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The Road to Regulation: Embracing the Rise of Ridesharing in Pennsylvania

Rob Dare

Introduction

Disruptive innovation, says noted scholar and author Clayton Christensen, “describes a process by which a product or service takes root initially in simple applications at the bottom of a market and then relentlessly moves up market, eventually displacing established competitors.”¹ The rapid advancement of technology, and the ease with which smartphone applications may be created, has led to a subcategory of disruptive innovation that some commentators call Big Bang Disruptors, that is, “companies that combine increasingly cheap off-the-shelf component technologies with new business models and test them directly in the marketplace.”² Once the product is launched, the losers fail quickly. However,

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1. Clayton Christensen, *Disruptive Innovation*, <http://www.claytonchristensen.com/key-concepts/>. For a more detailed explanation of disruptive innovation, watch Professor Christensen explain his landmark concept at <https://www.youtube.com/watch?v=qDrMAzCHFUU>.
 2. Paul Nunes and Larry Downes, *How Innovations Become Better and Cheaper*, FORBES.COM (May 9, 2013) <http://www.forbes.com/sites/bigbangdisruption/2013/05/09/welcome-to-the-world-of-better-and-cheaper/print/>. For further discussion on the concept of Big Bang Disruptors and how competitors are dealing with them, see Paul Nunes and Larry Downes, *Big-Bang Disruption*, HARV. BUS. REV., Mar. 2013, available at <http://www.accenture.com/SiteCollectionDocuments/PDF/Accenture-Big-bang-Disruption.pdf>; see also Larry Downes, *Uber’s battle in Seattle highlights the irony of regulation hurting the consumers it was designed to help*, WASH. POST (Mar. 24, 2014), <http://www.washingtonpost.com/blogs/innovations/wp/2014/03/24/ubers-battle-in-seattle-highlights-the-irony-of-regulation-hurting-the-consumers-it-was-designed-to-help/> (describing UberX as a “perfect example” of a Big Bang Disruptor).

if the product succeeds, customer adoption can be nearly immediate, and “the winners of the model scale rapidly, as consumers use some of the same technologies as the innovators to socialize their preferences on a near instantaneous basis.”³

Two triumphant winners of this model are Uber and Lyft, companies whose smartphone applications allow users and consumers to arrange for a ride from nearby drivers, a concept collectively termed “ridesharing.”⁴ Uber, a startup founded in 2009, was recently valued at \$3.5 billion,⁵ and Lyft, founded in 2012, was valued at \$700 million⁶ — less than two years after its inception. Ridesharing companies like Uber and Lyft identified what they perceived as a technologically ailing industry — transportation — and introduced a system that enhances consumer experience, particularly in urban areas, where traditional forms of transportation, namely taxicabs, have long-remained resistant to change or competition.

While ridesharing companies have sparked consumer hope, their operations continue to be a source of regulatory unrest. Opponents of rideshare companies have said that companies like Uber and Lyft are operating outside of

3. *Id.*

4. The development and operations of Uber, Lyft, and the concept of ridesharing is discussed at length, *infra*, footnotes 39-60 and accompanying text.

5. Mark Milian and Ari Levy, *Uber’s Google-Led Deal Said to Value Company at \$3.5 Billion*, BLOOMBERG (Aug. 23, 2013), <http://www.bloomberg.com/news/2013-08-23/uber-s-google-led-funding-said-to-value-company-at-3-5-billion.html>.

6. Douglas MacMillan and Evelyn Rusli, WALL ST. J., *Ride-Sharing App Lyft Is Valued at More Than \$700 Million* (Mar. 8, 2014), <http://blogs.wsj.com/digits/2014/03/08/ride-sharing-app-lyft-is-valued-at-more-than-700-million/>.

the taxicab's government-granted system, and are stealing taxicab business. Rideshare supporters, on the other hand, generally claim that technological innovation and a customer-service based approach serve a different market, provide new services, and are popular with the traveling public.

The expansion of UberX⁷ and Lyft to cities across the United States⁸ has forced state, city, and county governments to decide if, and how, ridesharing companies should be regulated. Some cities have completely banned ridesharing operations, while others have embraced the competition. One of the most recent debates commenced in Pittsburgh, Pennsylvania, with the arrival of Lyft at the city on February 7, 2014,⁹ and UberX a few days later.¹⁰

Part I of this article provides a brief historical overview of the taxicab industry and the development of its regulation. Part II of the article traces the rapid rise and increasing popularity of ridesharing companies. Next, Part III analyzes the various legislative responses to the introduction of companies like UberX and Lyft. Lastly, Part IV of the article discusses Pittsburgh's reaction to ridesharing, and offers the regulatory framework by which Pennsylvania would most benefit.

7. UberX is Uber's ridesharing system involving drivers of personal vehicles, as opposed to its luxury line, Uber Black. *See infra* footnotes 38-44 and accompanying text..

8. As of March 10, 2014, Uber operates in 36 U.S. cities. *See* Uber, *Cities*, UBER BLOG, <https://www.uber.com/cities>. Lyft operates in 24 U.S. cities. *See* Lyft, *Cities*, <https://www.lyft.me/cities>.

9. Justine Coyne, *Ride-sharing startup Lyft launches in Pittsburgh Friday*, PITT. BUS. TIMES, Feb. 5, 2014, <http://www.bizjournals.com/pittsburgh/blog/techflash/2014/02/ride-sharing-startup-lyft-launches-in.html?page=all>

10. Meagan, *Pittsburgh, Your Uber Is Arriving Now*, UBER.COM (February 11, 2014), <http://blog.uber.com/pituberX>.

I. A Brief History of Taxicab Regulation

Hackneys, or horse-drawn carriages for hire, entered the markets of London and Paris between 1600 and 1620, and were quickly regulated, requiring licenses to operate, so as to “restrain the multitude and promiscuous use of coaches.”¹¹ In the United States, horsedrawn carriages met competition toward the end of the 19th century, with the introduction of automobiles, and by 1899, there were nearly one hundred taxicabs on New York City streets.¹² By the 1920s, industrialists, and automobile manufacturers like Ford Motor Company and General Motors, realized the enormous economic potential of the taxi industry, and became owners of fleets that created an increasingly sizeable, and flourishing market.¹³ However, in the 1930s, on the heels of the Great Depression, the growth in unemployment, combined with unsold automobiles, resulted in a sharp and drastic increase in the number of taxis.¹⁴ With taxi rides still considered a luxury at that time, even fewer people could afford a ride; meanwhile, the number of taxis rose and occupancy rates and revenue per taxi declined.¹⁵ A chaotic state of the industry ensued, which *The Washington Post* aptly described in a 1933 editorial:

Cut-throat competition in a business of this kind always produces chaos. Drivers are working as long as sixteen hours per day, in their

11. Paul Stephen Dempsey, *Taxi Industry Regulation, Deregulation & Regulation: the Paradox of Market Failure*, 24 *TRANSP. L.J.* 73, 76 (Summer 1996) (quoting David Williams, *Information and Price Determination in Taxi Markets*, 20 *Q. REV. OF ECON. & BUS.* 36 (1981)). Interestingly, Dempsey notes that common carrier liability traces its origins to Roman Law, beginning about the year 200 B.C.

12. PBS, *Taxi History*, <http://www.pbs.org/wnet/taxidreams/history/>.

13. *Id.*

14. Dempsey, *supra* note 11, at 77.

15. *Id.*

desperate efforts to eke out a living. Cabs are allowed to go unrepaired. . . .

Together with the rise in the accident rate there has been a sharp decline in the financial responsibility of taxicab operators. Too frequently the victims of taxicab accidents bear the loss because the operator has no resources of his own and no liability insurance. There is no excuse for a city exposing its people to such dangers.¹⁶

The response to this unruly and unsafe period “was municipal control over fares, licenses, insurance and other aspects of taxi service.”¹⁷ Thus, “governmental regulation of private firms, rather than public ownership . . . [was] deemed the appropriate means of protecting the public interest in economically viable modes of transportation.”¹⁸

Nearly all municipalities derive the power to regulate the taxi industry from state legislation that either requires or permits such regulation.¹⁹ These statutes and municipal ordinances have been challenged as unconstitutional on a number of grounds, or even preempted by federal law, however, they are consistently upheld.²⁰ Taxi regulation generally takes place at the local level, where city or county boards determine the number of taxi companies that may operate, as well as the total number of taxis that may provide services within the

16. Dempsey, *supra* note 11, at 77 (citing *Taxicab Chaos*, WASH. POST, Jan. 25, 1933, editorial page).

17. *Id.*

18. *Id.* at 76.

19. *Id.* at 77.

20. *Id.* at 78. Citing *Golden State Transit Corp. v. City of Los Angeles*, 726 F.2d (D.C. Cir. 1983) *cert denied*, 105 S. Ct. 1865 (1983), Dempsey explains the case in which “a municipality’s taxicab regulation survived scrutiny under the Sherman Act, as it fell under the ‘state action’ exemption to that legislation.” *Id.* at n.15. Dempsey also points out that “[a]lthough Title VI of the Federal Aviation Act of 1994 preempted intrastate regulation of motor carriers of property, it did not preempt intrastate regulation of the transportation of passengers.” *Id.*

city.²¹ The city or county boards also generally hold the power to set prices, (usually measured by mileage), and provide safety, insurance, and service standards.²² Thus, regulation may be subdivided into two categories: economic regulation (primarily price and market entry controls) and non-economic regulation (primarily safety and quality standards).²³ However, the taxi regulatory schemes vary from city to city and state to state, thus it is difficult to analyze the system as a whole, but, later in the article, the specific models of California and Colorado will be examined in order to assess how Pennsylvania may regulate ridesharing company operations.

II. The Rise of Ridesharing

To most of us, ridesharing is a relatively recent concept, seemingly hatched by Silicon Valley startups. Although companies like Uber and Lyft have recently harnessed the technology and model for operation, the concept itself – using innovative technology to match drivers and riders in real-time – is something the Federal Transit Authority (“FTA”) has been working on since 1992.²⁴ The FTA’s goal in creating a systematic network of vehicles and passengers was primarily to simultaneously reduce city congestion and the adverse environmental and health effects caused by automobile travel. Similarly identifying the advantages of a

21. *Id.*

22. *Id.*

23. Lee Harris, *Taxicab Economics: The Freedom to Contract for a Ride*, 1 GEO. J.L. & PUB. POL’Y 195, 197 (2002).

24. Amber Levofsky and Allen Greenberg, *Organized Dynamic Ride Sharing: The Potential Environmental Benefits and the Opportunity for Advancing the Concept* 3 Transportation Research Board (2001), <http://ridesharechoices.scripts.mit.edu/home/wp-content/papers/GreenburgLevofsky-OrganizedDynamicRidesharing.pdf>.

dynamic ridesharing system, several cities instituted pilot ridesharing programs.²⁵ Between 1993 and 1996, five notable projects were undertaken to implement a system by which technology would enable a “matching” system where drivers and riders could identify each other, and coordinate a ride.²⁶ Each system operated differently, with some using toll-free numbers and pagers to communicate,²⁷ others utilizing commuter information kiosks at transportation centers,²⁸ and another used the internet and email to arrange rides.²⁹ Most of the programs were abandoned for low usage.³⁰ In each instance, there was a small number of requests for rides and even smaller number of matches made between riders and drivers.³¹

Analyzing the projects, Amber Levofsky and Allen Greenberg attributed their failures to a number of factors. First, “commuters need to be aware of a new service, but the abandoned services were not aggressively advertised. They were short lived, allowing insufficient time for effective marketing and commuter experimentation.”³² In addition, “people have a natural distrust of strangers, and are hesitant to ride in a car with one. The projects verified that without enhanced security measures, this is a clear deterrent to participating in a dynamic

25. Levofsky and Greenberg, *supra* note 24, at 4. The cities that developed programs were Bellevue, Washington; Los Angeles, California; Sacramento, California; Riverside, California; and Seattle, Washington.

