
TRANSPORTATION NETWORK COMPANIES: MASSACHUSETTS
LEGISLATION IGNORES THE OFFERING OF NEW SERVICES

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I. Introduction

There are many transportation options for residents of the Commonwealth to get around the city; from the MBTA's trains, buses, and the commuter rail, to taxicabs and personal motor vehicles.¹ After the unprecedented snow in 2015, the train was often not in service, city dwellers who could not walk from one location to the next utilized the services of Uber and Lyft to get to their destinations.²

Ride-sharing services have taken over the Massachusetts transportation market. According to Uber, the company has profited from over \$1 million dollars in rides per day throughout all of the states and countries it services.³ Over a year ago, more than eight

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¹ See *Boston*, CITY OF BOSTON (last updated Apr. 7, 2016), archived at <https://perma.cc/D2P9-3DK5> (listing different ways to travel around the City of Boston).

² See The Driver, *Drive for Uber, Lyft or Sidecar during a Blizzard?*, RIDESHARE DASHBOARD (Jan. 15, 2015), archived at <https://perma.cc/J4ND-9QNL> (describing alternative modes of transportation to use during a storm).

³ See Ellen Huet, *Uber Says It's Doing 1 Million Rides Per Day, 140 Million in Last Year*, FORBES (Dec. 17, 2014), archived at <https://perma.cc/RWS9-XLVN> (discussing Uber's growth in the transportation market since their creation in 2009).

million people used Uber, and this number has since grown exponentially.⁴ These ride service technology startups arrived in Massachusetts back in 2009 and have since transformed the transportation sector by helping to meet the Commonwealth's transportation needs.⁵ While the ride-sharing services have provided consumers with a more convenient option, concerns over passenger safety have steadily risen.⁶ The Commonwealth's regulation of ride-sharing services faces continued challenges as a result of the constant offerings of new services.⁷ Ride-sharing services are here to stay in Massachusetts and the legislation helps to maintain the market in a manner that will not deter startups, while better protecting consumers.⁸

Part two of this paper will discuss the history of ride-sharing services, the services they offer and the prices at which they offer them, as well as the requirements for their drivers.⁹ The next section will discuss the regulation of taxicabs, reviewing their emergence on

⁴ See Craig Smith, *By the Numbers 24 Amazing Uber Statistics*, DMR (last updated Sep. 20, 2015), archived at <https://perma.cc/352D-9REW> (citing numerical figures for Uber's number of rides, revenue, and investment amounts).

⁵ See Tom Quinn, *Takin' a Ride: Uber Muscles in on Transportation in Worcester*, WORCESTER MAG. (Apr. 9, 2015), archived at <https://perma.cc/D97Y-H4GW> (analyzing the importance of Uber's services and the benefits provided to the citizens of Massachusetts); see also Senator Stan Rosenberg, *Senate Passes Bill to Regulate Transportation Network Companies*, SENATOR STAN ROSENBERG (last visited Jan. 12, 2017), available at <http://www.stanrosenberg.com/article/senate-passes-bill-regulate-transportation-network-companies> (highlighting the importance of the bill in regulating the latest transportation services available in the Commonwealth).

⁶ See Quinn, *supra* note 5 (analyzing the importance of Uber's services and the benefits provided to the citizens of Massachusetts); see also Matt Rocheleau, *Widespread violations found at Boston's food spots*, BOSTON GLOBE (May 25, 2015), archived at <https://perma.cc/R837-6U7E> (emphasizing another health and safety issue in food transportation associated with ride sharing); see also Catherine Lindsay, *Man impersonating an Uber driver allegedly assaults UMASS student*, BOSTON (Sept. 8, 2016), available at <https://www.boston.com/news/crime/2016/09/08/man-impersonating-an-uber-driver-allegedly-assaults-umass-student> (articulating safety issues with lack of regulation in ride sharing that prevent impersonation and other crimes).

⁷ See Morgan Brown, *Uber - What's Fueling Uber's Growth Engine?* GROWTHHACKERS, (last visited Oct. 2015), archived at <https://perma.cc/2JG3-B55C> (highlighting Uber's success as a result of their continuous offering of new services).

⁸ See Rosenberg, *supra* note 5 (discussing the legislation signed into law by Governor Baker which regulates Transportation Network Companies and aims to keep consumers safe without stifling innovation in the Commonwealth).

⁹ See *infra* Part II.

the market and the case law surrounding taxicab driver's concerns.¹⁰ The history of the proposed legislation for ride-sharing services while they were operating in a legal gray area in Massachusetts will also be presented.¹¹ Following the history section, the facts of the legislation regulating Uber and Lyft will be discussed.¹² Then, the benefits and downfalls of the legislation will be analyzed.¹³ The conclusion of this Note will discuss areas in which the legislation could be improved to keep up with Uber's constant offering of new services.¹⁴

II. History

A. *Uber: Services, Fares, Pricing, and Requirements for Drivers*

Uber was founded in 2009 and currently has operations in hundreds of cities, spanning sixty different countries.¹⁵ Uber's presence has expanded to the global market and seeks to make cities more accessible for passengers and continues to launch new services.¹⁶ Uber claims to "seamlessly" connect passengers to drivers through

¹⁰ See *infra* Part II.

¹¹ See *infra* Part II.

¹² See *infra* Part III.

¹³ See *infra* Part IV.

¹⁴ See *infra* Part V.

¹⁵ See *Our Story*, UBER, (last visited May 6, 2017), archived at <https://perma.cc/84DD-AAXU> (explaining the foundation of Uber and the founders of the corporation); see also *Cities*, UBER, (last visited Oct. 16, 2015), archived at <https://perma.cc/M36W-ULUW> (providing a list of countries and cities in which Uber provides services).

¹⁶ See *Our Story*, *supra* note 15 (discussing the growth of Uber in the market and their expansion from a few locations to global transportation markets); see also Nate Boroyan, *Here's How Many Uber Drivers There Are in Boston*, BOSTINNO (Jan. 22, 2015), archived at <https://perma.cc/GTP5-NSVW> (describing the number of Uber drivers in Boston); Kerri Lu, *Launch Everywhere—How Uber Won 450+ Markets*, ONESKY (Aug. 1, 2016), archived at <https://perma.cc/6YZK-4TBQ> (highlighting Uber's continued growth as one of the fastest growing startups and its billion-dollar revenue). "Since it was founded in 2009, unicorn ride-sharing app Uber has become one of the fastest growing start-ups in Silicon Valley, with a reported \$1.5 billion revenue and an estimated worth of USD \$62.5 billion by late 2015, not to mention an exponential revenue growth." *Id.*

their online application, “acting as an intermediary, allowing two individuals to connect.”¹⁷

Uber posts its itemized fare pricing for each of the cities it serves and each of the available motor vehicle options.¹⁸ The choices for vehicles range from UberX, known as the “low-cost” Uber, the UberXL, the “low-cost” ride for large groups, UberBlack, “the original Uber,” UberSUV “room for everyone,” and UberTaxi “the taxi without the hassle,” all of which have varying rates.¹⁹ There are different fees associated for each of the different vehicles.²⁰

A recent article published revealed the findings of a month long study that was conducted on Uber’s surge pricing.²¹ Uber uses an algorithm to adjust the price of a ride when demand is high and the supply of cars on the road is low.²² Uber explains that their intent is to increase the fare to get more drivers active on the application which increases the supply of cars on the road in a particularly busy area.²³ Uber expects this to result in the reduction of wait time for vehicles, bringing the surge price back down to normal pricing due to the increase of vehicles on the road.²⁴ This is Uber’s claim, but the

¹⁷ See Stephanie Francis Ward, ‘App’ me a ride: Internet Car Companies Offer Convenience, but Lawyers See Caution Signs, 100 A.B.A. J. 13, 13-14 (Jan. 2014) (analyzing the legal gray area in which Uber operates and citing Uber’s claims that their drivers are subcontractors and not employees); see also *Our Story*, supra note 15 (discussing how the app gives users the ability to request various services when needed).

¹⁸ See *Boston*, UBER (last visited Oct. 16, 2015), archived at <https://perma.cc/2N95-MFL3> (providing the different ride options for passengers in the city of Boston).

¹⁹ See *id.* (describing the different options for vehicles Uber offers to consumers in Boston).

