



## An Uncertain Future for Ridesharing Services in Massachusetts

by Matt Blackburn

### Overview

Last month, the Los Angeles City Council approved a new policy that will allow ridesharing companies like Uber and Lyft to operate at LAX—the second busiest airport in the United States, and fifth busiest in the world.<sup>1</sup>

Mark it a huge loss for the Los Angeles taxi industry and another victory for the ride-hailing firms that continue their fight for existence in lawmaking bodies and courtrooms across the country.

Massachusetts is no exception: the battle over Uber and Lyft's future in the Bay State has arrived on Beacon Hill, and the fate of three bills (listed below) will largely determine these companies' future in the Commonwealth.

- Bill H.3351 - An Act Establishing Department of Public Utilities Oversight of Transportation Network Companies<sup>2</sup>
- Bill H.931 - An Act relative to transportation network company services<sup>3</sup>
- Bill H.3702 - An Act relative to passenger safety<sup>4</sup>

All three are efforts to establish a formal regulatory framework for ridesharing services, creating a legal categorization for these firms as “transportation network companies (TNCs)” —a term first used by the California Public Utilities Commission in a Proposed Decision filed back in December 2012 to create rules for online-enabled transit services.<sup>5</sup>

What regulatory model have other states adopted? In testimony<sup>6</sup> submitted to the House Consumer Affairs Committee of the Pennsylvania legislature in October 2014, Nick Zabriskie, public policy associate of the East Coast division of Uber Technologies, shares that almost half the states and the District of Columbia have finalized legislation to regulate TNCs. In the testimony, Zabriskie presents several core components of these laws, including requirements that TNCs:

- Obtain a license from the appropriate regulatory body. As a license-holder, TNCs are responsible for ensuring that each TNC driver authorized to accept trip requests on the TNC's platform has passed a stringent screening process that includes a criminal background check and safety inspection of his or her vehicle

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## **An Uncertain Future for Ridesharing Services in Massachusetts**

- Implement a zero-tolerance policy whereby a TNC must immediately suspend any driver suspected of operating a vehicle while under the influence of alcohol or drugs.
- Implement key fare transparency safeguards, including providing riders with a clear description of the rates before a rider accepts a trip request.

Finally, TNCs or TNC drivers must maintain insurance policies that provide coverage from the moment a driver is logged onto the app and available for a trip request. Once a TNC driver has accepted a request, the policy must provide for at least \$1 million of coverage.

### **How do the three Massachusetts bills compare?**

Bills introduced by Governor Baker in April (H.3351) and by Rep. Pignatelli (D – Lenox) in January (H.931) have been well-received by the TNC community, most notably by Uber and Lyft. While comprehensive in requirements to ensure public safety and consumer protection, they do not propose onerous restrictions on TNCs; the regulatory frameworks they lay out align well with the description of the components listed above by Zabriskie.

For example, H.931 would require TNCs to conduct, or have a third party conduct, local and national background checks on all drivers and to disqualify someone based on several criteria stipulated in the law. The law would also require TNCs to check the sex offender registry as part of the applicant reviews. Under this framework, TNC firms have discretion regarding the type of check that they conduct, but are held accountable for making sure it takes place. Out of the three bills, this approach to employee screening most closely resembles the model used in other jurisdictions across the country.

H.3351 would also require the same process, but would additionally require state Criminal Offender Record Information (CORI) background checks. They also require that TNCs coordinate with the state department of criminal justice information services

for additional screening that the TNCs would likely be required to pay for.

The latest of three bills to be filed, H.3702 (“An Act relative to passenger safety”), outlines dramatically different requirements. Introduced in July by Sen. Dorcena Forry (D – Dorchester) and Rep. Moran (D – Brighton), the bill mandates the same thorough state and national criminal background review proposed in Baker’s legislation. The Dorcena Forry/Moran bill, however, goes much further in laying out stringent requirements for driver’s insurance coverage and additional background check procedures. Arguably the most contentious requirement in the Dorcena Forry/Moran bill, however, is that all drivers carry a commercial insurance policy worth \$1 million. On operator background checks, the bill adds the requirement of fingerprint-based checks in both state and national criminal history databases, including the FBI’s database, for every prospective driver.