26. *Id.* at 5-8.

27. *Id.* at 5.

28. *Id.* at 6.

29. *Id.* at 7.

30. *Id.* at 8

31. *Id.*

32. *Id.*

ridesharing program.”³³ The only moderately successful program was conducted in Seattle, which Levofsky and Greenberg attributed to its “high computer and internet accessibility,” making commuters more willing and able to use the system.³⁴ Levofsky and Greenberg predicted that wireless communications and Global Positioning System (“GPS”) technology would be the foundation of a successful rideshare system because such technology “can monitor the origins and destinations of people seeking rides and locations of all participating vehicles with room for passengers.”³⁵ Further, they noted that “the availability of [a] hand-held phone . . . should help facilitate this flexibility.”³⁶

Fast-forward to 2012, when, as predicted, rapid technological advancement of wireless communications, GPS, and cellular phones sparked the development of reliable ridesharing operations. Still, “convincing people to give up a car and share a ride with a stranger? With the number of ride-sharing apps popping up recently, it could just be that the time is right,” wrote *The Washington Post*.³⁷ Although each company operates differently, to some extent, the basic principle is the same:

[p]assengers looking for a ride use the app to post their request and the app searches for drivers in the vicinity willing to provide rides. Security concerns about riding with a stranger are handled by thorough prescreening. Cost of the ride varies, with some fares a voluntary donation at a recommended amount. User ratings help

33. *Id.*

34. *Id.*

35. Levofsky and Greenberg, *supra* note 24, at 11.

36. *Id.*

37. Suzanne Kane, *Ride-Sharing Apps Take Off*, WASH. POST (Aug. 31, 2012), http://www.washingtonpost.com/cars/ride-sharing-apps-take-off/2012/08/31/84477cda-f36a-11e1-b74c-84ed55e0300b_story.html.

keep things on an even keel. A low rating of a passenger may mean drivers will refuse that person's ride request in the future.³⁸

The main players in today's ridesharing industry are Uber, Lyft, and Sidecar.³⁹ Uber was founded in 2009, and the company launched its first operation in San Francisco, California, in 2010 to improve upon what the founders perceived as a failing transportation system.⁴⁰ Uber's initial service was limited to what it called "Uber Black" – essentially a limousine service with a fleet of luxury sedans that operated on Uber's app platform.⁴¹ After experiencing near-immediate success, and realizing that the taxi industry and its outdated business model were failing consumers throughout the country, Uber launched UberX.⁴² UberX differs from Uber Black in two important respects: vehicle and price. Vehicles are not limited to luxury sedans, and because they are the personal vehicles of the drivers, they could range from a Chrysler 300 to a Toyota Prius. And, because it is not a luxury service, UberX fares are 35% less expensive than

38. *Id.*

39. For the purposes of this article – introducing legislation in Pennsylvania – I will focus on Uber and Lyft, because they are the only currently active companies in the state. Sidecar debuted in Philadelphia but has since been shut down. See Victor Fiorillo, *PPA Sting Operation Shuts Down New Google-Backed "Ride Share" Service Sidecar*, PHILA. MAG. (Feb. 25, 2013), <http://www.phillymag.com/news/2013/02/25/review-google-philadelphia-ride-share-service-sidecar-shut-down-by-city-ppa/>.

40. Travis Kalanick, *Uber's Founding*, UBER BLOG (Dec. 22, 2010), <http://blog.uber.com/2010/12/22/ubers-founding/>.

41. Leena Rao, *Uber Brings its Disruptive Car Service to Chicago*, TECH CRUNCH (Sept. 22, 2011), <http://techcrunch.com/2011/09/22/uber-brings-its-disruptive-car-service-to-chicago/>.

42. Alexia Tsotsis, *Uber Opens Up Platform to Non-Limo Vehicles With "Uber-X," Service Will Be 35% Less Expensive*, TECH CRUNCH (July 1, 2012), <http://techcrunch.com/2012/07/01/uber-opens-up-platform-to-non-limo-vehicles-with-uber-x-service-will-be-35-less-expensive/>.

Uber Black, and are also generally less expensive than a taxicab fare.⁴³

However, it should be noted that UberX uses “surge pricing,” meaning that fares may double or triple at times when rides are at their highest demand (i.e., Friday and Saturday nights, Halloween, and New Year’s Eve). Some have labeled this practice as price gouging,⁴⁴ but Uber explains that when supply (the number of vehicles available to pick up riders) is tight, raising the price allows the company to entice more drivers onto the system, and as the supply increases, the price goes down.⁴⁵ Nevertheless, the demand for improved livery service has become clear, and as result, UberX has become incredibly successful, now operating in over thirty-five American cities.⁴⁶

Lyft began its rise to success more recently. Launched in 2012, Lyft now offers its services in over thirty cities nationwide.⁴⁷ Unlike Uber, Lyft’s total operations are limited to the personal vehicle of the driver, and it does not maintain a separate fleet of luxury sedans or SUVs. Lyft operates much the same

43. *Id.* Importantly, in cities and states where UberX is not regulated as a taxi, they are free to adjust their rates at anytime, where as taxis must adhere to rates set by the regulatory agency that controls them. *See, e.g.,* Ryan Lawler, *Uber Slashes UberX Fares in 16 Markets to Make it the Cheapest Car Service Available Anywhere*, TECH CRUNCH (Jan. 9, 2014)

<http://techcrunch.com/2014/01/09/big-uberx-price-cuts/>(noting Uber’s commitment to slashing fares by over 20% in most cities in which it operates),

44. Annie Lowery, *Is Uber’s Surge Pricing an Example of High-Tech Gouging?*, N.Y. TIMES MAG. (Jan. 10, 2014),

http://www.nytimes.com/2014/01/12/magazine/is-ubers-surge-pricing-an-example-of-high-tech-gouging.html?_r=0.

45. Travis Kalanick, *NYE Surge Price Explained*, UBER BLOG (Dec. 31, 2011), <http://blog.uber.com/2011/12/31/nye-surge-pricing-explained/>.

46. Uber, *Cities*, UBER BLOG, <https://www.uber.com/cities>.

47. Lyft, *Cities*, LYFT, <http://www.lyft.com/cities>.

that UberX does, in which a potential rider may download the application to his or her smartphone, complete a personal profile with credit card information, and then request a ride from a nearby Lyft driver whose location is identified via GPS on the app's map. In some cities, the fare amount may be referred to as a "requested donation," which allows a rider to increase or decrease the amount paid through the app.⁴⁸ In other cities, Lyft charges a set amount for rides based on mileage, like UberX or a taxi.⁴⁹ Lyft's approach to increased rider demand is "Prime Time," a system whereby driver tips are automatically applied to each ride, rather than as an option.⁵⁰ The idea is that such a system creates a greater incentive for drivers to increase the supply to match the demand of the number of potential riders.⁵¹ Like UberX's surge pricing, Prime Time is dynamic, and is switched on and off as the demand for rides rises and falls.⁵²

48. Lyft, *How do I pay for a Lyft ride?* LYFT.COM, [https://www.lyft.me/help?article=1003538#How do I pay for Lyft rides?](https://www.lyft.me/help?article=1003538#How%20do%20I%20pay%20for%20Lyft%20rides?) The donation system was created generally to avoid regulatory fines where ridesharing for pay was or is illegal. The cities on a donation system are: Baltimore, MD; Charlotte, NC; Cincinnati, OH; Columbus, OH; Dallas, TX; Detroit, MI; Houston, TX; Indianapolis, IN; Madison, WI; Minneapolis-St. Paul, MN; Phoenix, AZ; Pittsburgh, PA; Providence, RI; San Antonio, TX. See Lyft, *Donations vs. Charges*, LYFT.COM, <https://www.lyft.me/help?article=1415358>.

49. Lyft, *Donations vs. Charges*, LYFT.COM, <https://www.lyft.me/help?article=1415358>. The following cities charge a set amount: Atlanta, GA; Boston, MA; Chicago, IL; Denver, CO; Los Angeles, CA; Nashville, TN; Orange County, CA; Sacramento, CA; San Diego, CA; San Francisco, CA; Santa Barbara, CA; Silicon Valley, CA; Seattle, WA; Washington, D.C.

50. Lyft, *What is Prime Time?* LYFT.COM, <http://www.lyft.com/help?article=1353884>

51. *Id.*

52. *Id.*

Sensing the societal concern with rider safety, Lyft actively advertises its driver background checks, driving record checks, insurance protection,⁵³ required vehicle inspections,⁵⁴ and zero tolerance policy with respect to drugs and alcohol.⁵⁵ According to Lyft, “every driver who applies to become a part of the community is screened for criminal offenses and driving incidents. The criminal background check includes national, county level and national sex offender databases.”⁵⁶ Drivers must be age twenty-three or older, have a driver’s license for more than one year, maintain valid personal auto insurance that meets or exceeds state requirements, have no more than two moving violations in the previous three years, have no DUI or drug-related infractions in the last seven years, and no extreme infractions (e.g., hit and run, or felonies involving a vehicle) in his or her lifetime driving history.⁵⁷ To be eligible to drive, an individual’s background check must not contain any of the following: sexual offenses, theft offenses, property damage, and other violent crimes.⁵⁸ Though it has only officially operated for approximately eighteen months, Lyft is now “one

53. According to Lyft, their coverage includes the following: Excess Liability: \$1,000,000 limit covering passengers and/or third parties; Contingent Collision: \$2,500 deductible and \$50,000 maximum applicable to drivers who have purchased collision coverage on their personal policy; Excess Uninsured/Underinsured Motorist (UM/UIM): \$1,000,000 limit covering drivers if they are hit by an uninsured or underinsured motorist who's at fault. See Lyft, *We Go the Extra Mile for Safety*, LYFT.COM, <http://www.lyft.com/safety>.