²⁰ See *id.* (stating the different rates charged for the different vehicles offered by Uber). For the UberX service, the base fare charged is \$2.00 at a rate of \$0.16 per minute in addition to the \$1.24 charged per mile. *Id.* There are additional charges for “safe ride fees” and a minimum fare of \$5.15. *Id.*

²¹ See Nicholas Diakopoulos, *How Uber surge pricing really works*, WASH. POST (Apr. 17, 2015), archived at <https://perma.cc/QPM5-5RJZ> (studying Uber’s policy on surge pricing and providing a case study on the practice and the actual effects of the increased price when demand is high, causing drivers to enter the high demand neighborhood rather than encouraging more drivers to get on the road).

²² See *id.* (explaining Uber’s intention for increasing the price of rides while demand is high to get an additional supply of drivers on the road to meet the demand, which as a result, is intended to lower the price and reduce wait times).

²³ See *id.* (analyzing Uber’s reasoning for surge pricing and how it was not effective in achieving their objectives).

²⁴ See *id.* (noting that reducing wait times for Uber’s high demand areas was not achieved with Uber’s surge pricing method).

study reveals that “the pricing system is working to reduce estimated wait times, but it seems to be working better in some neighborhoods than in others.”²⁵ In addition, surge pricing did not appear to increase the number of drivers on the road; instead it distributed the already active drivers to the busy neighborhoods.²⁶

Under Uber’s page for applicants interested in driving for Uber, they refer to their Uber drivers as “independent contractors.”²⁷ Drivers for Uber are paid weekly and get paid in fares for picking up passengers on their own schedule.²⁸ Uber not only delivers passengers, but it has attempted other services such as on-demand Uber ice cream, on-demand roses for Valentine’s day, on-demand barbecue in Texas, DeLorean rides in San Francisco, UberCHOPPER helicopter rides to the Hamptons, and partnerships with the NFL Players Association to promote safe rides for NFL players.²⁹ With the above listed services, the Uber drivers deliver the products to the passengers rather than taking the passenger from point A to point B and these services have continued to expand.³⁰

²⁵ *See id.* (discussing the case study performed, which revealed that Uber’s intention for surge pricing did not provide for the intended result; instead of increasing the supply of drivers on the road, the drivers already on the road were diverted to the higher demand areas leaving outside neighborhoods short on drivers, and increasing wait times).

²⁶ *See* Diakopoulos, *supra* note 21 (analyzing the effect of Uber’s surge pricing, which did not achieve Uber’s predicted outcome).

²⁷ *See Drive*, UBER (last visited Oct. 17, 2015), *archived at* <https://perma.cc/V95G-TF3B> (explaining Uber drivers are subcontractors and not employees).

²⁸ *See id.* (stating the rates at which Uber drivers are paid and the flexibility that comes along with being able to choose their own schedule for driving passengers).

²⁹ *See* Brown, *supra* note 7 (discussing Uber’s success in achieving growth due to their continued offering of new services to consumers).

³⁰ *See* Brown, *supra* note 7 (explaining that Uber’s new services deliver products rather than delivering passengers, and how this significantly increased Uber’s presence in the transportation of peoples and the transportation of goods market).

B. Uber Offers New Services

1. Contributions to the Community³¹

In an email sent to all Uber user's titled "UberMentor: Ride and Learn from Boston's Brightest."³² Uber provided new services to consumers offering a chance to meet one-on-one with a distinguished entrepreneur to "[g]et career advice, pitch an idea, or just glean as much wisdom as you can."³³ The entrepreneur would be in the vehicle and would meet with the mentee for fifteen minutes in the backseat of the Uber.³⁴ The project was intended to foster innovation

³¹ See Julia, *Uber + (RED) Team Up to Fight AIDS*, UBER (Nov. 30, 2015), archived at <https://perma.cc/D98E-QVRW> (stating Uber's partnership with (RED), an organization whose main platform is to fight against the AIDS virus). Uber teamed up with (RED) to help the fight against AIDS and asked consumers to donate \$5.00 on top of their normal fare to help support the global campaign against AIDS. *Id.* The donations would go to (RED)'s project which seeks to eliminate mother-to-child transmission of HIV globally by 2020. *Id.* The donations made by passengers in the Uber app would be matched by the Bill and Melinda Gates Foundation. *Id.* See also Emil Michael, *Joining Forces to Assist Veterans Experiencing Homelessness*, UBER (Nov. 10, 2015), archived at <https://perma.cc/5RMN-QEPQ> (highlighting Uber's attempt to integrate and support veterans through Uber). For Veterans Day, Uber provided passengers with a way to support veterans and military families by creating the UberMILITARY program, which helps to increase veteran's participation in Uber. *Id.* Uber helped homeless veterans by making contributions equaling "... 10,000 rides- a value of \$125,000-across five veterans' organizations, affiliated with the U.S. Department of Labor's Homeless Veterans Reintegration program, to provide on-demand transportation to jobs, interviews, and other employment events." *Id.* Uber works with many community organizations to positive impact the communities in which it serves passengers. *Id.*

³² See Justin L, *UberMENTOR: Ride and Learn from Boston's Brightest*, UBER (Oct. 4, 2015), archived at <https://perma.cc/2HQT-ZD3P> (describing the mentorship program offered by Uber to passengers); see also Justin L, *UberCHOWDER On Demand*, UBER (Mar. 13, 2015), archived at <https://perma.cc/R7D7-43XS> (showing other new Uber services available to consumers) [hereinafter *UberCHOWDER*]; see also Meghan Verena, *Outsmart the Flu with UberHEALTH*, UBER (Nov. 17, 2015), archived at <https://perma.cc/V6E5-94NY> (offering another ride sharing service).

³³ See Justin L, *supra* note 32 (highlighting Uber's objectives in providing a mentorship program to interested passengers).

³⁴ See Justin L, *supra* note 32 (describing the length of the meeting with between the passenger and the Uber mentor). The email advised those meeting with mentors to come prepared by having their resume available and having a list of goals they wanted to discuss during their ride, in order to make the most out of their short time with their mentors. *Id.*

in the city.³⁵

2. Additional Services for the Holidays

Uber offered ride-pooling services for Halloween in an email dated Friday, October 30, 2015.³⁶ Uber attempted to incentivize passengers to share rides for Halloween by using word plays on the “spooky” holiday to promote the pooling service, such as “Sharing isn’t scary. Split your fare if you’re rolling with friends and take uberPOOL . . . for parties of two or less.”³⁷ Uber explained to passengers that it would be in their best cost-saving interest to utilize uberPOOL since, “[d]emand goes way up for Halloween, so ride with other costumed companions this weekend. When you share the ride, you split the cost.”³⁸

Uber in another email, this time sent out on New Year's Eve, offered a tip for riders planning to use Uber for their New Year's Eve transportation needs to check surge pricing before requesting their Uber.³⁹ Uber provided “MegaPOOL” for New Year's Eve night which was a trolley service that allowed “you and your squad [to]

³⁵ See Justin L, *supra* note 32 (inferring the main objective of the mentorship program to increase the exchange of ideas and provide a platform for passengers to get advice from and pitch ideas to Uber executives). A list of mentors was provided along with short biographies of their education and field experience. *Id.*

³⁶ See Sarah Haydu, *Halloween Ride Guide*, UBER (Oct. 20, 2015), archived at <https://perma.cc/FH6S-YVEZ> (reiterating Uber's attempt to market their new services by providing emails to their passengers about the benefits of using the new pilot programs).

³⁷ See *id.* (revealing Uber's attempt to incentivize passengers to pool a ride to their destination in order to provide cheaper rides for passengers and allow more vehicles on the road during time periods of increased requests for rides); see also Justin L, *Celebrate 4 Years with \$4 uberPOOL*, UBER (Oct. 26, 2015), archived at <https://perma.cc/97A4-9AKL> (describing how Uber offered decreased fares for its four year anniversary).

³⁸ See *id.* (explaining the benefits of using Uber's new pooled service on Halloween night).

