

# **LR 523**

## **Examine alternative transportation options and recommend potential changes to Nebraska's statutes**

**Report to the Legislature**

### **Transportation and Telecommunications Committee**

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# **2014**

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# **1. Interim Study Resolution**

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ONE HUNDRED THIRD LEGISLATURE

SECOND SESSION

LEGISLATIVE RESOLUTION 523

Introduced by Dubas, 34.

PURPOSE: The purpose of this resolution is to study alternative transportation options and recommend potential changes to Nebraska's statutes. The Legislature recognizes there have been technological advances in personal transportation options to reduce emissions, reduce costs, increase accessibility, and improve health. Alternative transportation to be studied may include, but not be limited to, bicycles, e-bicycles, autocycles, and driverless vehicles. The study should examine the safety implications, economic impacts, and basic fairness in existing Nebraska law and the approaches of other states.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED THIRD LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Transportation and Telecommunications Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

## **2. Discussion of Issues**

The hearing was intended to continue discussion on transportation issues brought to the committee in the 2014 Legislative session that did not have time for consideration and passage by the entire Legislature, but that the Committee thought was important enough to warrant further attention; autocycles and bicycles. In addition, an issue arose after the Legislature adjourned sine die that demanded the committee's attention when Lyft and Uber began doing business in the state without regulatory authority.

### **a. Autocycle definition**

The proliferation of more gas efficient vehicles is evident in the creation of Elio Motors three wheeled vehicle, which has an estimated fuel efficiency of 84 mpg highway and 49 mpg city. The regulatory environment has not kept up with the private sector where Elio vehicles fit the definition of motorcycle, even though they are designed to be driven like an automobile. Under current Nebraska law the Elio fits the definition of motorcycle in §60-340. Technically a driver of an Elio would have to test for a motorcycle operator's license on a course designed for traditional motorcycles, which would be impossible given the vehicles design specifications. Another hardship is that Nebraska law (§60-6,279) requires operators of motorcycles to wear a helmet, something the Elio is also not designed for in safety tests.

### **b. Bicycle laws**

One aspect of alternative transportation is bicycle transportation. The interim study of bicycles was precipitated by two bills from the 2014 session:

LB756 (Smith) would have redefined *bicycle* to include electric-assist bicycles. The bill was advanced from committee to general file but failed to advance prior to adjournment sine die.

LB1071 (Lathrop) was heard late in the session but created a robust discussion of outdated and impracticable bicycle laws.

Discussion was had on the fact that Nebraska has no statewide authority on transportation. Other states have a "Department of Transportation" with jurisdiction over bicycle issues. Nebraska however is the only state with a "Department of Roads" with very little bicycle jurisdiction. It was suggested the state change the name of the Department to mirror the realities of multi-model transportation today. The Department does employ a State Bicycle Coordinator and publishes a Bicycle Safety Brochure. It was also suggested the state put up signs on highways to alert drivers to look out for potential cyclists, as is done in Kansas. Discussions with the Department indicate willingness to develop signage.

Testifiers also advocated for support of electric assist bicycles. The current definition of "bicycle" prohibits use of motorized devices on some trails and roadways. Owners of electric assist bicycles testified that they would like to ride on trails and the negative consequences of

motorized scooters and such do not apply to electric assist bicycles. They suggested an exception for e-bikes as introduced in LB756 (2014).

Other testifiers recommended specific changes to statute. 60-6,317 was mentioned as needing clarification to be more understandable to riders. For example, it was recommended 60-6,317(1)(a)-(e) be replaced with the following:

“Bicyclists may use the full lane if it is too narrow to share. Too narrow to share shall be defined as twelve (12) feet plus one foot for each ten miles per hour of the applicable speed limit. On wider lanes, bicyclists are to ride in the right six (6) feet of the lane, except when necessary to avoid conditions that make it unsafe to continue in the right six feet of the lane, including fixed or moving objects, stopped or moving vehicles, bicycles, pedestrians, animals, or surface hazards. Bicyclists may use any lane of the street.”

The justification for clarification is that cyclists are expected to stay out of the way of motor vehicles, rather than having all the rights and responsibilities of other vehicle operators. When cyclists are expected to ride at the edge of the road, they are placed in a dangerous position.

### **c. Transportation Network Companies**

#### ***Background***

In June of 2014, Lyft began operating in Nebraska, offering a mobile smartphone app to connect drivers and passengers in Lincoln and Omaha. The company did not apply to the Public Service Commission for authority to operate a for-hire transportation service. Uber has since offered similar services in Lincoln and Omaha. Their entry into Nebraska is similar to entry in other states and countries worldwide; begin operating and advertising for drivers while making no attempt to contact regulatory authorities claiming as a tech company they do not fit existing regulatory models.