54. Vehicles must be model year 2000 or newer and each must pass [Lyft’s] vehicle safety inspection. See Lyft, *supra* note 53.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

of the most compelling players in the ride-sharing space,”⁵⁹ and having recently completed a new round of \$250 million in financing that will enable the company to enter international markets, Lyft is clearly Uber’s top competition.⁶⁰

An Ailing Industry

While the introduction of ridesharing companies and apps has enhanced the consumer transportation experience, it has brought fear and frustration to the taxi industry, and to a lesser extent, existing public transportation systems. Brad Newsham, a former San Francisco cab driver for twenty-eight years, and former chair of the United Taxicab Workers, concluded that “[t]he cab industry here shot itself in the foot. . . . It has refused to deploy dispatching innovations. It has refused to keep up with the times and the times have moved right past them.”⁶¹

Historically, taxi companies have been especially slow to adopt two simple technological improvements that consumers and hospitality operators have long-called for: onboard credit card readers and GPS tracking systems.⁶² Though some

59. Austin Carr, *Lyft Raises \$250 Million for Aggressive Expansion in Race Against Uber*, FAST COMPANY (Apr. 2, 2014), <http://www.fastcompany.com/3028564/most-innovative-companies/lyft-raises-250m-for-aggressive-expansion-in-race-against-uber>.

60. *Id.*

61. Jon Brooks, *Will ‘Ride Sharing’ Kill San Francisco’s Taxi Industry?* KQED.COM (Nov. 7, 2013), <http://blogs.kqed.org/newsfix/2013/11/07/taxis-lyft-ride-service-war-on-streets-of-san-francisco>.

62. See Naomi R. Kooker, *HUB Taxis Slow to Adopt New Technologies*, BOSTON BUS. J. (Sept. 24, 2007), <http://www.bizjournals.com/boston/stories/2007/09/24/story3.html> (Noting,

cities, like New York City and Washington, D.C., mandate the use of such technology, they comprise the minority.⁶³ The reason most cited for declining adoption of new technology is simple: cost.⁶⁴ But the regulatory scheme in which most taxicabs operate makes adoption a more complex decision than it may appear. TaxiPass, a company that partners with taxicab companies to develop and implement secure cashless payment systems, aptly explains specific causes of the industry's failure to adopt new technology:

High Investment Cost

Traditional providers sell or lease expensive solutions that come with significant ongoing wireless fees, costly purchase/lease prices, and complex merchant accounts that must be closely managed and heavily managed.

Capped Pricing doesn't cover increased costs

Since taxi fares have capped price rates like other utilities, taxi drivers/fleets cannot raise their rates when their cost of business goes up, as it does when passengers increasingly utilize more costly forms of payment like cards.

Fragmented and independent industry doesn't have scale and consolidation to properly manage

Since most drivers are unable to implement secure, complex credit and debit card banking systems, they resort to the selling of manual imprints of passenger credit cards to the gray market. This illegal practice is risky for both passenger and driver, yet has become the standard for credit card processing in taxis.

High Variable Cost

Even without the expenses associated with maintaining secure cashless payment systems, cabbies routinely pay up to 10% to

in 2007, Boston cab companies' failure to adopt technology that riders said would improve cab experiences).

63. New York Taxi and Limousine Commission, *Taxicab Passenger Enhancements Project*, NYC.Gov,

http://www.nyc.gov/html/tlc/html/passenger/taxicab_serv_enh.shtml;

Mike Debonis, *Credit Cards in D.C. Taxicabs by March 30*, WASH. POST (Jan. 18, 2013), [http://www.washingtonpost.com/blogs/mike-](http://www.washingtonpost.com/blogs/mike-debonis/wp/2013/01/18/credit-cards-in-d-c-taxicabs-by-march-31/)

[debonis/wp/2013/01/18/credit-cards-in-d-c-taxicabs-by-march-31/](http://www.washingtonpost.com/blogs/mike-debonis/wp/2013/01/18/credit-cards-in-d-c-taxicabs-by-march-31/).

64. Kooker, *supra* note 62.

process credit card fares, making them a highly unattractive and cumbersome form of payment to accept for a driver on a 'rate-regulated' income.

By simply forcing cabbies to adopt technology without addressing the above issues, creates a 'race to the bottom' of the lowest cost tech solution to meet the regulated requirements and even then drivers will fight consumer usage given the high variable cost. Unless a regulator has 300 staff members like they do in New York, implementing 1000's of mystery shopper rides to enforce regulations is not a possibility.⁶⁵

What TaxiPass fails to mention, however, is that in many cities, taxicab companies have little incentive to upgrade technology and its associated costs because, due to the heavily restricted number of operators and cabs, they are not at risk of losing the market share. That was, until the introduction of competition from the likes of Uber and Lyft, who have caused taxi companies to re-evaluate their policies after, in some instances, losing 25-30% of their business.⁶⁶

Another sector fearful of the impact of ridesharing companies is public transportation.⁶⁷ It is argued that the creation and rise of private transportation companies "create[s] a two-tier transportation caste system, where the private sector solutions flourish, often at the expense of the public infrastructure that a large part of the population still depends on to get to work and go about their lives."⁶⁸ Further, critics predict, "when policy-makers begin to see [private

65. TaxiPass, *Regulators*, TAXIPASS.COM, <http://taxipass.com/regulators/>.

66. Brooks, *supra* note 79 (stating that "Hansu Kim, owner of San Francisco's DeSoto Cab, puts the drop in all taxi business citywide . . . anywhere from 25 to 33 percent in the past year.").

67. Though it should be noted that commentators have been the voice of opposition, not the public transit authorities themselves.

68. Kevin Roose, *Transit Strike Shows the Dark Side of Silicon Valley's Privatization Fetish*, N.Y. MAG (July 2, 2013), <http://nymag.com/daily/intelligencer/2013/07/bart-strike-shows-privatizations-dark-side.html>.

transportation companies] as legitimate replacements for public infrastructure, their incentives to make public services better will disappear.”⁶⁹

Supporters of ridesharing companies dispel the notion that they undercut public transit by, first, pointing out that “[t]he private transportation technology that undermined public transportation was invented in the 1920s and it’s called the ‘automobile’ and it’s the dominant transportation mode share in every non-New York metro area and has been for a long time.”⁷⁰ Second, ride sharing apps serve to complement public transit, not replace it. “Most people use ride sharing . . . as part of a range of options that tend to decrease car ownership, not necessarily public transit.”⁷¹ In a San Francisco survey, riders were asked what transportation they use aside from ride sharing apps and 53% said public transportation, followed by 28% who drive.⁷² Further, companies like UberX and Lyft are providing a cheaper alternative for people who otherwise would not take taxis, either because they cannot afford it, or because they are unhappy with taxi service and reliability of drivers.⁷³

III. The Regulatory Battle

69. *Id.*

70. Matthew Yglesias, *Uber and Lyft Aren’t Killing Public Transportation*, SLATE (July 3, 2013), http://www.slate.com/blogs/moneybox/2013/07/03/uber_and_lyft_aren_t_killing_public_transportation.html.

71. Tomio Geron, *While BART Strikes Continues, Do Ride-Sharing Apps Complement or Undercut Public Transit?*, FORBES (July 3, 2013), <http://www.forbes.com/sites/tomiogeron/2013/07/03/while-bart-strikes-continues-do-ride-sharing-apps-complement-or-undercut-public-transit/> (paraphrasing observations of Susan Shaheen, Co-Director, UC Berkeley Transportation Sustainability Research Center).

72. *Id.*

73. *Id.*

The introduction of rideshare companies like UberX and Lyft to cities throughout the U.S. has caused each city and state to confront and evaluate the regulatory grey area in which the companies operate. Are they taxis? Should they be regulated like taxis? Do they fit into existing statutory schemes? These are the types of questions that cities and states had to answer, and continue to do so, and because each city and state has a unique regulatory framework and political environment, each has generally addressed the issue differently.

In Chicago, Illinois, in support of the arrival of rideshare companies, but sensitive to public safety concerns, Mayor Rahm Emanuel proposed a new ordinance aimed to create new regulations for these companies, requiring, among other things, driver training, background checks, vehicle inspections, and insurance provisions.⁷⁴ The taxi industry complained that the rules would not go far enough, and that it makes no sense to create separate rules for companies that use apps, when many taxi drivers use them, too.⁷⁵ Thus, taxi drivers responded to the mayor's proposal by suing the City of Chicago, claiming the city is violating the drivers' rights by allowing UberX and Lyft to operate unregulated.⁷⁶

Rideshare drivers recently filed a motion to dismiss the lawsuit,⁷⁷ and the

74. See Jon Hilkevitch, *Chicago Looking to Regulate Ride-Sharing Services*, CHI. TRIB. (Feb. 3, 2014), http://articles.chicagotribune.com/2014-02-03/news/ct-getting-around-met-0203-20140203_1_ride-sharing-lyft-ride-share-companies. Mayor Emanuel's proposal would create a new category of "transportation network companies" much like California did, which is discussed *infra*.

75. *Id.*

76. See Andrew Harris, *Chicago Cabbies Sue Over Unregulated Uber, Lyft*, BLOOMBERG (Feb. 6, 2014), <http://www.bloomberg.com/news/2014-02-06/chicago-cabbies-sue-over-unregulated-uber-lyft-services.html>.

77. See Michelle Manchir, *Rideshare Drivers Seek Dismissal of Cab Companies' Lawsuit*, CHI. TRIB (Mar. 25, 2014),

regulatory discussion continues among the cab companies, rideshare companies, the city, and the state legislature.⁷⁸

Shortly after UberX and Lyft launched in Washington, D.C., the D.C. Taxicab Commission passed emergency measures that allowed the companies to operate, but required them to perform background checks on drivers, obtain commercial liability insurance for drivers, and to adhere to a zero-tolerance policy with respect to drugs and alcohol.⁷⁹ Then, in January 2014, the Taxicab Commission charged a panel with researching and investigating ridesharing operations, and to submit a report of “findings and recommendations” that may be used to develop effective rulemaking.⁸⁰ First, the report found that the Commission undoubtedly maintained the ability to regulate ridesharing activities.⁸¹ The report pointed out that “[i]n most respects, the business model for “ridesharing” vehicles fits the existing regulations for black cars (“sedans”) in Title 31, Chapter 14 of the D.C. Municipal Regulations” and the panel

[http://articles.chicagotribune.com/2014-03-25/news/chi-rideshare-drivers-
seek-dismissal-of-cab-companies-lawsuit-20140325_1_ride-share-companies-
ride-sharing-ridesharing](http://articles.chicagotribune.com/2014-03-25/news/chi-rideshare-drivers-seek-dismissal-of-cab-companies-lawsuit-20140325_1_ride-share-companies-ride-sharing-ridesharing).

78. See Michelle Manchir, *Rideshare Regulations Advanced by House Committee*, CHI. TRIB (Mar. 26, 2014), http://articles.chicagotribune.com/2014-03-26/news/chi-uber-lyft-rideshare-regulations-20140326_1_illinois-house-house-committee-ride-share-companies.