³⁹ See Sarah Haydu, *New Year's Eve Ride Guide*, UBER (Dec. 21, 2015), archived at <https://perma.cc/L34Q-BUE7> (alerting passengers to check the increased price during New Year's Eve before confirming and accepting the ride since the cost would be very high as a result of a limited number of vehicles on the road attempting to fulfill an unusually high number of ride requests).

hop around town in a New Year's Eve MegaPOOL.”⁴⁰ Instead of providing the previous Uber pool service which could only fit the number of passengers a standard vehicle could hold, Uber attempted to expand this service to accommodate much larger parties for New Year's Eve.⁴¹ The trolleys would also accommodate passengers by “. . . playing your favorite jams from 2015 . . .” and the trolley would be “. . . stocked with celebratory swag.”⁴²

C. Lyft: Services They Offer, Fares They Charge, and Requirements for Drivers

Lyft began operating in 2012 in San Francisco.⁴³ As of three years ago, during its first year, Lyft was giving more than 30,000 rides per week.⁴⁴ Lyft encourages trust and makes their experience more personable by requiring drivers and passengers to connect through Facebook.⁴⁵

⁴⁰ See Justin L, *New Year's Eve MegaPOOL-One Night of Seamless Celebration*, UBER (Dec. 29, 2015), archived at <https://perma.cc/DBV9-DFEM> (using modern marketing skills to attract a younger consumer base to utilize Uber services for mega pool trolleys which transport friends around the city of Boston on New Year's Eve). Trolleys were limited to the Boston and Cambridge Area. *Id.*

⁴¹ See *id.* (describing a new service Uber piloted on New Year's Eve to attract passengers to utilize more efficient ways of transportation by providing trolleys for up to 18 passengers as a way to reduce costs for passengers and to help reduce the number of vehicles needed on the road).

⁴² See *id.* (highlighting the amenities that come along with utilizing the Uber MegaPOOL trolley for New Year's Eve night). “This way you can make an appearance at a swanky soiree, plan your stealth exit, and keep the celebrations going in a MegaPOOL.” *Id.* The trolleys could transport up to 18 people and groups of five were the largest that could reserve a spot on the trolley. *Id.* Uber attempted to integrate old friends with new friends by including different groups of friends in the same trolley to maximize the 18-person capacity and provide a more personal and friendly atmosphere for passengers on their journeys. *Id.* The cost to enjoy the decked out trolley was only \$5.00 per person and there was a maximum of six people per request. *Id.* The \$5.00 charge would be a flat rate not subject to Uber's surge pricing for New Year's Eve Night. *Id.*

⁴³ See Nicholas Carlson, *Lyft, A Year-Old Startup That Helps Strangers Share Car Rides, Just Raised \$60 Million From Andreessen Horowitz And Others*, BUS. INSIDER (May 23, 2013), archived at <https://perma.cc/9ZVL-XAVP> (discussing the foundation of Lyft and the services they offer).

⁴⁴ See *id.* (citing the number of rides Lyft was providing in the beginning of their creation and how much the company has grown since its founding).

⁴⁵ See *id.* (discussing the personal selection process that the company takes when pairing passengers with a driver with whom they are familiar).

During regular hours, the base fare charge in Boston for a “Lyft” is \$2.00, each mile driven costs \$1.35, and there is a \$0.25 charge for each minute.⁴⁶ Similar to Uber’s “surge pricing,” Lyft uses “increased Prime Time pricing during peak hours to increase prices.”⁴⁷ What is unique to Lyft is that their drivers can accept tips from passengers and are able to keep 80% of the fare that is charged to the passenger.⁴⁸

Lyft requires that drivers are at least twenty-one years old and own an iPhone or Android phone.⁴⁹ Lyft requires background checks for employees, and runs national and county background checks.⁵⁰ Lyft drivers are disqualified from the application process if they have more than three moving violations in the past year, have a major moving violation in the past three years, have a DUI or other drug-related violations in the last seven years, or have any driving-related convictions within the last seven years.⁵¹ Lyft also requires an in-

⁴⁶ See *Boston*, LYFT (last visited Oct. 2015), archived at <https://perma.cc/S5S7-LMW5> (explaining the services that Lyft provides and the fares they charge for those services). The minimum cost of a ride is \$4.00. *Id.* There is a trust and safety fee, which is an additional \$1.55 charge per ride. *Id.* Lyft also offers Lyft Plus, which is a six-passenger ride for larger groups. *Id.* The base charge during Plus pricing is \$3.50, the minimum cost is \$6.00, the cost per mile is \$2.45, and the cost per minute is \$0.35, keeping with the same \$1.55 trust and safety fee. *Id.* There is a \$10.00 cancel penalty charged to passengers who cancel rides once drivers are en route to pick up passengers. *Id.*

⁴⁷ See *Become a Driver*, LYFT (last visited Oct. 2015), archived at <https://perma.cc/B2YW-XJP8> (stating the increased pricing during peak hours of high demand for drivers). Lyft’s “plus pricing” is analogous to Uber’s “surge pricing” both of which are increased rates during peak hours. *Id.* The increased “Prime Time” multiplier is provided to the passenger at the time of the ride. *Id.* Plus pricing, as Lyft calls it, is an increased rate. *Id.*

⁴⁸ See *id.* (explaining the requirements for Lyft driver applicants).

⁴⁹ See *id.* (discussing the background checks that are run on potential drivers, which is the purpose for charging passengers the driver safety fee on each of their rides).

⁵⁰ See *id.* (explaining Lyft’s procedures in place to protect passengers and provide passengers with a safe ride and drivers).

⁵¹ See *Become a Lyft Driver*, LYFT (last visited Oct. 18, 2015), archived at <https://perma.cc/QP43-MMSP> (discussing Lyft’s policies on disqualifying potential applicants for moving violations and other criminal convictions that are on their records).

state driver's license that is at least a year old.⁵² Lyft advertises its "insurance protection" where it claims to provide additional insurance policies to cover commercial auto liability insurance for up to \$1 million dollars per accident contingent upon their driver's policies.⁵³

Lyft offers "Lyft line," which is advertised by the company as, ". . . an affordable new way to ride."⁵⁴ The Lyft line allows you to select the Lyft predetermined route that travels near your destination.⁵⁵ The service is intended to be for pooling passengers along similar routes, allowing other passengers who are also heading in the same direction to join you on your ride, which decreases the price of the ride per passenger.⁵⁶

D. Sidecar: Services They Offered, Fares They Charged, and Requirements for Drivers

Sidecar was available in eight U.S. markets: Washington, DC, Seattle, San Francisco, Los Angeles, Chicago, and Boston.⁵⁷ It was

⁵² See *Become a Driver*, *supra* note 47 (continuing to explain the requirements for Lyft's drivers, including the required in-state license that must be held for at least one year prior to applying to drive for the company). Some regions have specific requirements for how old a Lyft driver's motor vehicle can be. *Id.* Massachusetts has vehicle requirements for its Lyft driver vehicles. *Id.*

⁵³ See *Become a Driver*, *supra* note 47 (explaining Lyft's insurance coverage in addition to the coverage provided to passengers covered under the driver's insurance policy).

⁵⁴ See *Meet Lyft Line*, LYFT (last visited Oct. 18, 2015), archived at <https://perma.cc/5HJ3-WSU7> (discussing Lyft's offering of a new ride-sharing service to decrease the price of a ride for passengers by having more than one passenger share the ride).

⁵⁵ See *id.* (discussing Lyft's offering of a new ride-sharing service to increase the availability of drivers on the road by pooling passengers in vehicles).

⁵⁶ See *id.* (explaining Lyft's new service for passengers going in the same direction to take the same ride as a way to reduce costs and increase efficiency of drivers). The passenger using the Lyft line end up being on the commute longer due to the additional stops the driver has to take to pick up the other passengers. *Id.* Lyft allows you to see the names and photos of the people you will be traveling with along your route. *Id.*

⁵⁷ See *About*, SIDECAR (last visited Oct. 18, 2015), archived at <https://perma.cc/JLU9-EM3N> (discussing the founding of the company and the locations in which it offers its services); see also *Sidecar Expands Shared Rides to Boston and Washington DC*, SIDECAR (Dec. 4, 2014), archived at <https://perma.cc/QF3G-XKX7> (discussing the services offered by Sidecar).

founded in 2012 and based in San Francisco,⁵⁸ and closed its doors at the end of 2015.⁵⁹ Sidecar offered three main services through a ride application that connected rides with drivers like Uber and Lyft.⁶⁰ Sidecar offered “Shared Rides,” a discounted carpooling service that picked up more than one passenger along a similar route to deliver a cheaper price to the passenger.⁶¹ Sidecar’s other main service was “Sidecar Delivers.”⁶² According to Sidecar’s website, Sidecar deliveries would “combine people and packages on the same route for the fastest, most affordable and innovative on-demand delivery solution for retailers.”⁶³ Sidecar advertised that they had the lowest prices of their competitors.⁶⁴

Sidecar did not have wheelchair accessible vehicles on demand, but on their site had a “feature” for those that require a wheelchair accessible vehicle.⁶⁵ Passengers were given telephone numbers

⁵⁸ See *Our Story*, *supra* note 57 (stating the main cities in which Sidecar offers services).