### **A legitimate effort to regulate, or a series of poison pills?**

TNCs have protested the requirements for fingerprints and commercial coverage for all drivers, calling them unnecessary, byzantine and relics of an archaic regulatory system that has no relevance to today’s private transportation market. In their view, H.3702 is a collection of “poison pills” designed to eliminate any reasonable opportunity for TNCs to continue business in Massachusetts.

Uber has been particularly vocal in its opposition to the bill. In a digital campaign launched just after H.3702 was unveiled, Uber took to e-blasts to decry the “taxi special interest groups” behind the competing legislation and urge supporters to sign a petition against the bill.

It’s hard to blame them. According to a January 2015 study published by Uber and the Benenson Strategy Group, across Uber’s 20 largest markets, more than half of partners work 15 hours or less per week and 80 percent work under 35 hours.<sup>7</sup> The study also highlights that 49 percent of all Uber drivers work a separate full-time job. These numbers make it clear that Uber’s success relies on a significant part-time

workforce—requiring all these partners to carry \$1 million of commercial insurance coverage would kill their business.

In a *Globe* Op-Ed, Dorcena Forry and Moran countered that their cardinal concern is customer safety for ridesharing users, and their legislation would ensure Uber and other TNCs operate in compliance with the “same regulations that apply to every other form of transportation in our state.”<sup>8</sup>

This claim deserves more scrutiny. If the Boston legislators’ bill were drafted to put taxi and ride-sharing services under the same requirements, they would have a valid point. The problem is that their bill does the opposite.

Many Boston taxi companies carry just the minimum in bodily injury coverage (\$20,000 per person and \$40,000 per accident), according to a *Globe* spotlight piece on the Boston taxi industry<sup>9</sup>—significantly less than the requirement of \$1 million proposed in H.3702. If the goal of the commercial insurance requirement is to create a level playing field for TNCs and taxis, why are the legislators proposing that Uber, Lyft and other ridesharing firms be held to a higher and more rigid standard?

### **Shifting the focus to the taxi industry**

Why do new laws need to protect an industry that has been insulated from reform for decades—an industry that the *Boston Globe* exposed as a system of oligopolistic practices, worker exploitation, and refusal to concede the criticisms from its consumers?<sup>10</sup> Would the public benefit from applying the same rules that led to lower quality and higher costs to these new firms?

Uber and Lyft’s popularity has sparked an important public debate about taxi services—principally, the level of consumer frustration with the status quo in this industry. Customers have expressed this frustration through their wallets: taxi ridership dropped by a whopping 22 percent this year in Boston.<sup>11</sup>

The rise of these innovative companies has given much-needed impetus to mobilize legislators on the shortcomings of other players in this marketplace.

While a regulatory framework to oversee the operation of these firms is necessary, legislators should also turn their focus to the broken components of the taxi system that generated demand for these new companies in the first place.

Taxi regulations have been costly on many fronts, and numerous studies illustrate the problematic nature of existing laws for this market. A widely-cited report by the Federal Trade Commission was one of the earliest studies on the effectiveness of regulations in existing ride-for-hire markets. With respect to the costs of regulation, the authors conclude “we do not have empirical evidence that the relevant regulations that actually exist increase the efficiency of resource allocation.”<sup>12</sup>

A 2006 report by the Liberty Justice Center on competition and entry in for-hire markets also points to a number of issues with the way these services have traditionally been governed. Perhaps most alarming is their estimate that taxi regulations cost U.S. passengers as much as \$800 million per year.<sup>13</sup>

A number of municipalities have experimented with varying levels of taxi deregulation. Indianapolis, for example, removed certain limits on licenses and simplified requirements back in 1994. As a result, the city saw its number of licenses increase three-fold, from 26 to 75, the number of vehicles available for service rose from 200 to 500, and 49 new companies entered the market—40 of which are minority- or women-owned. Customers also benefitted, as average fares dipped by 7 percent. Interestingly, customer complaints actually declined during this phase of deregulation, in spite of the higher volume of firms providing service.<sup>14</sup>

### **How to reform taxi regulations in the Commonwealth**

What would be the best way to deregulate the taxi industry in Massachusetts municipalities? That has yet to be answered—but, whatever the approach, it wouldn’t be simple.