79. See Lori Aratani, *Proposal would allow D.C. Cabs to Embrace ‘Price Surging’*, WASH. POST (April 7, 2014), http://www.washingtonpost.com/local/trafficandcommuting/proposal-would-allow-dc-cabs-to-embrace-surge-pricing/2014/04/07/obb48f28-be85-11e3-b195-ddoc1174052c_story.html.

80. GOVERNMENT OF THE DISTRICT OF COLUMBIA TAXICAB COMMISSION, REPORT OF THE PANEL ON INDUSTRY, *Findings and Recommendations on “Ridesharing*, TAXI-LIBRARY.ORG, 2 (Jan. 24, 2014), http://www.taxi-library.org/dc-recommendations-on-ridesharing_2014-01-24.pdf.

81. *Id.*

“recommend[ed] these rules be redrafted to fit both classes of service.”⁸² As for any proposed regulations, the report recommended, among other things, that rules: (1) should require companies to purchase adequate liability insurance to “cover claims by passengers and members of the public injured when “ridesharing” vehicles are involved in accidents”; (2) should require that “drivers [] be properly screened and their vehicles inspected for safety according to standards set by the Commission”; (3) should require drivers to receive basic training from the “ridesharing” service; and (4) should require each ridesharing service to maintain a zero tolerance policy for drugs and alcohol, including at the time of application.⁸³ Finally, the panel explained the future challenges of the taxi industry, concluding that:

“Ridesharing” will pose challenges for preserving fair competition in the public vehicle for hire industry. Some taxicabs will find it difficult to fairly compete, which threatens the viability of the taxicab industry, the only legal source of street hail service. This is contrary to the interests of the District of Columbia. The Commission should consider lawful, non-protectionist means of leveling the competitive playing field. Proposed regulations should allow a digital dispatch service to set the entire fare when it books a trip for a taxicab, thereby allowing taxicab fares to fluctuate up and down in response to market demand, in the same way they now do for black cars and would for “ridesharing” vehicles. The challenges to the taxicab industry may also have the effect of reducing the number of wheelchair-accessible vehicles. The Commission should consider measures to continue increasing the availability of accessible vehicles if “ridesharing” becomes an approved service.⁸⁴

Though rideshare operations have yet to be officially approved in Washington, D.C., D.C. Council members heeded the advice of the panel and

82. *Id.* at 3.

83. *Id.*

84. *Id.*

recently proposed legislation that would allow the city’s taxi drivers to embrace what UberX deemed “surge pricing,” in which prices are adjusted in real-time according to demand.⁸⁵ Under the proposal, “passengers who book via a mobile app would be told ahead of time what they can expect to pay for their taxi ride . . . [and] [t]he price would not be set by individual cabdrivers but by the D.C. Taxicab Commission or the mobile dispatch service. Individuals who hail a taxi on the street would still pay metered rates.⁸⁶ Council members say the legislation “will allow traditional cabs to better compete with new app-based ride services” and that it “strikes a balance between allowing new ride services — in which individuals transport passengers using their own cars — to grow while evening the playing field for D.C. cabdrivers.”⁸⁷ To date, the proposal has not been voted on, and D.C. cab drivers, who are required to spend hundreds or thousands of dollars to comply with regulations, continue to maintain that rideshare companies have caused “irreparable harm” to cabbies, and should be forced to play by the same rules.⁸⁸

Surprisingly, in Seattle, a city with a rich history of cultivating and embracing innovative technology, the taxi industry scored a major victory recently when the City Council voted to place a cap on the number of vehicles

85. Lori Aratani, *Proposal Would Allow D.C. Cabs to Embrace ‘Surge Pricing’*, WASH. POST (Apr. 7, 2014), http://www.washingtonpost.com/local/trafficandcommuting/proposal-would-allow-dc-cabs-to-embrace-surge-pricing/2014/04/07/0bb48f28-be85-11e3-b195-ddoc1174052c_story.html

86. *Id.*

87. *Id.*

88. *Id.*

each rideshare company may have on the road.⁸⁹ The measure limits UberX, Lyft, and Sidecar (the companies currently operating in Seattle) to 150 drivers on the road at any given time, for a collective total of 450, a significant decrease from the estimated 2,000 vehicles that were on the road before the vote.⁹⁰ The bill, which the Council started working on in March 2013,⁹¹ also created regulations that require safety inspections of vehicles, require drivers to obtain personal auto insurance that meets state requirements, and require rideshare companies to carry commercial liability insurance.⁹² Though he vowed to sign the legislation, Seattle Mayor Ed Murray expressed skepticism with respect to the solution to the city's transportation issues, stating that

[h]ad I been in office earlier than January, I would have sent my own recommendations to Council for integrating rideshare companies into our existing regulatory framework while also reforming that framework to ease undue burdens on taxis. . . . I do not believe it is either a complete solution or a long-term solution.

. . . .

I remain concerned about the issue of insurance, which I believe is already too burdensome for taxis. I remain concerned about the need to level the regulatory playing field for taxis generally, which includes issues of training, fees, rates, use of technology and latitude for innovation. And I remain concerned about the issue of

89. Reid Wilson, *Seattle Becomes First City to Cap Uber, Lyft Vehicles*, WASH. POST (Mar. 18, 2014),

<http://www.washingtonpost.com/blogs/govbeat/wp/2014/03/18/seattle-becomes-first-city-to-cap-uber-lyft-vehicles/>.

90. *Id.*

91. Joel Connelly, *Council Votes to Limit, Regulate Ride Share Firms*, SEATTLE POST-INTELLIGENCER (Mar. 17, 2014),

<http://blog.seattlepi.com/seattlepolitics/2014/03/17/council-votes-to-limit-regulate-ride-share-firms/#20586101=0>.

92. *Id.*; Wilson, *supra* note 89.

caps on rideshare vehicles, which I believe is unreasonably restrictive and unworkable in practice.⁹³

Though the cap will be in place for the next year,⁹⁴ it is expected that conversations will continue among the City Council, Mayor Murray (who is notably the former Chair of the House Transportation Committee),⁹⁵ and the ridesharing companies.

Chicago, Washington, D.C., and Seattle, are just a few examples of city and state governments' clash with rideshare companies. And, while those cities have allowed operations to continue on varying levels, on the other hand, Miami, Fl., Houston, Tex., Portland, Ore., Austin, Tex., and New Orleans, La. have all refused to allow companies like Uber and Lyft to operate.⁹⁶ The cities of Minneapolis, Minn., St. Paul, Minn., Milwaukee, Wisc., and Detroit, Mich., have allowed the companies to operate, but have strictly held them to the standards and requirements of taxicabs under local or state law.⁹⁷

Currently, California is the only state that has formally regulated ridesharing companies. Another, Colorado, having passed legislation through the state House that would regulate ridesharing, is close. Thus, the statutory schemes, the regulatory battles, and legislative responses in those states warrant a closer look.

93. Office of the Mayor, *Mayor Murray Responds to Ride Share Legislation Approved by City Council*, SEATTLE.GOV (Mar. 17, 2014), <http://murray.seattle.gov/mayor-murray-responds-to-rideshare-legislation-approved-by-city-council/#sthash.JAVwuX7l.OxpqEyrG.dpbs>.

94. Connelly, *supra* note 91.

95. Office of the Mayor, *About Ed*, SEATTLE.GOV, <http://www.seattle.gov/mayor/about-ed>.

96. See Wilson, *supra* note 89.

97. *Id.*

California

In California, like many other states, a state statute requires municipalities to regulate the local taxi industry.⁹⁸ The city of Los Angeles, for example, requires an applicant to prove “public convenience and necessity” to gain entry to the taxi market, and entry, rates, and business practices are governed by a single municipal body, the Los Angeles Board of Transportation Commissioners.⁹⁹ The Los Angeles ordinance contains requirements of insurance,¹⁰⁰ an identification system of color and signage,¹⁰¹ and rate regulations,¹⁰² and outlines the scenario in which the Commissioners may suspend or revoke a driver or vehicle permit.¹⁰³

However, California law distinguishes between taxi services, regulated by cities and counties, and “charter party carrier” services,¹⁰⁴ which are subject to

98. CAL. GOV'T CODE § 53075.5 (West 2011) (stating that “every city or county shall protect the public health, safety, and welfare by adopting an ordinance or resolution in regard to taxicab transportation service rendered in vehicles for carrying not more than eight persons, excluding the driver, which is operating within the jurisdiction of the city or county . . .”)

99. LOS ANGELES MUN. CODE, ch VII, art 1., §§ 71.00, 71.12. The governing body for San Francisco, another California transportation hub, is the San Francisco Municipal Transportation Agency (SFMTA). See San Francisco Municipal Transportation Agency, *Taxi Industry*, <http://www.sfmta.com/services/taxi-industry>.

100. LOS ANGELES MUN. CODE, ch VII, art 1., § 71.14

101. *Id.* at §§ 71.16, 71.19, 71.20, 71.21.

102. *Id.* at § 71.25.

103. *Id.* at §§ 71.08.

104. See CAL. PUB. UTIL. CODE ANN. § 5353 (g) (West 2007) (listing the exclusions to the classification of Charter Party Carrier of Passengers, and stating one as “taxicab transportation service licensed and regulated by a city or county, by ordinance or resolution, rendered in vehicles designed for carrying not more than eight persons excluding the driver”).

regulation by the California Public Utilities Commission.¹⁰⁵ Charter party carriers are defined as:

every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in this state. “Charter-party carrier of passengers” includes any person, corporation, or other entity engaged in the provision of a hired driver service when a rented motor vehicle is being operated by a hired driver.¹⁰⁶

Charter party carriers of passengers must obtain from the Commission a certificate of public convenience,¹⁰⁷ maintain trip reports that detail the ride’s point of origin and destination,¹⁰⁸ carry liability insurance,¹⁰⁹ and cannot advertise their services as taxi operations.¹¹⁰ This distinction between taxis and charter party carriers of passengers was critical to the state’s approach to the regulation of ridesharing companies.

When UberX and Lyft launched in California in 2012, the California Public Utilities Commission issued a cease and desist letter to the companies arguing that they needed to be licensed.¹¹¹ The letter informed the companies that they were subject to regulation by the CPUC as “charter-party carriers.”¹¹² However,

105. *Id.* at § 5381 (stating that [“t]o the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.”)

106. *Id.* at § 5360.

107. *Id.* at § 5371.

108. *Id.* at § 5381.5.

109. *Id.* at § 5391.

110. *Id.* at § 5386.5.

111. Tomio Geron, *Ride-Sharing Startups Get California Cease and Desist Letters*, FORBES (Oct. 8, 2012),

<http://www.forbes.com/sites/tomiogeron/2012/10/08/ride-sharing-startups-get-california-cease-and-desist-letters/>.