⁵⁹ See Heather Somerville, *Sidecar to stop ride, delivery services at end of year*, REUTERS (Dec. 29, 2015), archived at <https://perma.cc/B5CL-BUT9> (detailing Sidecar’s announcement to cease operations).

⁶⁰ See *Our Story*, *supra* note 57 (stating the services Sidecar offers).

⁶¹ See *Our Story*, *supra* note 57 (discussing Sidecar’s carpooling service to make rides cheaper for passengers).

⁶² See *Our Story*, *supra* note 57 (discussing Sidecar’s delivery service).

⁶³ See *Our Story*, *supra* note 57 (explaining Sidecar’s delivery service that allows businesses to have their products delivered to a specified destination). Sidecar Delivers works with businesses to deliver their packages so that they can focus on their work, and provides tracking numbers so business can track their packages with an available customer service support line to contact if there is an issue with the delivery. *Id.*

⁶⁴ See *Riders*, SIDE CAR (Oct. 18, 2015), archived at <https://perma.cc/2SNU-SGSE> (highlighting the benefits of Sidecar over other ride-sharing services). Sidecar passengers choose their ride based on price, vehicle, or estimated time of arrival. *Id.* The passenger is given the total cost of the ride before they confirm their selected ride options. *Id.* To determine the cost of a ride, the passenger selects their destination, and sorts the list of available drivers based on one of the four following criteria: (a) lowest price, (b) shortest estimated time of arrival, (c) favorite drivers or, (d) vehicles that offer additional benefits. *Id.* These additional benefits can include; extra seating for larger groups, snacks, water and more options. *Id.* The passenger then selects their desired accommodations and their ride is en route which highlights the ease in selecting a ride best tailored to the accommodations a passenger is seeking. *Id.*

⁶⁵ See *Rules of the Road*, SIDE CAR (last visited Oct. 18, 2015), archived at <https://perma.cc/8XGM-2WBQ> (explaining the available options for those that require accommodations for disabilities).

of taxi and cab services that could provide wheelchair accessible vehicles in certain locations including, D.C., Seattle, San Francisco, and Chicago.⁶⁶

Sidecar required drivers to have a smartphone that ran Android or iOS programs.⁶⁷ Drivers were also required to have a registered vehicle with valid personal automobile insurance, a driver's license, a driving record in good standing, no criminal background,⁶⁸ and be at least twenty-one years old to drive for Sidecar.⁶⁹

⁶⁶ *See id.* (highlighting that Sidecar does not have vehicles to accommodate those with disabilities, but provides contact information of companies that can accommodate passengers with disabilities).

⁶⁷ *See Drive*, SIDE CAR (last visited Oct. 18, 2015), *archived at* <https://perma.cc/24YP-MRM8> (discussing the requirements for driver's cellphones in order to operate Sidecar's smartphone application).

⁶⁸ *See Insurance*, SIDE CAR (last visited Oct. 18, 2015), *archived at* <https://perma.cc/4QRP-3TZG> (disclosing that Sidecar does not conduct its own background checks, but rather has the criminal and driving record background checks performed by a third-party).

⁶⁹ *See Drive*, *supra* note 67 (explaining the requirements for Sidecar drivers).

E. Ride Sharing Services in Massachusetts Operated as “Technology Companies”

In light of all the services Uber, Lyft and Sidecar offer, the drivers that executed the delivery of passengers or goods were not regulated, like traditional livery services, by the Commonwealth of Massachusetts.⁷⁰ Ride-sharing service companies were regulated as technology companies.⁷¹ Ride-sharing services were operating what had been called a “legal gray-area,” since the drivers had not been licensed

⁷⁰ See Nicole Dungca, *Even as Uber, Lyft gain riders, drivers face \$500 city fines*, BOSTON GLOBE (May 27, 2015), archived at <https://perma.cc/WD3Z-BZER> (discussing the legal gray area that Uber and other ride-sharing services are currently operating under due to their self-identifying status as technology startups).

⁷¹ See 47 U.S.C. § 230 (f)(3) (defining information content provider as “any . . . entity that is responsible . . . for the creation or development of information provided through the Internet . . .”); Matt Blackburn, *An Uncertain Future for Ridesharing Services in Massachusetts*, PIONEER INSTITUTE (Sept. 4, 2015), archived at <https://perma.cc/L7AU-LQA8> (discussing how ride-sharing services are currently regulated and how the proposed legislation in Massachusetts could change that); see also Ward, *supra* note 17 (stating that Uber identifies themselves as a technology company). Lyft claims it is an Internet site and protected by section 230 of the Communications Decency Act, which states, “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another ‘information content provider.’” *Id.* One commentator has noted:

[I]f you’re engaging in branding or giving them the tools of the trade, like GPS devices or equipment to process transactions, you may be moving out of the role of being a pure publisher under section 230. If a service is setting the price from Midtown to Wall Street at \$10, then under the law that might be considered something that is just not a publisher’s role.

Id.

locally as taxi or livery drivers.⁷² Since traditional livery services are regulated by the cities, any driver who was found transporting passengers without a livery or taxi license in the city of Boston was subject to a \$500 fine.⁷³

⁷² See Nate Boroyan, *Why Don't Boston Taxi Drivers Just Switch to Uber and Lyft*, BOSTINNO (Jan. 20, 2015), archived at <https://perma.cc/F86H-2F4D> (discussing how Boston regulates taxi and livery services in their area and highlighting that Uber drivers are slipping through the cracks of regulation since these services have been operating without a taxi license). Currently, Uber and other “technology companies” are operating under a loophole under Rule 403 and have avoided the regulatory restrictions placed on passenger driver vehicles. *Id.* Difficulties for traditional taxicab services include the changing innovation in the transportation sector and their investments in acquiring a taxi license is eroding as a result of the ride based apps. *Id.* See also adamg, *Boston cab owners say city and state are driving them to ruin; sue over non-regulation of Uber and its ilk*, UNIVERSAL HUB (Jan. 20, 2015), archived at <https://perma.cc/85WA-MYU6> (referencing the lawsuit filed by Boston taxi drivers who claimed ride sharing service companies have an unfair advantage in the market since they do not face the same regulation as traditional taxicab drivers); see also CDA 230: *The most important law protecting internet speech*, ELECTRONIC FRONTIER FOUNDATION, archived at perma.cc/6YNB-F36A (describing the loophole in which the ride-sharing services are currently operating under which prevents them from being regulated as taxis). Lyft claims it is an Internet site and protected by section 230 of the Communications Decency Act, which states, “no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” *Id.* Currently Uber and other “technology companies” are operating under a Rule 403 loophole and have avoided the regulatory restrictions placed on passenger driver vehicles. *Id.*

⁷³ See adamg, *supra* note 72 (requiring that operators of ride sharing services have licenses granted by the states); see also *Hackney Carriage Rules and Regulations*, BOSTON POLICE DEPARTMENT (Aug. 29, 2008), archived at <https://perma.cc/RNJ2-FTYG> (listing 53 pages of rules and procedures for hackney carriage holders and their vehicles). Boston Police Department which regulates Hackney Carriage rules for the City of Boston, Rule 403 titled “Hackney Carriage Rules and Regulations” states the requirements for hackney license holders ranging from fares that can be charged, insurance requirements for vehicles, and penalties for noncompliance. *Id.* See also Rosenberg, *supra* note 5 (inferring that Uber and Lyft can still innovate as a technology company while complying with common sense safety regulations).

F. *The History of Taxicab Regulation*

“Taxis” have been driven since the inception of the original transportation of a horse and buggy and have been regulated throughout history.⁷⁴ In the 1970s, there was a period of de-regulation of taxicabs, which resulted in a decrease of the protection of passenger safety and an increase in the level of road congestion which negatively impacted the environment.⁷⁵

Licenses for transportation vehicles are required in order to drive passenger vehicles in the Commonwealth of Massachusetts.⁷⁶ According to Massachusetts General Laws, it is illegal for a transportation vehicle to pick up and drop off passengers if they are unlicensed.⁷⁷ It is also required for licensed taxicabs to have the name or the trade

⁷⁴ See *Taxis, TNCS and Deregulation: Is History Repeating Itself?*, WHO’S DRIVING YOU? (last visited Dec. 26, 2016), archived at <https://perma.cc/QGP8-HMGA> (highlighting during the periods in our history where there was deregulation of taxicab drivers or unlicensed taxicab drivers on the road, cities saw an increase in accident rates, poor accident coverage and increased level of road congestion).