One option is to ditch the medallion system altogether. Municipal transit authorities could do this by buying

## An Uncertain Future for Ridesharing Services in Massachusetts

back the medallions they originally issued. However, as a *Globe* piece from July 2015 pointed out, this option could inspire public backlash.<sup>15</sup> The idea of bailing out the wealthy medallion-owners of Greater Boston's taxi cartels with taxpayer money wouldn't sit well with most city residents.

Edward Glaeser, a *Globe* contributor and Harvard economics professor, suggested a different idea in an April 2013 column: replace the current system with one that ties the annual fees for license renewal to “the burden each cab imposes on its surrounding.”<sup>16</sup> In other words, this system would factor in the social cost of operating a cab by considering variables such as congestion, environmental impact, as well as public safety risk—the cost per mile would be based on these metrics, and annual mileage would dictate the total cost of renewal.

Another recommendation to consider comes from a winning entrant from Pioneer's 2013 Better Government Competition. In their proposal, *Freeing Entrepreneurs from Overreaching Government Regulation*, authors Shira Rawlinson and Dana Berliner suggest introducing a scaled version of what New York City implemented in 2012. That year, the State Assembly authorized Mayor Bloomberg to unilaterally issue a new class of 18,000 non-transferable permits to for-hire vehicles. The new permits, which enable taxi operators to pick up passengers via street hail anywhere beyond specified restricted areas in the city, are effective for three years and cost \$1,500 a piece—a welcomingly affordable sum compared to the \$625,000 price tag of a Boston taxi medallion.<sup>17</sup>

Regulation reform will be key to the survival of the taxi industry, though it may not be sufficient. To keep up with popular businesses like Uber and Lyft, taxi companies need to do the same things firms in most consumer-oriented marketplaces do: stay competitive by improving their service and pricing. As ridesharing firms continue to establish themselves as competitors in this market under a new regulatory framework, taxi companies must provide the same features that make ridesharing companies successful. These companies could generate much greater consumer appeal

through adoption of features like user-friendly and mobile-based applications, transparency regarding pricing with fare estimates, two-way rating systems that allow review of both drivers and passengers, and automated payment systems that eliminate the need for person-to-person transactions (arguably the most important feature Uber offers from a public safety standpoint).

In addition to revising regulations for taxis, it's imperative that lawmakers establish a regulatory framework for TNCs that effectively reconciles adequate measures for consumer protection with a model that doesn't restrict ridesharing firms' ability to do business. To establish this balance, government officials should not regulate TNCs with the traditional approach to taxi regulation—it would not be “leveling the playing field”, but applying an antiquated and broken set of standards to a successful business model that meets a new type of customer culture. Consumer demand has changed, and new laws should reflect this.

There are several proven models of success the Commonwealth can replicate to achieve this. A good start is to look at the Colorado Transportation Network Company Act, especially with regards to addressing the insurance gap—the period when TNC operators are soliciting fares but have not accepted a passenger's request. Both H.931 and H.3351 incorporate a similar approach to insurance for TNC operators that would mitigate public safety risk without impeding the commercial activities of these companies. Lawmakers should stick with the language in these two bills.

Following the example of Colorado's legislation, which establishes the Public Utilities Commission as the authority that oversees TNCs, Massachusetts legislators should include an additional provision that establishes an analogous group or department as the regulatory body to monitor the activities of TNCs to ensure they operate in a safe manner. This regulatory group could both govern TNCs during their first year of operating under new legislation and re-examine the Hackney-Carriage Unit and regulatory areas under its oversight that could be improved to better meet evolving consumer demands.

History teaches us that innovative businesses that disrupt established, static industries often generate a strong backlash. The incumbent players in the transportation industry aim to quash TNCs in the same way 19th-century Luddites rallied against new technology that promised to make transformative improvements to the textile industry. Bill H.3702 embodies this crusade against positive change. Unfortunately, its biggest victims are consumers.

TNCs aren't the only answer, but they offer a promising vision of a future transportation industry that puts the consumer first. Massachusetts officials have an opportunity to realize this vision. Now that they are in the driver's seat, let's hope they steer us on the right course.



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### Endnotes

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