112. *Id.*

negotiations between the parties ensued, and an interim agreement was reached, whereby the companies were allowed to operate while the CPUC investigated to determine if, and how, the companies should be regulated.¹¹³ A flyer created by the San Francisco Cab Drivers Association and the United Taxicab Workers of San Francisco described the position of the cab drivers:

Unlicensed, uninspected, unregulated and underinsured taxis are being allowed to roam the streets, creating a public safety hazard, increased congestion, greenhouse gasses and unfair competition to law abiding cab drivers. Under the guise of 'Ridesharing' these rogue taxis are avoiding all regulations, inspections, fees and insurance requirements enforced on legal taxicabs.¹¹⁴

The rideshare companies countered by arguing that they are not taxis and thus are not subject to regulations of taxis, and that they provide better service and more safety protections than traditional taxis.¹¹⁵ The companies urged the CPUC not to attempt to force fit the companies' operations into outdated transportation regulations.

An exhaustive rulemaking process commenced on December 12, 2012, and during the following seven months the CPUC carefully considered comments from a number of interested parties, including the CEO of a cab company, the Greater California Livery Association, International Association of Transportation Regulators, Uber Technologies, Personal Insurance Federation of

113. Tomio Geron, *Lyft Cleared by CPUC, Launches Ride-Sharing in Los Angeles*, FORBES (Jan. 30, 2013), <http://www.forbes.com/sites/tomiogeron/2013/01/30/lyft-cleared-by-cpuc-launches-ride-sharing-in-los-angeles/>.

114. Tomio Geron, *California PUC Proposes Legalizing Ride-Sharing From Startups Lyft, Sidecar, Uber*, FORBES (July 30, 2013), <http://www.forbes.com/sites/tomiogeron/2013/07/30/california-puc-proposes-legalizing-ride-sharing-companies-lyft-sidecar-uber/>.

115. *See id.*

California, San Francisco Municipal Transportation Agency, and the United Taxicab Workers.¹¹⁶ The CPUC sought comment on “how the Commission’s existing jurisdiction pursuant to the California Constitution and the Public Utilities Code should be applied” to rideshare companies and their drivers.¹¹⁷ In addition, the Commission sought comment on “whether any existing legislation should be modified or if new legislation should be enacted.”¹¹⁸

At end of July, the CPUC issued its proposed ruling, and it was approved on September 13, 2013, making California the first state to regulate ridesharing. The CPUC determined that it has the jurisdiction and duty to establish regulations pertaining to ride sharing services pursuant to Article XII of the California Constitution and Section 5360 of the Public Utilities Code, which defines “charter party carrier of passengers.”¹¹⁹ The Commission noted that it “may supervise and regulate every charter-party carrier of passengers in the State and may do all things . . . necessary and convenient in the exercise of such power and jurisdiction.”¹²⁰ The Commission exercised its jurisdiction, and its power to develop a new category of regulation when technology is introduced into an existing industry,¹²¹ creating a new category of charter-party carriers, which it

116. California Public Utilities Commission [hereinafter “California PUC”], *Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry* 5, 6, 7 (July 30, 2013), <http://sfeda.org/CPUC/CPUCPROPSOEDrec.PDF>.

117. *Id.* at 8.

118. *Id.*

119. California PUC, *supra* note 116, at 21-22; *See* § 5360, *supra* note 102 and accompanying text for the definition of “charter-party carrier.”

120. California PUC, *supra* note 116, at 22 (quoting CAL. PUB. UTIL. CODE ANN. § 5381).

121. *Id.* at 23; *See* CAL. PUB. UTIL. CODE ANN. § 701.

called Transportation Network Companies (“TNC”). TNCs were defined as “an organization, whether a corporation, partnership, sole proprietor, or other form, operating in California that provides transportation services for compensation using an online enable app or platform to connect passengers with drivers using their personal vehicles.”¹²² The Commission then created a list of rules and regulations applicable to all TNCs (including UberX and Lyft) effective immediately.¹²³ Among other things, the regulations included specific insurance requirements,¹²⁴ mandated criminal background checks of drivers,¹²⁵ required vehicle inspections,¹²⁶ and required the submission of a variety of annual reports aimed to identify and curb rider discrimination.¹²⁷

Colorado

Similar to California, and unlike most states, in which city governments regulate the taxi companies, in Colorado, the state Public Utilities Commission (“PUC”) regulates the taxi industry of the state’s major cities, including Denver.¹²⁸ The PUC maintains the “authority and duty to prescribe such reasonable rules covering the operations of motor carriers as may be necessary” to “[e]nsure public safety, financial responsibility, consumer protection, service quality, and the provision of services to the public.”¹²⁹ Colorado classifies taxicabs as common

122. California PUC, *supra* note 116, at 24.

123. *Id.* at 26.

124. *Id.* at 26, 29-30.

125. *Id.* at 26.

126. *Id.* at 28-29.

127. *Id.* at 31-32.

128. *See* COLO. REV. STAT. ANN. § 40-10.1-103(1) (stating that [a]ll common carriers and contract carriers are declared to be public utilities” and are thus subject to control by the PUC. Common carries are defined as follows:

129. *Id.* at § 40-10.1-106(1),(a)

carriers under its statutory code, and the legislature defines common carriers as “[e]very person directly or indirectly affording a means of transportation, or any service or facility in connection therewith, within this state by motor vehicle or other vehicle whatever by indiscriminately accepting and carrying passengers for compensation.”¹³⁰ A taxicab operator is required to carry liability insurance,¹³¹ is subject to a national fingerprint-based criminal history record check,¹³² and must obtain from the PUC a Certificate of Public Convenience and Necessity (“CPCN”), which essentially states that public convenience requires such operation.¹³³ The CPCN, through the authority of the PUC, “specifies the type of service to be provided and the geographic area to be covered.”¹³⁴

Lyft launched in Denver in September 2012, and UberX entered the market two months later,¹³⁵ in October.¹³⁶ Almost immediately, the Colorado

130. *Id.* at § 40-1-102(3)(a)(I).

131. *Id.* at § 40-10.1-107

132. *Id.* at § 40-10.1-110

133. *Id.* at § 40-10.1-201

134. *Common and Contract Carriers*, COLORADO.GOV, <http://cdn.colorado.gov/cs/Satellite/DORA-PUC/CBON/DORA/1251633067827> (Mar. 26, 2014)

135. Uber Black, one of Uber’s services that offers a more luxurious ride through partnerships with licensed limousine companies, was Uber’s first introduction to Denver. It was met with strong resistance, but regulatory proposals that sought to effectively put them out of business ultimately failed, and Uber Black was given the virtual green light. *See* Andy Vuong, *Judge’s proposed rules would probably drive Uber out of Colorado*, DENVER POST (Aug. 5, 2013), http://www.denverpost.com/breakingnews/ci_23801122/judges-proposed-rules-would-probably-drive-uber-out?source=pkg; Andy Vuong, *Colorado regulators give the green light to e-hailing startup Uber*, DENVER POST (Sept. 17, 2013), http://www.denverpost.com/breakingnews/ci_24116352/colorado-regulators-give-green-light-e-hailing-startup?source=pkg.

136. Andy Vuong, *PUC to investigate low-cost ride-sharing services Lyft and uberX*, DENVER POST (Dec. 11, 2013),

Public Utilities Commission convened to determine whether an investigation was needed to decide whether the companies' services should to be subject to regulation.¹³⁷ Prior to the meeting, the PUC made its position quite clear, stating that "[t]he commission staff believes that [rideshare companies] are providing common carrier service and they fall under the regulation of the commission."¹³⁸ Each company also firmly took its stance, with Uber's Denver general manager Will McCollum noting that it "provides consumers reliable transportation option through the convenience of the Uber app" and "[i]t's 30 percent cheaper than a taxi."¹³⁹ Lyft cofounder and president John Zimmer countered the PUC more directly, saying that "[c]urrent PUC rules were written prior to a solution like Lyft being possible and Lyft is not a common carrier."¹⁴⁰ Many entrepreneurs and technology enthusiasts saw heavy regulation of the companies as destructive to Colorado's reputation as a hub for innovation.¹⁴¹ After all, in 2011, Colorado Governor John Hickenlooper launched the Colorado Innovation Network, an annual global business summit aimed to "make Colorado the best state in the

http://www.denverpost.com/business/ci_24698031/puc-investigate-low-cost-ride-sharing-services-lyft .

137. *Id.*

138. *Id.* (quoting PUC spokesman, Terry Bote).

139. *Id.* (quoting Uber Denver general manager Will McCollum)

140. *Id.* (quoting Lyft cofounder and president John Zimmer)

141. Andy Vuong, *Uber tax battle threatens to hurt Colorado's tech and business image*, DENVER POST, (Aug. 11, 2013),

http://www.denverpost.com/business/ci_23833414/uber-taxi-battle-threatens-hurt-colorados-tech-and. Eric Mitisek, CEO of the Colorado Technology Group, a trade group with over 600 member companies, remarked "At a time when we're working really hard to position Colorado as an innovation and technology-friendly state to attract Google, Amazon, Microsoft, eBay and [a] lot of the true-play internet companies to do more business here, this is not a good representation of the business climate." *Id.*

nation to do business in by supporting entrepreneurs, encouraging innovation and promoting the state’s highly-skilled workforce.”¹⁴²

Denver’s taxi companies and drivers, claiming not to oppose innovation, demanded that transportation services like UberX and Lyft (and others that may follow), be held to the same existing rules as taxis.¹⁴³ In the name of fair competition and public safety, taxi companies argued that the same regulations be applied to ridesharing companies.¹⁴⁴ The PUC held firm with its position that UberX and Lyft must be regulated as taxicabs, or the legislature must pass a bill that says otherwise. The PUC warned that if the legislature did not pass a bill, the PUC would be forced to shut down all UberX and Lyft operations.¹⁴⁵

A bipartisan group of state senators responded by drafting Senate Bill 125. Much like California, the bill proposed to classify Lyft and UberX as Transportation Network Companies (“TNC”), creating a new class of companies subject to limited PUC regulation.¹⁴⁶ To achieve this, the legislature specifically exempted TNCs from the definitions of a “common carrier,” “contract carrier,” and “motor carrier.” The bill defines a TNC as

142. *Id.*

143. Greg Avery, UberX, Lyft ride-sharing apps under fire from taxi industry, DENVER BUS. J. (Jan. 14, 2014) http://www.bizjournals.com/denver/blog/boosters_bits/2014/01/uberx-lyft-ride-sharing-apps-under.html?page=all.

144. *Id.*

145. Vincent Carroll, Lyft and uberX are latest threat to taxi oligopoly, DENVER POST, (Jan. 7, 2014), http://www.denverpost.com/carroll/ci_24864612/carroll-lyft-and-uberx-are-latest-threat-taxi.