⁷⁵ See *id.* (describing periods of deregulation where cities realized the negative impact and re-regulation for the following reasons: “prices for taxi riders increased, vehicle quality decreased, the average age of vehicles increased, fares became confusing and unpredictable to passengers, taxi riders in low-density areas were restricted and access to 24/7 transportation became difficult, and taxi riders became prone to price inflation and exploitation”).

⁷⁶ See MASS. GEN. LAWS. ch. 40, § 22 (2015) (discussing the requirements for drivers to operate as passenger services in the Commonwealth of Massachusetts). According to Massachusetts General Laws Chapter 40, section 22, the state grants cities and towns in the Commonwealth of Massachusetts the power and authority to make rules and orders to regulate livery vehicles, and to receive an annual fee for each license granted. *Id.*

⁷⁷ See H.R. 3213, 187th Sess. (Mass. 2011) (naming the Massachusetts statute that grants the authority to cities and towns in Massachusetts to grant licenses to drivers who transport passengers).

No person shall set up, employ or use, for the conveyance of passengers for hire, any motor vehicle, coach, van, cab or other means of conveyance, without a license to own and operate a taxicab or livery vehicle for hire from the department of telecommunications and energy or the municipality in which the main office is located. In the absence of a local government authority, the police department shall be responsible for licensing under this chapter.

Id.

name of the owner and the name of the city or town in which it is licensed painted on the sides of the vehicle in letters not less than four inches high and one half inch wide.⁷⁸

Since cities in the Commonwealth of Massachusetts have the authority to regulate taxicab licenses and there is not complete uniformity in regulations, as a point of comparison, Boston taxicab drivers under Massachusetts Port Authority Legislation are required to obtain a vehicle permit.⁷⁹ Each taxicab driver must have a valid hackney license.⁸⁰ Boston taxis “historically called Hackney Carriages, are licensed by the Police Commissioner under the authority of chapter 392 of the Acts of 1930.⁸¹ The hackney carriage unit is the oldest specialized unit in the Boston Police Department, founded the same year as the unit in 1854.”⁸² All taxis in the city of Boston are required to have a Hackney carriage license, called the “hackney license” for short and cannot operate in the city without their identifying marker – the medallion that certifies they are regulated and licensed by the City of Boston – to operate.⁸³

Taxicab drivers are required to have functioning, sealed taximeters in their vehicles and the rear passengers seats must be lit at all times.⁸⁴ Taxicab drivers must also have a meter rate card providing for transparency of pricing for passengers.⁸⁵ The Taxicab medallion

⁷⁸ See MASS. GEN. LAWS. ch. 40, § 22 (2015) (naming requirements for drivers of passenger transportation vehicles to have their vehicles clearly marked with the company name for which they drive).

⁷⁹ See 740 MASS. CODE REGS. § 23.04 (1995) (describing the regulation of taxicab drivers by the Massachusetts Port Authority).

⁸⁰ See *id.* (requiring licenses for taxicab drivers to operate within the City of Boston).

⁸¹ See *Hackney Carriage Unit*, BPDNEWS (last visited Jan. 30, 2017), archived at <https://perma.cc/J57A-ZMCY> (stating that Chapter 392 of the Acts of 1930 granted the Police Commissioner the authority to grant Hackney Carriage licenses).

⁸² See *id.* (highlighting the history of the term “hackney license” and the original legislation that required such a license be attained in order to drive a livery service vehicle in the city of Boston).

⁸³ See *id.* (cautioning passengers to “Look for the Medallion! Remember if it doesn't say ‘Boston Licensed Taxi,’ you could be in for a bad ride”).

⁸⁴ See 740 MASS. CODE REGS. § 23.04 (1995) (inferring that well-lit and well-maintained meters in the backseat of a taxi will ensure transparency in fare pricing to customers).

⁸⁵ See 740 MASS. CODE REGS. § 23.04 (1995) (highlighting the requirement that taxicabs must be equipped with meters to calculate the distance and cost of the ride to be displayed for passengers).

number must also be displayed in the rear seats allowing for passengers to clearly see the driver's licenses.⁸⁶ Taxicab vehicles are subject to inspections at the discretion of officials at Logan International Airport.⁸⁷ Taxicab drivers are provided with their own lane at Logan Airport and must have a license to operate within that lane.⁸⁸ The legislation sets out additional procedures for taxicab drivers in the taxicab pool lane and the procedure for the discharging and picking up of passengers as well as the fares charged.⁸⁹

The regulations set out the procedural process for temporary suspensions of operators and their rights in appealing such suspensions or administrative hearing decisions.⁹⁰ Operators who have successive violations are subject to suspension or even termination of their operator's license.⁹¹ The hearing procedures for taxicab drivers are found in Mass. Gen. Laws ch. 30A.⁹²

Taxicab drivers have encountered legal issues with their status as workers.⁹³ Taxicab drivers brought suit against Boston Cab Dispatch, Inc., where they claimed they were employees of the taxicab services and misclassified as independent contractors.⁹⁴ The taxicab

⁸⁶ See 740 MASS. CODE REGS. § 23.04 (1995) (implying that requiring medallion be displayed puts customers on notice that they are in a regulated taxi).

⁸⁷ See 740 MASS. CODE REGS. § 23.04 (1995) (granting Logan airport law enforcement agencies the authority to search and assess taxicab drivers' vehicles for safety issues).

⁸⁸ See 740 MASS. CODE REGS. § 23.04 (1995) (granting taxicab drivers a monopoly on a lane at the airport for dropping off and picking up passengers and providing the necessary procedures they are subject to).

⁸⁹ See 740 MASS. CODE REGS. § 23.04 (1995) (stating the regulation for taxi transportation network service companies, covering such areas as the taxicab lane at Logan Airport).

⁹⁰ See 740 MASS. CODE REGS. § 23.04 (1995) (providing the authority to suspend licenses).

⁹¹ See 740 MASS. CODE REGS. § 23.04 (1995) (setting out the penalties for those who violate the provisions of the administrative statute).

⁹² See 740 MASS. CODE REGS. § 23.04 (1995) (referencing the applicable statute that provides the procedural protections for appealing administrative decisions and revocation of taxicab driver's licenses).

⁹³ See Anthony Zaller, *Court Holds Independent Contractor Status of Cab Drivers not Suitable for Class Action*, CALIFORNIA WORKFORCE RESOURCE BLOG (Sept. 28, 2009), archived at <https://perma.cc/254C-G5BX> (demonstrating an example of a classification of legal issues for taxi drivers).

⁹⁴ See *Sebago v. Boston Cab Dispatch, Inc.*, 471 Mass. 321, 322 (2015) (stating the plaintiffs claim against the defendant for unfair business practices in the transportation service industry).

drivers alleged their incorrect label as independent contractors prevented them from receiving; minimum wages, overtime pay, tips, and the protections afforded by the Massachusetts Wage Act, Mass. Gen. Laws ch. 149, § 148.⁹⁵ The court held after reviewing the contractor statute, the taxicab drivers were not employees, but rather contractors.⁹⁶

G. Legal Claims Brought by Taxicab Drivers Against Uber

In 2015, after ride-sharing services had been in the transportation sector for years, taxicab drivers were realizing a decrease in profits and filed a claim against Uber alleging the company engaged in unfair and deceptive business practices.⁹⁷ The taxicab drivers claimed the practices of Uber were unfair business practices since Uber was not subject to the same regulations as taxicab drivers, which required a license to operate among other regulations.⁹⁸ Uber filed a motion to dismiss the claims for unfair and deceptive business act but the court denied the defendant's motion.⁹⁹

Taxicab drivers have also alleged that Uber has violated unfair competition and racketeering laws (RICO) alleged by taxicab drivers since Uber was not following taxicab regulations.¹⁰⁰ The plaintiff alleged that Uber did not comply with the extensive regulations that taxicab drivers must follow and avoids costs and burdens that taxicab services cannot avoid, such as requiring a medallion and

⁹⁵ *See id.* (citing the taxi driver's reasoning for wanting to be recognized as an employee and not a subcontractor).

