

## Uber and Lyft get a set of rules to call their own

By: admin September 15, 2016



Last month, the governor signed into law an “Act Regulating Transportation Network Companies.” As its title suggests, the act creates a new set of regulations to govern Transportation Network Companies, or TNCs, the most widely recognized of which are Uber and Lyft.

The law creates new rules for TNC drivers and their vehicles and will go into effect gradually over the next 15 months. The delay will afford the regulators time to draft and promulgate implementing regulations, and will afford TNCs and their drivers time to digest the act and to adapt their businesses.

The law establishes a new division within the Department of Public Utilities and vests it with jurisdiction over TNCs. The DPU is charged with promulgating rules and regulations, as well as with implementing, administering and enforcing the act.

To fund the DPU’s operations, the act requires each TNC with operations in Massachusetts to pay the DPU an annual surcharge equal to a percentage of its intrastate operating revenues. With the exception of MassPort, which may issue its own rules regarding TNC operations on its properties, the law prohibits any efforts by state or local government entities to burden further TNCs and drivers.

TNCs will be required to obtain an operating permit from the DPU. To qualify, the TNC must verify, among other things, that:

- (1) it has appropriate controls in place to ensure that each of its drivers (a) has passed a background check, (b) carries adequate insurance, (c) pays tolls at the commercial rate, and (d) accommodates riders with special needs;
- (2) its “app” has a clear and conspicuous explanation of its total cost and pricing structure before the ride begins;
- (3) it maintains updated driver rosters; and
- (4) it has a toll-free hotline for rider and driver questions and complaints.

TNC permits must be renewed annually.

TNCs and their drivers may not provide transportation services unless the driver is using a qualified vehicle. To qualify, vehicles must pass additional inspection requirements, to be determined by the Registry of Motor Vehicles. At a minimum, vehicles must pass checks of their brakes and suspension systems.

TNC drivers will be required to obtain certificates from each of the TNCs through which they arrange rides before they are permitted to provide transportation services. To obtain a certificate, a driver must submit an application to the TNC, meet certain minimum criteria, and clear a two-part background check.

But TNCs are not required to issue certificates to qualifying drivers. At a minimum, a driver-applicant must be 21 and demonstrate compliance with the DPU’s vehicle and insurance requirements (including providing notice to insurers of an intent to provide transportation network services using the insured vehicle).

Part 1 of the background check will be performed by the TNC receiving the application and will measure an applicant’s “suitability” against a standard to be determined and promulgated by the DPU. TNCs must reconfirm each of their drivers’ “suitability” at least semi-annually.

Part 2 of the background check is a CORI/SORI check to be performed by the DPU.

If a driver fails his or her semi-annual "suitability" test, the TNC must notify the DPU and immediately remove the driver from its digital network and suspend his or her certificate.

If the driver has certificates from more than one TNC, the DPU will notify the other TNCs, which also will be required to take appropriate action against the driver.

Drivers will be entitled to an administrative appeal before the DPU of any suspensions, including a right to a hearing. Aggrieved drivers will have a further right of appeal to the Superior Court pursuant to the Administrative Procedures Act, G.L.c. 30A, §14.

Approved drivers will be required to display their certificates inside their vehicles. The certificate will show the driver's name, photograph and license plate number. Drivers with multiple TNC certificates must display each of them.

Drivers also will receive from certifying TNCs decals identifying the TNC that must be affixed to the front and rear of the vehicle. Drivers may not provide transportation services that were not prearranged through a TNC's "app."

Drivers also will be required to carry with them at all times proof of adequate insurance. In the event of an accident, the driver will be required to provide insurance information to all interested parties and the police, and must disclose whether transportation network services were being provided at the time of the accident.

The police will be authorized to issue citations to drivers found in violation of any of the foregoing rules. Some violations — like failing to display a TNC decal or failing to display a certificate — will result in a civil citation and fine.

Other violations — like using another driver's certificate — could result in a criminal citation with the possibility of jail time. Any citation of a driver also will result in a \$500 fine to each of the cited driver's certifying TNCs.

The newly enacted law attempts to balance the interests of several significant stakeholders, including TNCs, drivers, law enforcement agencies, taxi medallion owners, consumers and the public.

Whether you believe the act strikes a fair balance probably depends on your point of view. Medallion owners, for example, might view the law as leveling the playing field. Drivers might be discouraged by new barriers to entry and increasing oversight of their "independent" operations by TNCs. TNCs will likely welcome that act as a necessary compromise that could have been far more burdensome.

One thing each stakeholder should appreciate is the act's clarity. TNCs, regulators, drivers, law enforcement officers (and their lawyers!) together have been navigating a patchwork of old and ill-fitting statutes, regulations and ordinances issued by any number of governmental entities that concerned taxis, limousines and even horse-drawn carriages.

But Uber and Lyft are none of those things. They are "Transportation Network Companies," and now they and the people who offer and use their services will have clearer legal status and a set of rules to call their own.

*Matthew A. Kane is a partner at Laredo & Smith in Boston.*

Issue: SEPT. 19 2016 ISSUE

YOU MIGHT ALSO LIKE



Superior Court to  
bar: Help us manage  
your case better

⦿ January 19, 2017

Never mind robots;  
let's question  
human-driven cars

⦿ January 19, 2017

Business Litigation  
Session Year in  
Review, 2016

⦿ January 12, 2017

---

Copyright © 2017 Massachusetts Lawyers Weekly

10 Milk Street, Suite 1000,

Boston, MA 02108

(800) 451-9998