146. Andy Vuong, PUC director raises concerns about Uber and Lyft’s ride-sharing bill, DENVER POST, (Jan. 28, 2014), http://www.denverpost.com/business/ci_25012385/puc-director-raises-concerns-about-uber-and-lyfts.

a corporation, partnership, sole proprietorship, or other entity, operating in Colorado, that uses a digital network to connect riders to drivers for the purpose of providing transportation. a transportation network company does not provide taxi service, transportation service arranged through a transportation broker, ridesharing arrangements . . . or any transportation service over fixed routes at regular intervals. A transportation network company is not deemed to own, control, operate, or manage the personal vehicles used by transportation network company drivers.¹⁴⁷

The measure proposes, through detailed and specific language, to require the companies to, among other things, carry liability insurance,¹⁴⁸ conduct background checks of drivers, and obtain operating permits.¹⁴⁹ By a 29-6 vote, the bill passed the Senate and now moves on to the House.¹⁵⁰

147. S.B. 14-125, 69th Gen. Assemb., 2d Reg. Sess. (Co. 2014), *available at* http://www.leg.state.co.us/clics/clics2014a/csl.nsf/fsbillcont3/70364091166B28FC87257C4300636F6B?open&file=125te_01.pdf.

148. In almost every state, insurance protection has been a primary concern of city and state officials, as well as the public. The concern was that, though TNC drivers were covered by commercial policies when en route to pickup, and during a ride, what happens if a driver's personal auto insurance policy does not cover the period when a driver is logged in to the app but not providing transportation, and an accident occurs? In response, last month, UberX and Lyft vowed to cover this so-called "insurance gap." See Andy Vuong, *UberX Announces New Coverage to Cover "Insurance Gap" for ride-sharing drivers*, DENVER POST (Mar. 14, 2014), <http://blogs.denverpost.com/techknowbytes/2014/03/14/uberx-announces-new-coverage-cover-insurance-gap-ride-sharing-drivers/13352/>.

Though it was not ultimately an issue in the case, and a personal liability policy covered the driver, the "insurance gap" question was raised after an UberX driver in San Francisco hit and killed a 6 year-old girl while he didn't have a fare. *Id.*

149. Andy Vuong, *Colorado Senate Approves UberX and Lyft Ride-Sharing Bill*, DENVER POST (Mar. 10, 2014), http://www.denverpost.com/business/ci_25312612/colorado-senate-approves-uberx-and-lyft-ride-sharing.

150. *Id.* As of the time of this writing (April 17, 2014) the Colorado House of Representatives has reportedly passed numerous amendments to the bill and Uber claims that in its current form, the bill would effectively kill UberX operations in Colorado. See Greg Avery, *UberX ride-sharing not going away in Colorado if Uber has anything to do with it*, DENVER BUS. J. (Apr. 17, 2014), http://www.bizjournals.com/denver/blog/boosters_bits/2014/04/uberx-ride-sharing-in-colorado-not-going-away-if.html.

IV. Ridesharing Legislation in Pennsylvania

Before discussing a potential legislative solution that embraces ridesharing in Pennsylvania, the relevant existing regulatory framework must be examined. Similar to Colorado, Pennsylvania classifies a taxicab as a “common carrier by motor vehicle,” a subcategory of “common carrier,”¹⁵¹ and the legislature defines common carrier by motor vehicle as

[a]ny common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes any motor vehicle, with or without driver, for transportation or for use in transportation of persons or property . . .¹⁵²

Further, because a common carrier by motor vehicle is considered a public utility, taxicab operations are subject to the broad regulatory power of the Pennsylvania Public Utilities Commission (“PUC”), which maintains the authority to “regulate and supervise all public utilities doing business within the Commonwealth.”¹⁵³ The PUC “may make such regulations, not inconsistent with law, as may be

151. “Common carrier” is defined as
Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, but shall not include contract carriers by motor vehicles, or brokers, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

66 Pa.C.S.A. § 102.

152. *Id.*

153. 66 Pa.C.S.A. § 501(b) (West 2014)

necessary or proper in the exercise of its powers or for the performance of its duties.”¹⁵⁴ The PUC further classifies common carriers of motor vehicles into six categories, and each category is subject to different regulations.¹⁵⁵ Taxicabs fall under “call or demand service,” which is described as [l]ocal common carrier service for passengers, rendered on either an exclusive or a nonexclusive basis, where the service is characterized by the fact that passengers normally hire the vehicle and its driver either by telephone call or by hail, or both.”¹⁵⁶ But, while the PUC holds regulatory authority over the vast majority of taxicabs in Pennsylvania, the exception is Philadelphia. There, in April 2005, the PUC transferred oversight of “medallion” taxicabs to the Philadelphia Parking Authority (“PPA”),¹⁵⁷ an independent administrative agency that drafted its own

154. *Id.* Because the PUC cannot promulgate regulations inconsistent with law, it would be unable to counter state legislative actions.

155. 52 Pa. Code § 29.13(2). The five categories are: scheduled route service, call or demand service, group and party service, limousine service, airport transfer service, and other services; paratransit, experimental. *Id.*

156. *Id.*

157. Pennsylvania Public Utility Commission [hereinafter “Pennsylvania PUC”], *Philadelphia Taxis and Limousines*, PUC.Gov, http://www.puc.pa.gov/utility_industry/transportation/motor_carrier/philadelphia_taxicabs_and_limousines_.aspx. Medallion taxicabs “are identified by the presence of a metal disc upon the hood of the taxicab, and the presence of a four digit number preceded by the letter “P”, painted on the fenders of the taxicab.” *Id.* They must comply with specific, codified requirements of operations, drivers, and vehicles. *See* 52 Pa. Code § 30. According to the PUC, “currently there are five non-Medallion taxi carriers authorized to provide taxicab service to designated areas within Philadelphia on a non-city wide basis” and the PPA “will regulate these carriers when they are providing service in PPA authorized vehicles between points in their Philadelphia designated area, from points in their Philadelphia designated area to destinations outside of Philadelphia, and from points outside of Philadelphia to points within their Philadelphia designated area.” Pennsylvania PUC, *Philadelphia Taxis and Limousines*.

rules and regulations pertaining to taxicabs, replacing previously applicable PUC regulations.¹⁵⁸

Taxicabs operating within Pennsylvania (other than Philadelphia), are required to be licensed by the PUC, through an application for a certificate of public convenience.¹⁵⁹ The taxis are subject to a variety of service standards and requirements.¹⁶⁰ Vehicles must pass state safety inspections,¹⁶¹ must comply with a variety of equipment requirements,¹⁶² and cannot be more than eight model-years old.¹⁶³ Drivers must be at least 21 years of age,¹⁶⁴ and must be approved after a cab company obtains and reviews a criminal background check. The companies are required to disqualify any prospective or current driver if he or she is, or was, “convicted of a felony or a misdemeanor under the laws of the Commonwealth or under the laws of another jurisdiction, to the extent the conviction relates adversely to that person's suitability to provide service safely and legally.”¹⁶⁵ In addition, taxicabs operating within Pennsylvania must maintain adequate insurance liability coverage (a minimum of \$35,000),¹⁶⁶ and must charge fees that are set and approved by the PUC.¹⁶⁷ All rules and

158. *Id.*

159. *See* 66 Pa.C.S.A. § 1103.

160. 52 Pa. Code § 29.313.

161. *Id.* at § 29.405.

162. *Id.* at §§ 29.402, 29.403.

163. *Id.* at § 29.314.

164. *Id.* at § 29.503.

165. 52 Pa. Code § 29.505

166. *Id.* at § 32.11. More specifically, “[t]he \$35,000 minimum coverage is split coverage in the amounts of \$15,000 bodily injury per person, \$30,000 bodily injury per accident and \$5,000 property damage per accident.” *Id.*

167. Pennsylvania PUC, *supra* note 153.

regulations pertaining to taxicabs (and other “motor carriers”) are immediately supervised and enforced by a subdivision of the PUC, the Motor Carrier Services & Enforcement Division.¹⁶⁸

Disruption of the taxicab industry in Pittsburgh began with the arrival of Lyft to the city on February 7, 2014,¹⁶⁹ and with UberX several days later.¹⁷⁰ Within a matter of days, the heads of the city’s two main taxi providers, Star Transportation Group and Pittsburgh Transportation Group, sent a letter to Mayor Bill Peduto requesting that the Mayor shut down the rideshare companies’ operations.¹⁷¹ The letter also contained a draft of a city ordinance that would empower City of Pittsburgh police officers with the authority to cite UberX and Lyft drivers for operating without a permit from the PUC, a violation of state law.¹⁷² Much to the dismay of the taxi companies, Mayor Peduto then sent a letter of his own to PUC executive director Jan Freeman, asking that the Commission consider a rule change in order to accommodate much-needed competition. The Mayor remarked “I support the expansion of transportation options in our city and recognize the need for a broader and more diverse suite of options to get people around town quickly, safely, and reliably.”¹⁷³ Specifically, the Mayor

168. Pennsylvania PUC, *Motor Carriers*, PUC.GOV, http://www.puc.state.pa.us/consumer_info/transportation/motor_carrier/applications.aspx.

169. See Coyne, *supra* note 9.

170. See Meagan, *supra* note 10.

171. See Kim Lyons and Moriah Balingit, *Pittsburgh Cab Firms Try to Cut Off Newcomers*, PITT. POST-GAZETTE (Feb. 12, 2014), <http://www.post-gazette.com/news/transportation/2014/02/13/Local-cab-firms-try-to-cut-off-newcomers/stories/201402130204>

172. *Id.*

173. Kim Lyons, *Peduto Asks for Rule Change on Ride-Sharing Operations*, PITT. POST-GAZETTE (Feb. 19, 2014), <http://www.post->

proposed that the PUC amend Chapter 29 of the Public Utility Code to create a new class of transportation providers, similar to what California did.¹⁷⁴ Current regulations, lamented Councilman Dan Gilman, “are too onerous . . . [t]hey're structured to what cab companies looked like in the 1980s.”¹⁷⁵

PUC Spokeswoman Jennifer Kocher responded to calls for a rule change by pointing out that while the agency appreciates Mayor Peduto’s suggestions and recommendations, “nobody has come to [the PUC] with a business model and explained what in the current regulations don't work for them, what changes they would need to see.”¹⁷⁶ Weeks later, however, Mayor Peduto met with the Chairman of the PUC, Robert Powelson, who acknowledged the need for a regulatory change in favor of ride sharing companies, saying that “[t]hese applications force us to get outside our 1960s regulations and come into 2014. . . . We as a commission need to get out of our own way and embrace and work with these carriers.”¹⁷⁷ Powelson also offered advice for the taxi companies fearful of the competition: “[y]ou need to innovate, and you can't expect to have exclusive, territorial rights anymore.”¹⁷⁸ ¹⁷⁹

[gazette.com/business/2014/02/18/Peduto-asks-for-rule-change-on-ride-sharing-operations/stories/201402180175#ixzz2zApPm2BZ](http://www.post-gazette.com/business/2014/02/18/Peduto-asks-for-rule-change-on-ride-sharing-operations/stories/201402180175#ixzz2zApPm2BZ)

174. *Id.*

175. *Id.*

176. *Id.*

177. Kym Lyons and Moriah Balingit, *Ride-Share Firms Gain More Traction With Support from PUC*, PITT. POST-GAZETTE (Feb. 24, 2014), <http://www.post-gazette.com/business/2014/02/25/Ride-share-firms-gain-more-traction-in-Pa-talks/stories/201402250111#ixzz2zAvaQsIq>

178. *Id.*

179. Recently, perhaps in response to challenges to innovate, Yellow Cab applied to the PUC for an alternative “call or demand service” it would call “Yellow X,” a not-so-subtle dig at competitor, UberX. “Yellow X” would essentially operate under the business model of ride share companies, where

Thus, it appears that Pittsburgh, and the PUC, are committed to drafting regulations that encourage competition, increase consumer choice, and provide for a safe and reliable form of transportation. However, it will need to take the form of either legislation from the General Assembly, or a resolution passed by the PUC, in order to become effective. State Representative Erin Molchany (D-Mt. Washington) has pledged to sponsor such legislation, as has Rep. Ed Gainey (D-East Liberty).¹⁸⁰

It is my position that the General Assembly use the regulations passed by the California Public Utilities Commission, as well as the senate bill passed in Colorado, to draft a bill that embraces ride sharing in Pennsylvania. The following is a first draft on which to build.