⁹⁶ *See id.* at 328 (describing the reasoning of the court in holding that taxicab drivers are not employees but rather contractors).

⁹⁷ *See Boston Cab Dispatch, Inc. v. Uber Techs., Inc.*, Civil Action No. 13-10769-NMG, 2015 U.S. Dist. LEXIS 8508, at *1 (D. Mass. Jan. 26, 2015) (citing the Plaintiff's claim against Uber for unfair business practices as a result of taxicab drivers facing lower profits since the entrance of ride sharing services into the market).

⁹⁸ *See id.* at *2 (describing the Plaintiff's complaints of unfair and deceptive business practices as a result of Uber not being regulated where taxicab drivers are subject to regulation); *see also Rosenberg, supra* note 5 (explaining how the bill seeks to regulate transportation network companies to ensure consumer protection).

⁹⁹ *See Boston Cab Dispatch, Inc.*, 2015 U.S. Dist. LEXIS 8508, at *20 (indicating the court's reasoning for denying the claimant's motion to dismiss).

¹⁰⁰ *See id.* at *1 (explaining the Cab driver's claim for unfair competition of ride-sharing service companies).

markings which display their vehicle as a taxicab.¹⁰¹ The court denied the defendant's motion to dismiss on the claim of unfair business competition, and the court ruled there was a causal connection between RICO and the acts of the ridesharing services and denied the defendant's motion to dismiss the RICO claim.¹⁰²

H. Ride-sharing Service Drivers' Statuses as Independent Contractors

Uber drivers had brought a claim against their employer Uber claiming that they were employees and were being denied various statutory protections as employees codified under the California Labor Code.¹⁰³ The Uber drivers claimed that they were employees since they "perform services" for the benefit of Uber.¹⁰⁴ The court held that the motion for summary judgment would not be granted since the question of whether or not they are employees or subcontractors is a question of fact that must be decided by a jury.¹⁰⁵

In the same case as above, the Plaintiff's motion for class certification against Uber alleges that they are employees and not subcontractors of Uber.¹⁰⁶ The Court granted the Plaintiff's motion to be considered a class and allowed the Plaintiffs to pursue the claim that Uber violated the labor code under California's Unfair Competition Law.¹⁰⁷

¹⁰¹ *See id.* at *12 (stating the basis of the unfair practices claim by the cab drivers including operating without incurring the expenses of the law and diverting revenue from the taxi drivers).

¹⁰² *See id.* (explaining the court's reasoning that there was a lack of connection between the alleged claims and the presented facts).

¹⁰³ *See O'Connor v. Uber Techs.*, 82 F. Supp. 3d 1133, 1135 (N. D. Cal. 2015) (describing the claim brought by Uber drivers alleging they were not treated as employees).

¹⁰⁴ *See id.* (discussing the Plaintiff's allegations that they are employees since they perform services for the company as an employee would).

¹⁰⁵ *See id.* at 1148 (the court held that the question of whether or not Uber drivers were employees was a question of fact that needed to be decided by a jury, and therefore, the court dismissed the request for dismissal by Uber).

¹⁰⁶ *See id.* at 1135 (explaining the Plaintiff's reasoning in filing for class status).

¹⁰⁷ *See id.* (discussing the court's reasoning in allowing the Plaintiffs to file as a class and allowing the Plaintiffs to continue with their claim for violation of labor codes).

I. *Massachusetts Proposed Legislation for Ride-Sharing Services*

Four different bills were proposed in Massachusetts to regulate ride-sharing services.¹⁰⁸ The first proposed legislation is Proposed Bill S559; an act relative to transportation network company insurance, sponsored by James E. Timilty, which focuses on the requirement for TNC drivers to have insurance coverage.¹⁰⁹ Under the proposed bill, Transportation Network Companies have to submit their drivers' insurance policies, which must have damage coverage of \$100,000 per person and \$300,000 per accident.¹¹⁰ The legislation requires that the driver's insurance coverage should begin once the ride sharing application is enabled and the driver begins picking up passengers, and the coverage ends once the application is turned off and the driver is no longer accepting passengers.¹¹¹ If there is a gap in the insurance coverage, it is the responsibility of the Transportation Network Company to cover any gap in insurance.¹¹² The legisla-

¹⁰⁸ See Ben Ross, *Legislation Filed to Increase Restrictions on Uber in Massachusetts*, SUN TIMES NETWORK (Jul. 21, 2015), archived at <https://perma.cc/YAW3-DE83> (stating the proposed legislation to regulate ride sharing services was similar to the regulation of taxicabs).

¹⁰⁹ See H. D. 3702, 2015 Leg., 189th Sess. (MA. 2015) (stating the proposals to regulate ride-sharing services).

¹¹⁰ See *id.* (stating the proposed requirements for the amount of insurance coverage for ride-sharing services); see also Geoffrey Gordon, *Uber and other TNCs and Personal Auto Insurance in MA*, GORDON ATLANTIC INSURANCE (Sept. 15, 2016), archived at <https://perma.cc/VBP9-VTCG> (giving general information about ride sharing services in Massachusetts).

Uber provides insurance . . . for when a rider has been matched, and while riding: the actual fare: Once the person getting a ride gets into the car, and until they depart, Uber insurance fills the gap in the personal auto policy. What Uber insurance does NOT do is provide coverage when it is first suspended: when the "I'm available" app begins.

Id.

¹¹¹ See Gordon, *supra* note 110 (discussing the shortcomings of current Massachusetts insurance policies that suspend coverage when vehicles are used for hire).

¹¹² See Shira Schoenberg, *Gov. Charlie Baker Signs Law Regulating Uber and Lyft in Massachusetts*, MASSLIVE (Aug. 5, 2016), archived at <https://perma.cc/KN5U-XN9Z> (stating that transportation network companies are required to outfit drivers with \$1 million in personal insurance coverage).

tion also requires that the transportation network companies cooperate in automobile investigations.¹¹³

The second piece of legislation that was proposed to the Massachusetts Financial Service Committee was Proposed bill H931; an act relative to transportation network company services, sponsored by William Smitty Pignatelli, which requires TNC drivers to get a permit from the Transportation Department of the Commonwealth, which is a \$5,000 permit fee.¹¹⁴ The legislation requires fare calculations to be posted on the TNC's websites.¹¹⁵ The application for ridesharing services has to show a picture of the driver and the license plate number before the passenger enters the motor vehicle.¹¹⁶ Following a ride, the passenger has to receive an itemized bill of the total fare paid.¹¹⁷ The bill also requires drivers to have insurance policy coverage of \$1,000,000 for death, personal injury and property damage.¹¹⁸ The TNC will also have to provide coverage if there has been a lapse of the driver's coverage.¹¹⁹

The legislation also sets out strict record checks including; a local and national criminal background check, national sex offender registry database review, and driving history.¹²⁰ The proposed legislation also restricts disclosing a passenger's personally identifiable

¹¹³ See H. D. 3702, 2015 Leg., 189th Sess. (MA. 2015) (discussing the importance of ride-sharing service companies to participate in investigations regarding their driver's motor vehicles).

¹¹⁴ See H. D. 931, 2015 Leg., 189th Sess. (Mass. 2015) (proposing a fee for registration of ride-sharing service drivers, which is similar to the licensing fee charged for taxicab driver medallions which allows them to drive passengers).

¹¹⁵ See *id.* (stating the requirements to provide transparency of pricing for consumers).

¹¹⁶ See *id.* (laying out proposals for consumer safety by requiring drivers' pictures to be shown to passengers before passengers are picked up from their location).

¹¹⁷ See *id.* (providing transparency for drivers by requiring ride-sharing service companies to provide itemized receipts to passengers revealing the cost per mileage, the cost per minute and the other fees and services charged required).

¹¹⁸ See *id.* (requiring an insurance policy that is equivalent to the insurance policy requirements of a taxicab driver).

¹¹⁹ See H. D. 931, *supra* note 119 (placing the liability of insufficient policy coverage on behalf of the driver on the transportation network company).

