the **Missouri Register**.*

PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars (\$500) in the aggregate, as any costs associated with the proposed rule are not a product of the rule itself but incident to the statutory changes included in SS #2 SCS HCS HB 130 (2017)

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars (\$500) in the aggregate, as any costs associated with the

proposed rule are not a product of the rule itself but incident to the statutory changes included in SS #2 SCS HCS HB 130 (2017).

*NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed rule with the Department of Revenue, General Counsel's Office, P.O. Box 475, Jefferson City, MO 65105-0475. To be considered comments must be received within thirty (30) days after publication of this notice in the **Missouri Register**. No public hearing is scheduled.*