Bill Summary

The bill authorizes the Pennsylvania Public Utilities Commission (“The Commission” or “PUC”) to regulate Transportation Network Companies, which are companies that match drivers and passengers through a digital network, such as a mobile phone application, for transportation from an agreed-upon point of origin to an agreed-upon destination.

- **Section 1** of the bill exempts Transportation Network Companies from the definition of “common carrier by motor vehicle.”
- **Section 2** exempts Transportation Network Companies from the definition of “contract carrier by motor vehicle.”
- **Sections 3** adds a new scheme of classification to enable the Commission to exercise limited regulatory authority over Transportation Network Companies.
- **Section 4** exempts Transportation Network Companies from much of the PUC's authority, including regulation of rates, entry, operational requirements, and general requirements governing common carriers,

personal vehicles would be used and an app would connect driver and passenger. The PUC gave no timetable for its approval. See Kim Lyons, *Yellow Cab Applies for License for Ride Share Service*, PITT. POST-GAZETTE (Apr. 11, 2014), <http://www.post-gazette.com/business/2014/04/12/Yellow-Cab-applies-for-license-for-ride-share-company/stories/201404120013>.

180. Lyons and Balingit, *supra* note 172.

contract carriers, and motor carriers, but does require a Transportation Network Company to obtain a permit from the PUC. Section 4 authorizes the PUC to regulate permit holders with respect to safety conditions, insurance requirements, and driver qualifications. Section 4 also authorizes the PUC to take action against a transportation network company for any violations, including the authority to issue a cease-and-desist letter, suspend or revoke a permit, or impose civil penalties.

Be it enacted by the General Assembly of Pennsylvania:

Section 1. In Pennsylvania Consolidated Statutes, 66-102, amend “common carrier by motor vehicle” and “public utility” as follows:

§ 102. Definitions.

“Common Carrier by motor vehicle” means any common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, whether or not the owner or operator of such motor vehicle, or who or which provides or furnishes any motor vehicle, with or without driver, for transportation or for use in transportation of persons or property as aforesaid, and shall include common carriers by rail, water, or air, and express or forwarding public utilities insofar as such common carriers or such public utilities are engaged in such motor vehicle operations, but does not include

(10) A Transportation Network Company, as defined in 52 Pa. Code 29.602, or a Transportation Network Driver, as defined in 52 Pa. Code 29.602

“Public utility.” (1) Any person or corporations now or hereafter owning or operating in this Commonwealth equipment or facilities for:

iii(a) Transporting passengers as a Transportation Network Company

Section 2. In Pennsylvania Consolidated Statutes, 66-2501, amend “contract carrier by motor vehicle” (2) as follows:

§ 2601. Declaration of Policy and Definitions

(2) The term “contract carrier by motor vehicle” does not include:

(X) A Transportation Network Company, as defined in 52 Pa. Code 29.602, or a Transportation Network Company Driver, as defined in 52 Pa. Code 29.602.

Section 3. In Pennsylvania Administrative Code 52-29.13, amend classifications as follows:

§ 29.13 Scheme of Classification

(7) *Online-enabled service.* Local service for passengers, rendered on either an exclusive or a nonexclusive basis, where the service is characterized by the fact that passengers hire a Transportation Network Company vehicle and its driver by requesting a ride through a digital network application.

Section 4. In Pennsylvania Administrative Code 52-29 add Part 4 to Chapter 29 as follows:

Part 4

Transportation Network Companies

52 Pa. Code 29.601. Short title. This article shall be known and may be cited as the “Transportation Network Company Act.”

52 Pa. Code 29.602. Definitions. As used in this Part 4, unless the context otherwise requires:

(1) “Personal Vehicle” means a vehicle used by a Transportation Network Company Driver in connection with providing services for a Transportation Network Company that meets the vehicle criteria set for in this Part 4.

(2) “Prearranged ride” means a period of time that begins when a driver accepts a requested ride from a rider through a digital network, continues while the driver transports the rider in a personal vehicle, and ends when the rider departs from the personal vehicle.

(3) “Transportation Network Company” means a corporation, partnership, sole proprietorship, or other entity, operating in Pennsylvania, that uses a digital network to connect riders to drivers for the purpose of providing transportation. A Transportation Network Company does not provide taxi service, transportation service arranged through a broker, ridesharing arrangements, as defined in 55 P.S. § 695.1, or any transportation service over fixed routes at regular intervals. A Transportation Network Company does not own, control, operate, or manage the personal vehicles used by Transportation Network Company drivers. A Transportation Network Company does not include a political subdivision or other entity exempted from federal income tax under section 115 of the Federal “Internal Revenue Code of 1986” as amended.

(4) “Transportation Network Company Driver or “Driver” means an individual who uses his or her personal vehicle to provide transportation services for riders matched through a Transportation Network Company’s digital network. A driver need not be an employee of a Transportation Network Company.

(5) “Transportation Network Company Rider” or “Rider” means a passenger in a Transportation Network Company vehicle for whom transport is provided, including: an individual who uses a Transportation Network Company’s online application or digital network to connect with a Driver to obtain services in the Driver’s vehicle for the individual and anyone in the individual’s party.

(6) “Transportation Network Company Services” or “Services” means the provision of transportation by a Driver to a Rider with whom the Driver is matched through a Transportation Network Company. The term does not include services provided either directly by or under contract with a political subdivision or other entity exempt from federal income tax under section 115 of the federal “Internal Revenue Code of 1986”, as amended.

52 Pa. Code 29.603. Limited Regulation. Notwithstanding any other provision of law, Transportation Network Companies are governed exclusively by this Part 4. A Transportation Network Company is exempt from the Commission’s rate, entry, operational, or common carrier requirements, unless otherwise set forth in this Part 4.

52 Pa. Code 29.604. Registration – financial responsibility of transportation network companies – insurance. A Transportation Network Company shall comply with the filing requirements of Part 3 and the registered agent requirement of Part 7.

(1) If a Transportation Network Company’s insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the Transportation Network Company shall cause its insurer to issue payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle. The Commission shall not assess any fines as a result of this subsection 5.

52 Pa. Code 29.605. Operational requirements. (1) The following requirements apply to the provision of services:

(a) A Driver shall not provide services unless a Transportation Network Company has matched the Driver to a Rider through a digital network. A driver shall not solicit or accept the physical summoning of a ride commonly known as a “street hail.”

(b) A Transportation Network Company shall make available to prospective Riders and Drivers the method by which the company calculates fares and the applicable rates being charged and an option to receive an estimate fare.

(c) After completion of a prearranged ride, a Transportation Network Company shall transmit to the rider an electronic receipt, either by electronic mail or text message, documenting:

(i) the point of original and final destination of the prearranged ride;

(ii) the total duration and distance of the prearranged ride;

(iii) the total fare paid, including the base fare and any additional charges incurred;

(iv) the driver's first name and telephone number; and

(v) notification to Riders of the Transportation Network Company's intoxicating substance policy, including the method to report a Driver that a Rider suspects is under the influence of an intoxicating substance.

(d) Before permitting a person to act as a Driver, a Transportation Network Company shall confirm that the person is twenty-one years of age or older and possesses:

(i) a valid driver's license;

(ii) proof of personal automobile insurance;

(iii) proof of a Pennsylvania vehicle registration; and

(iv) within ninety days of the effective date of this Part 4 and pursuant to Commission rules, proof that the person is medically fit to drive.

(e) A Driver shall not offer or provide Transportation Network Company services in excess of the maximum service hours as determined by the Commission.

(f) A Transportation Network Company shall implement an intoxicating substance policy for drivers that prohibits any amount of intoxication of the driver while providing services. The transportation network company shall include on its website, mobile device application software, and electronic receipts, a notice concerning the transportation network company's intoxicating substance policy.

(g) (I) A Transportation Network Company shall have a mechanic certified by the Pennsylvania Department of Transportation conduct a safety inspection of a prospective driver's vehicle before it is approved for use as a personal vehicle and shall have annual inspection of the personal vehicle thereafter. A safety inspection shall include an inspection of:

(A) foot brakes;

(B) emergency brakes;

(D) steering mechanism;

(C) windshield;

(E) rear window and other glass;

(F) windshield wipers;

(G) headlights;

(H) tail lights;

(I) turn indicator lights;

(J) stop lights;

(K) front seat adjustment mechanism;

(L) the opening, closing, and locking capability of the doors;

(M) horn;

(N) speedometer;

(O) bumpers;

(P) muffler and exhaust system;

(Q) tire conditions, including tread depth;

(R) interior and exterior rear-view mirrors; and

(S) safety belts.

II. The Commission may also conduct inspection of personal vehicles.

(h) A person vehicle must:

(I) Have at least four doors; and

(II) Be designed to carry no more than eight passengers, including the Driver.

(i) A Transportation Network Company shall make the following disclosure to a prospective driver in the prospective driver's terms of service:

While operating on the transportation network company's digital network, your personal automobile insurance policy might not afford liability coverage, depending on the policy's terms.

(j) (I) a Transportation Network Company shall make the following disclosure to a prospective Driver in the prospective Driver's terms of service:

If the vehicle that you plan to use to provide transportation network company services for our transportation network company has a lien against it, you must notify the lienholder that you will be using the vehicle for transportation services that may violate the terms of your contract with the lienholder.

(II) The disclosure set forth in subparagraph (i) of this Paragraph (j) must be placed prominently in the prospective Driver's written terms of service, and the prospective driver must acknowledge the terms of service electronically or by signature.

(k) A Transportation Network Company shall make the following disclosure to a Rider:

While riding as a passenger in a Transportation Network Company Driver's personal vehicle, a Rider is insured under the terms of the Transportation Network Company's liability policy.