¹²⁰ See *id.* (emphasizing the different methods in which a driver will be checked to provide a safe driver for passengers). The legislation prevents drivers from driving who have; more than three moving violations in the prior three years, and a disqualification if the driver has been convicted in the past seven years of DUI, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence and acts of terror. *Id.*

information to a third party.¹²¹ There have been cases when TNC drivers have been accused of crimes and having such a database would make it easier for law enforcement to find such perpetrators.¹²² TNC drivers can only drive passengers if they are using the online application, and they cannot provide services through soliciting or accepting street hails.¹²³ The legislation requires non-discrimination of passengers.¹²⁴ TNCs cannot charge a higher fare for passengers that are accompanied by service animals and the proposed bill requires wheelchair accessible vehicles.¹²⁵ There is an annual \$10,000 surcharge for TNCs that discriminate against passengers with disabilities.¹²⁶

The third proposal for regulating TNCs in Massachusetts was Proposed bill H3351; an Act establishing Department of Public Utilities Oversight of Transportation Network Companies, sponsored by Governor Charles D. Baker, which requires that TNCs be regulated by the Department of Public Utilities (hereinafter “DPU”) and gives DPU the authority to issue regulations and enforce provisions of the law.¹²⁷ This legislation requires drivers to be at least twenty-one years old.¹²⁸ The legislation also contains application procedures for drivers consisting of background checks of criminal records, sex offender records, and driving records.¹²⁹ The legislation requires a

¹²¹ See *id.* (protecting confidential information of passengers and drivers from being sold to outside parties).

¹²² See Aimee Picchi, *The Rising Safety Issues That Could Throttle Uber*, CBS MONEYWATCH (Dec. 11, 2014), archived at <https://perma.cc/F2T8-E5EM> (citing cases where TNC passengers have been victims of crimes committed by TNC drivers and implying the importance of having TNC drivers information in an easy accessible in-state database in the hands of the Department of Transportation to prosecute such perpetrators).

¹²³ See H. D. 931, *supra* note 119 (restricting ride-sharing service drivers’ ability to pick up passengers).

¹²⁴ See H. D. 931, *supra* note 119 (clarifying that passengers cannot be denied service on the basis of a protected class).

¹²⁵ See H. D. 931, *supra* note 119. (elaborating on the ways in which passengers cannot be discriminated against by ride-sharing service drivers).

¹²⁶ See H. D. 931, *supra* note 119 (providing a penalty for noncompliance with protection from discrimination requirements).

¹²⁷ See H.D. 3351, 2015 Leg., 189th Sess. (Mass. 2015) (stating the agency that has the authority to regulate and enforce ride sharing service legislation).

¹²⁸ See *id.* (proposing age requirements for ride-sharing service drivers).

¹²⁹ See *id.* (providing screening of drivers to ensure the safety of passengers).

transportation network driver's certificate.¹³⁰ This bill gives the DPU the ability to suspend a transportation network driver's certificate immediately for a crime or driving infraction.¹³¹ If a driver is found driving without a driver's certificate, he or she will be issued a fine of \$350.00.¹³²

Under this proposed bill, each driver is required to have insurance coverage of a minimum of \$1,000,000 for bodily injury and property damage.¹³³ If there is a lapse of the TNC's driver's coverage, the TNC will be responsible and liable for lapses in coverage and damages.¹³⁴ There must also be recognizable external markers on vehicles.¹³⁵ TNCs must provide transparent pricing and must have an itemized layout of the pricing before the ride.¹³⁶ As a result of the legislation and the overseeing of TNC drivers by DPU, there would be a list of employed TNC drivers that would be updated regularly and provided to law enforcement.¹³⁷

The final proposed bill, H3702: An Act relative to passenger safety, sponsored by Michael J. Moran and Linda Dorcena Forry, requires TNCs to disclose their profits or be subjected to a fine for non-compliance.¹³⁸ TNCs must publish on their website how it calculates fares, and a toll free 24 hour a day customer service representative line must be available.¹³⁹ The proposed bill prevents TNC services

¹³⁰ *See id.* (requiring transportation network drivers to acquire a driving certificate, issued by the DPU, which is similar to the license required for traditional taxicab drivers).

¹³¹ *See id.* (stating the authority of the DPU to issue and suspend licenses of ride sharing service drivers according to the rules set out by the DPU).

¹³² *See id.* (providing the transparency that is required in order to issue fines for noncompliance with the driver's requirement to obtain a license from the DPU).

¹³³ *See* H.D. 3351, *supra* note 127 (setting the minimum amount of insurance coverage required for ride sharing service drivers).

¹³⁴ *See* H.D. 3351, *supra* note 127 (placing liability for non-compliance with minimum insurance policy requirements on the transportation network company and not the transportation network driver).

¹³⁵ *See* H.D. 3351, *supra* note 127 (requiring transparency of ridesharing service vehicles).

¹³⁶ *See* H.D. 3351, *supra* note 127. (demanding price transparency of rates for the benefit of passengers).

¹³⁷ *See* H.D. 3351, *supra* note 127 (forcing transportation network drivers' information to be provided to law enforcement authorities).

¹³⁸ *See* H.B. 3702, 2015 Leg., 189th Sess. (Mass. 2015) (requiring transparency and availability of TNCs for the safety of passengers).

¹³⁹ *See id.* (pressing Transportation Network Companies to be available to address passenger concerns).

from charging “surge pricing” during “emergency conditions.”¹⁴⁰

The proposed bill supports individuals with disabilities by requiring one in every 100 vehicles to be wheelchair accessible.¹⁴¹

Each TNC vehicle must have markings identifying the vehicles that should be readily identifiable from seventy-five feet away.¹⁴² TNC drivers are required to have insurance coverage with a minimum of \$1,000,000 in bodily injury coverage, and such policy coverage is required to be displayed within the mobile application.¹⁴³

Under the final proposed bill, a TNC certificate is required to drive for a Transportation Network Company.¹⁴⁴ Each driver must have a valid identification, photo and certificate placed in a position visible to the passenger in the vehicle and must be twenty-one years of age.¹⁴⁵ Applicants are required to undergo background checks including: national and state background checks, checks through the sex offender registry, CORI database, and are subjected to fingerprinting.¹⁴⁶ Drivers are also subject to random drug testing.¹⁴⁷ The TNCs have three days to report to the regulatory department if their

¹⁴⁰ See *id.* (restricting the ability of TNCs to increase prices during high demand that is a result of emergency conditions).

¹⁴¹ See *id.* (requiring accommodating services for passengers with disabilities).

¹⁴² See *id.* (discussing the standards for the appearance of vehicles, which make it clear to passengers that the vehicles are driven by TNC drivers).

¹⁴³ See *id.* (proposing the minimum level of insurance coverage to protect passengers in TNC vehicles in the event of a motor vehicle collision and bodily injury or property damage claims).

¹⁴⁴ See H.B. 3702, *supra* note 138 (establishing the requirements to obtain the permission from the DCU to drive as a TNC driver). The state will be involved with the regulation as a result of requiring a certificate in order to drive for a TNC, the regulating department may, following a notice and a hearing, suspend or revoke the Transportation Network Company driver’s permit at its discretion. *Id.*

¹⁴⁵ See H.B. 3702, *supra* note 138 (requiring drivers to display the proper identification as a way to provide transparency of driver information to passengers).

¹⁴⁶ See H.B. 3702, *supra* note 138 (subjecting TNC drivers to a full investigative background check to ensure the safety of drivers). The legislation excludes drivers if they are listed on the sex offender registry, have been convicted of a felony, have three moving violations in the past three years, a violation for failure to stop for a law-enforcement officer, reckless driving, or refusal to submit to a breathalyzer test. *Id.*

¹⁴⁷ See H.B. 3702, *supra* note 138 (establishing the process in which TNC driving applicants are subject to protect passengers who utilize TNC services).

driver has received an infraction.¹⁴⁸

III. Facts

The proposed bills were presented by their sponsors on September 15, 2015, and were heard by the Financial Services Committee.¹⁴⁹ Testimony was heard from those who appeared and had an interest in the regulation of Transportation Network Companies (TNC), which included: taxicab drivers, Lyft and Uber drivers and Sidecar drivers.¹⁵⁰ The proposed legislation was reviewed by the Massachusetts Committee on Financial Services before issuing a final regulation.¹⁵¹ Following the hearing on the proposed bills, final legislation was signed, regulating ride-sharing services in Massachusetts.¹⁵²

A. Regulation of Transportation Network Drivers

The Commonwealth of Massachusetts, for the first time since Uber and Lyft had entered the transportation market in 2009, finally

¹⁴⁸ See H.B. 3702, *supra* note 138 (creating a mechanism by which TNC drivers' licenses can be revoked in a short period of time for driving infractions protecting the safety of passengers). If drivers continue to operate after having received a violation, they are subject to a fine of not less than \$750. *Id.* Drivers are also subject to a minimum \$1,500 fine if they drive passengers without using the mobile application. *Id.*

¹⁴⁹ See *An Act Establishing Department of Public Utilities Oversight of Transportation Network Companies*, COMMONWEALTH OF MASSACHUSETTS (last visited Nov. 5, 2015), archived at <https://perma.cc/NQS9-DB4F> (discussing the legislative history of Governor Baker's proposal to regulate TNCs); see also Rosenberg, *supra* note 5 (supporting the Senate Bill S.2371); *Governor Signs Legislation Supporting Innovative Transportation Options*, COMMONWEALTH OF MASSACHUSETTS (Aug. 5, 2016), archived at <https://perma.cc/G59Q-UB6A> (signing innovative transportation options into law).