#### ***Nebraska law***

Nebraska statutes define a common carrier as “any person who or which undertakes to transport passengers ... in intrastate commerce by motor vehicle for hire, whether over regular or irregular routes, upon the highways of this state”. Neb. Rev. Stat. §75-302(6). A regulated motor carrier is defined as “any person who or which owns, controls, manages, operates, or causes to be operated any motor vehicle used to transport passengers ... over any public highway in this state”. Neb. Rev. Stat. §75-302(18). Clearly Lyft and Uber and other similar entities fit these definitions as persons who cause to be operated for hire transportation services.

Nebraska statutes also require contract carriers and regulated motor carriers to publish tariffed rates (§75-308). Lyft and Uber have no rates on file with the Commission.

Further, Nebraska statutes specify insurance requirements for such carriers (§75-307). Lyft and Uber have no insurance on file with the Commission. Drivers testified they were not aware that

their personal automobile liability policies would not cover accidents made while transporting passengers for Uber or Lyft, or that their policy could be canceled because of the livery exclusion.

The Commission has the authority to seize and confiscate the vehicles used to transport passenger's for-hire in violation of Nebraska law requiring a certificate of public convenience and necessity. (§75-309.01)

The Public Service Commission has established Rules and Regulations for Motor Carriers. The rules and regulations require all common carriers to file, set, and collect tariff rates, to identify their vehicles in specific ways, and to carry any passenger unless intoxicated or disorderly. To ensure safety, the commission rules and regulations require driver background checks and specify requirements for drivers' hours of service, including the use of log books. The commission also requires vehicle inspections. (291 NAC 3)

### ***Other issues of concern***

Market saturation and competition are factors underlying the laws and regulations on taxi service. Especially in rural areas where there may be only one taxi driver, competition could easily cause the market to become unsustainable, and leave a community without transportation services. In more populated communities the issue of losing transportation provider's altogether is lessened, but the presence of unregulated transportation makes business for certificated carriers uncertain.

By failing to comply with Nebraska law the businesses are able to offer lower prices to consumers than competing taxi companies.

### **3. Recommendations and Conclusions**

**Autocycle definition** - The Committee should work with the Department of Motor Vehicles to ensure a definition of autocycle is crafted that fits with existing Nebraska statutes, is technology neutral, and consistent with Federal law. The American Association of Motor Vehicle Administrators (AAMVA) model definition is a good starting point.

**Bicycle laws** - The Committee recommends amending the definition of bicycle to include motor assisted bicycles operating at speeds no greater than that which non-motor assisted bicycles are capable. Further review should be made of 60-6,315(2) requiring a rider to “not remove his or her feet from the pedals” as impracticable. Public education should be increased regarding the applicability and exceptions of the Nebraska Rules of the Road to bicycle operators.

**Transportation Network Companies** - Technology companies should be made to feel welcome in Nebraska, but not at the expense of public safety. Legislation appears necessary to ensure the Public Service Commission has authority to regulate transportation network companies carrying passengers for hire. Specifically, laws regarding rate regulation, insurance requirements, background checks, and nondiscrimination should be updated to protect the public traveling on highways within Nebraska. Legislation should clarify requirements for companies such as Lyft and Uber, and their drivers, regarding background checks, insurance requirements, rates, and nondiscrimination. The Public Service Commission may also consider amending rules and regulations to create a class of common carrier that would apply to Lyft, Uber, and similar transportation network companies. In drafting legislation to address the concerns brought up by these companies, the experience of other states should be considered. Almost every other state (and other countries) are grappling with the same issue, and Nebraska can benefit from their pitfalls and successes. For a broader, technology neutral solution, the Legislature should consider requiring any network based application company, such as Lyft and Uber, to comply with all applicable state laws prior to offering service in Nebraska.

## **4. List of Testifiers**

The Hearing on LR523 was held Thursday, September 11, 2014 by the Nebraska Legislature's Transportation and Telecommunications Committee. The morning session was dedicated to public testimony regarding alternative transportation issues generally. The afternoon session focused on Lyft and Uber, transportation network companies operating in the State, and was invited testimony only.

### ***AM Testifiers***

Joel Sheltroun – Elio Motors

Peggy Adair

Barb Fraser – Lincoln Pedestrian and Bicycle Advisory Committee

Julie Harris – Nebraska Bicycling Association, Live Well Omaha

Robert Boyce

Brent Davis – Nebraska Bicycling Alliance

Mary Torell – Great Plains Trails Network

Ben Wallace – Lyft driver

Todd Snover – Lyft driver

Bill Mulloy – Taxi driver

Vicki Clark – Lyft driver

### ***PM Testifiers***

Senator Heath Mello

Commissioner Anne Boyle – Public Service Commission

David Levy – Lyft

Dave Barmore – Uber Technologies

John Davis – Happy Cab Companies

Kirby Young – Servant Cab

Ron Hug – City Taxi

Kelly Campbell – Property and Casualty Insurer's Association

David Arnold – Greater Omaha Chamber, Greater Omaha Young Professionals