(l) A Transportation Network Company shall make available to a Rider a customer support telephone number on its mobile application or website for Rider inquiries.

(m) A Transportation Network Company shall disclose to a Rider the information set forth in Paragraph (i) in this subsection about the Transportation Network Company's liability policy and the Driver's personal automobile insurance policy.

(n) The primary insurance coverage and disclosures set forth in this subsection take effect on June 28, 2014.

(o) (I) A Transportation Network Company shall not disclose to a third party any personally identifiable information concerning a user of the Transportation Network Company's digital network unless:

(A) The Transportation Network Company obtains the user's consent to disclose personally identifiable information;

(B) Disclosure is necessary to comply with a legal obligation; or

(C) Disclosure is necessary to protect or defend the terms and conditions for use of the service or to investigate violations of the terms and conditions.

II) The limitation of disclosure does not apply to other information about the user that is not personally identifiable.

(p) Any taxicab company or shuttle company authorized by the commission under this article may convert to a Transportation Network Company model or may create a subsidiary or affiliate Transportation Network Company. In converting to a Transportation Network Company Model or setting up a Transportation Network Company subsidiary or affiliate, a taxicab company or shuttle company authorized by the commission under this article may completely or partially suspend its certificate of public convenience and necessity issued pursuant to 66 Pa.C.S.A. § 1103. During the period of suspension of its certificate of public convenience and necessity, a taxicab company, shuttle company, or a subsidiary or affiliate of a taxicab company or shuttle company is exempt from taxi or shuttle standards under this article, the standards concerning the regulation of rates and charges under article 3 of this title, and any commission rules regarding common carriers promulgated under this article or article 3 of this title.

(q) Each Transportation Network Company shall require that each Transportation Network Company vehicle providing Transportation Network Company Services display an exterior marking that identifies the Transportation Network Company vehicle as a vehicle for hire. The marking need not be permanent.

(1) A Transportation Network Company or a third party shall retain accurate inspection records for at least fourteen months after an inspection was conducted for each personal vehicle used by a Driver.

(2)(a) Before a person is permitted to act as a Driver through the use of a Transportation Network Company's Digital Network, the Transportation Network Company shall:

(I) Obtain a criminal history record check from the Pennsylvania State Police and through a privately administered national criminal record check, including the national sex offender database; and shall obtain a new criminal history record every five years while the individual is serving as a Driver.

(b) (I) A person who has been convicted of or pled guilty or nolo contendere to driving under the influence of drugs or alcohol in the previous seven years before applying to become a Driver shall not serve as a Driver. If the criminal history record check reveals that the person has ever been convicted of or pled guilty or nolo contendere to any of the following felony offenses, the person shall not serve as a Driver:

A) An offense involving fraud, as described in Title 18, Pa.C.S.A.;

B) An offense involving unlawful sexual behavior, as defined in Chapter 31 of Article B of Title 18, Pa.C.S.A.

C) An offense against property, as described in Article C of Title 18, Pa.C.S.A.; or

D) A crime of violence, as described in Article B, Title 18, Pa.C.S.A.

(II) A person who has been convicted of a comparable offense to the offenses listed in subparagraph (I) of this paragraph (b) in another state in the United States shall not serve as a Driver.

(III) A Transportation Network Company or a third party shall retain accurate results of the criminal history record check for each Driver that provides services for the Transportation Network Company for at least five years after the criminal history check was conducted.

(IV) A person who has, within the immediately preceding five years, been convicted of or pled guilty or nolo contendere to a felony shall not serve as a Driver.

(4)(a) Before permitting an individual to act as a Driver on its digital network, a Transportation Network Company shall obtain and review a driving history research report for the individual.

(b) An individual with the following moving violations shall not serve as a Driver:

(I) More than three moving violations preceding the individual's application to serve as a Driver; or

(II) A serious traffic offense, as described by Chapter 27, subchapter B, Title 75, Pa.C.S.A., in the three-year period preceding the individual's application to serve as a Driver whether committed in this state, another state, or the United States, including vehicular eluding, as described in Section 3733, Pa.C.S.A., reckless driving, as described in Section 3736, Pa.C.S.A., and aggravated assault by vehicle, as described in Section 3772.1, Pa.C.S.A.

(c) A Transportation Network Company or a third party shall retain accurate results of the driving history research report for each driver that provides services for the Transportation Network company for at least three years. One year from the effective date of this Part 4 and annually thereafter, each Transportation Network Company shall submit to the Motor Carrier Services & Enforcement Division a verified report detailing the number of drivers that were found to have committed a moving violation or serious traffic offense, the as well as a list of Rider complaints pertaining to an intoxicating substance policy and the outcome of the investigation into those complaints.

(5) If any person files a complaint with the Commission against a transportation network company or driver, the Commission may inspect the Transportation Network Company's records as reasonably necessary to investigate and resolve the complaint.

(6) (a) a transportation network company shall provide services to the public in a nondiscriminatory manner, regardless of geographic location of the departure point or destination, race, ethnicity, gender, sexual orientation, disability, or other potentially discriminatory factor that could prevent customers from accessing transportation. A Transportation Network may provide platforms for Drivers and Riders to rate each other but a Transportation Network shall monitor the rating system for discriminatory behavior. A driver shall not refuse to transport a passenger unless:

(I) The passenger is acting in an unlawful, disorderly, or endangering manner;

(II) The passenger is unable to care for himself or herself and is not in the charge of a responsible companion; or

(III) The Driver has already committed to providing a ride for another rider.

(b) A Transportation Network Company shall not impose additional charges for providing services to persons with physical or mental disabilities.

(c) A Driver shall permit a service animal to accompany a rider on a prearranged ride.

(d) If a Rider with physical or mental disabilities requires the use of mobility equipment, a Criver shall store the mobility equipment in the vehicle during a prearranged ride.

(e) A Transportation Network Company's web site and on-line applications must comply with the web content accessibility guidelines 2.0, as may be subsequently amended, published by the web accessibility initiative or successor organization.

(7) A Driver shall immediately report to the transportation network company any refusal to transport a passenger pursuant to paragraph (a) of subsection (6) of this section, and the transportation network company shall annually report all such refusals to the commission in a form and manner determined by the commission.

(8) One year from the effective date of this Part 4 and annually thereafter, each Transportation Network Company shall submit to the Motor Carrier Services & Enforcement Division a verified report detailing the number of rides requested and accepted by Transportation Network Company Drivers within each zip code where the Transportation Network Company operates; and the number of rides that were requested but not accepted by the Transportation Network Company drivers within each zip code where the Transportation Network Company operates.

52 Pa. Code 29.606. Permit required for transportation network companies – penalty for violation – rules.

(1) A person shall not operate a Transportation Network Company in Pennsylvania without first having obtained a permit from the Commission.

(2) The Commission shall issue a permit to each Transportation Network Company that meets the requirements of this Part 4 and pays a permit fee to the commission. The permit is valid for one year.

(3) The permit fee for the initial one-year permit for each of the two Transportation Network Companies operating in Pennsylvania on the effective date of this Part 4 is one hundred seven thousand five hundred dollars. If a third Transportation Network Company applies for a permit before the permit fee has been readjusted for the first time under subsection (4) of this section, the Transportation Network Company shall pay a permit fee of seventy-one thousand six hundred sixty-seven dollars and the two other permit holders shall each be refunded one-half of the permit fee paid by the third permit holder. If a fourth Transportation Network Company applies for a permit fee before the permit fee has been readjusted for the first time under subsection (4) of this section, that Transportation Network Company shall pay a permit fee of fifty-three thousand seven hundred fifty dollars and the three other permit holders shall each be refunded one-third of the permit fee paid by the fourth permit holder. For a fifth or subsequent Transportation Network Company seeking a permit before the

permit fee has been readjusted for the first time under subsection (4) of this section, the Commission shall set the fee by determining the Transportation Network Company's pro rata share of two hundred fifteen thousand dollars and shall refund to the other permit holders a pro rata share of the Transportation Network Company's permit fee.

(4) The General Assembly, at each regular session, shall determine the Commission's administrative expenses for regulating Transportation Network Companies under this Part 4, including any FTE additions or reductions that may be necessary. The Commission shall assess permit fees in amounts that, in the aggregate, equal the Commission's administrative expenses, as determined by the General Assembly. The commission shall assess a permit fee against each Transportation Network Company operating in Pennsylvania in an amount apportioned on the basis of the number of personal vehicles associated with the Transportation Network Company.

(5) The cumulative amount of the annual permit fees for all Transportation Network Companies operating in Pennsylvania must not exceed two hundred fifteen thousand dollars unless the General Assembly determines that an increased aggregate amount is necessary and appropriate.

(6) The Commission shall determine the form and manner of application for a Transportation Network Company permit.

(7) The Commission may take action against a Transportation Network Company including issuing an order to cease and desist and suspending, revoking, altering, or amending a permit issued to the Transportation Network Company.

(8) (a) For a violation of this Part 4 or a failure to comply with a Commission order, decision, or rule issued under this Part 4, a Transportation Network Company is subject to the Commission authority.

(b) The Commission shall not assess a penalty against a Driver.

(9) The Commission may deny an application under this Part 4 or refuse to renew the permit of a Transportation Network Company based on a determination that the Transportation Network Company has not satisfied a civil penalty arising out of an administrative or enforcement action brought by the Commission.

52 Pa. Code 29.607. Fees - transportation network company fund – creation. The Commission shall transmit all fees collected pursuant to this Part 4 to the State Treasurer, who shall credit the fees to the Transportation Network Company Fund, which is hereby created in the State Treasury. The moneys in the fund are continuously appropriated to the Commission for the purposes set forth in this Part 4. All interest earned from the investment of moneys in the fund is credited to the fund. Any moneys not expended at the end of the fiscal year remain in the fund and do not revert to the general fund or any other fund.

Pa. Code 29.608. Rules. (1) The Commission may promulgate rules consistent with this Part 4, including rules concerning administration, fees, and safety requirements.

(2) (a) The Commission, in consultation with the Division of Insurance, shall promulgate rules concerning financial responsibility requirements for Transportation Network Companies, including:

(I) Rules requiring each Transportation Network Company to maintain and file with the Commission evidence of financial responsibility and proof of its continued validity as the Commission deems necessary; and

(II) Coverage sufficient to:

(A) Protect Drivers, Riders, other motorists, and pedestrians; and

(B) Cover all times in which a Driver is logged into the Transportation Network Company's Digital Network.

(b) In promulgating rules under this subsection (2), the Commission shall consider:

(I) Requiring Transportation Network Companies to carry full commercial coverage; and

(II) Setting the minimum amount of financial responsibility required as the same amount required for taxicab companies.

(3) The Commission, in consultation with the Division of Workers Compensation in the Pennsylvania Department of Labor and Industry and upon consideration of existing statutory and case law, shall promulgate rules determining workers compensation obligations.

Section 5. Safety clause. The General Assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of public peace, health, and safety.