¹⁵⁰ See *Event Detail - Joint Committee on Financial Services*, THE 189TH GENERAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS (Sept. 15, 2015), archived at <https://perma.cc/5XJ2-3MA9> (setting the agenda for the Hearing Committee regarding Transportation Network Companies); see also Rosenberg, *supra* note 5 (supporting TNC's innovative technologies to thrive in Massachusetts).

¹⁵¹ See Adam Vaccarro, *The Uber Issue Is Headed to the State House*, BOSTON.COM (Sep. 11, 2015), archived at <https://perma.cc/6PJT-7WNS> (discussing the proposed bills and the procedure for what happens after the Joint Committee on Financial Services hears the presentation of legislation and testimony).

¹⁵² See MASS. GEN. LAWS ch. 159A½, § 3(c) (2015) (outlining ride-sharing regulations); see also Governor Charlie Baker, *supra* note 149 (signing innovative transportation options into law).

passed legislation regulating ride-sharing services, which they named Transportation Network Companies (TNCs) in the Legislation.¹⁵³ The legislation regulates both Transportation Network Companies and their drivers requiring TNC drivers: to have decals affixed to their vehicles,¹⁵⁴ undergo background checks,¹⁵⁵ have their vehicles

¹⁵³ See MASS. GEN. LAWS ch. 159A½, § 3 (c) (stipulating Transportation Network Companies as . . . “a corporation, partnership, sole proprietorship or other entity that uses a digital network to connect riders to drivers to pre-arrange and provide transportation”).

¹⁵⁴ See MASS. GEN. LAWS ch. 159A½, § 4 (requiring removable decals to be affixed to the front and rear of the Transportation Network Vehicle while the vehicle is engaged in transportation network services.)

(b) In consultation with the registry of motor vehicles, the division shall provide for the establishment of removable decals to be issued by transportation network companies, in a form and manner prescribed by the division, to transportation network drivers to designate a vehicle as a transportation network vehicle for law enforcement and public safety purposes. The decal shall be applied to both the front and back panels of a vehicle at all times while the vehicle is providing transportation network services. A transportation network driver who provides transportation network services using the digital network of more than 1 transportation network company shall display the respective decals for each transportation network company while the vehicle is providing transportation network services. A transportation network driver who ceases to be certified to provide transportation network services for any reason shall return the decal within 14 days of that cessation to the respective transportation network company in the manner and form prescribed by the division.

Id.

See also Schoenberg, *supra* note 112 (describing the decal requirement for ride sharing drivers); *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (indicating that ride share vehicles must be properly marked).

¹⁵⁵ See MASS. GEN. LAWS ch. 159A½, §§ 3-4 (creating a division within the department of public utilities to establish rules and regulations for transportation network service companies and drivers). The legislation also gives authority to the department of public utilities to obtain all criminal offender record information to determine if an applicant is suitable to obtain a transportation network driver certificate. *Id.* See also Schoenberg, *supra* note 112 (noting how the background checks are the most rigorous in the country).

inspected,¹⁵⁶ and carry insurance.¹⁵⁷

B. Regulation of Transportation Network Companies

TNCs are required to apply and obtain a permit before operating.¹⁵⁸ The requirements for a TNC to obtain a certificate to operate include: the TNC's operations must be in the public interest,¹⁵⁹ the TNC must have an oversight process to ensure their drivers comply

¹⁵⁶ See MASS. GEN. LAWS ch. 90, § 7A (inspecting safety mechanisms includes having a fully functioning vehicle, functioning vehicle braking system and suspension).

The registrar shall establish rules and regulations, in consultation with the division established in section 23 of chapter 25, providing for an inspection of transportation network vehicles operated under a certificate issued pursuant to chapter 159A½. Such inspections shall be in addition to the emissions testing requirements and the periodic staggered inspection as required by this section; provided however, that the transportation network vehicle inspection shall be available at the same time as the emissions testing and the periodic staggered inspection. At a minimum, and subject to other requirements that the registrar may establish, such inspections shall ensure that the safety mechanisms of the vehicle are fully functioning and shall include a review of the vehicle's braking system and suspension.

Id. See also MASS. GEN. LAWS ch. 159A½ § 4(2)(f) (stating that the inspection should occur within 12 months of obtaining a transportation driver certificate); *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (establishing the inspection requirement for vehicles).

¹⁵⁷ See MASS. GEN. LAWS ch. 175 § 228 (highlighting the requirement for TNCs to provide insurance coverage if there is a lapse in coverage for any TNC driver's policy); see also *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (describing the legislation as closing the insurance gap by requiring \$1 million of minimal insurance coverage); Jordan Graham, *New Baker Bill Allows Uber, Lyft to Operate Legally -- with Insurance*, BOSTON HERALD (Apr. 24, 2015), archived at <https://perma.cc/63QU-BXYM> (describing the law as ensuring customer safety and reliable travel choices).

¹⁵⁸ See MASS. GEN. LAWS ch. 159A½, § 4 (3)(b) (requiring TNCs to apply to obtain a permit to operate in Massachusetts). "A transportation network company shall apply for a permit to be issued and annually renewed by the division. No transportation network company shall operate without a permit issued to it by the division." *Id.*

¹⁵⁹ See MASS. GEN. LAWS ch. 159A½, § 4 (3)(c) (allowing TNCs to obtain or renew permits only if their practices are in the public interest).

with insurance coverage requirements and all other laws and regulations for TNC vehicles and drivers.¹⁶⁰ TNCs must ensure their drivers have completed a background check and have a clearance certificate, and that they are a suitable driver with a TNC driver certificate.¹⁶¹ A surcharge is also assessed on each TNC based on how much they report annually in operating revenues.¹⁶²

1. Regulation of Rides and TNC Vehicles; Accommodations for Individuals with Disabilities and Service Animals

The new regulations require the TNC network to explain the total cost of the ride in itemized format before the ride begins.¹⁶³ Fare estimates provided to riders must include any surge pricing and any high demands times or increased volume of TNCs ride requests and how increased volume and high demands will affect pricing.¹⁶⁴

¹⁶⁰ See MASS. GEN. LAWS ch. 159A½, § 4 (3)(c)(i) (describing the minimum requirements for each TNC applicant).

At a minimum, each applicant for a permit shall verify the following: (i) that the applicant has an oversight process in place to ensure that the applicant and every transportation network driver using the transportation network company's digital network possesses adequate insurance coverage, as required by this chapter and section 228 of chapter 175, and otherwise complies with all laws, rules and regulations concerning transportation network vehicles and drivers . . .

Id.

¹⁶¹ See MASS. GEN. LAWS ch. 159A½, § 4 (3)(c) (regulating TNCs and defining the requirements TNCs must oversee for their drivers). TNC drivers who hold a vehicle that is registered out of state license are not disqualified from obtaining a TNC Driver suitability certificate. *Id.* at § 4 (4)(b)(ii). “[A]nd that the applicant has an oversight process in place to ensure that transportation network drivers with vehicles registered outside of the commonwealth meet the requirements of 207 this chapter.” *Id.* at § 4 (3)(c)(x).

¹⁶² See MASS. GEN. LAWS ch. 159A½, § 2 (23)(b) (assessing a surcharge on each transportation network company in proportion to how much the company reports for its annual Massachusetts operating revenues).

¹⁶³ See MASS. GEN. LAWS ch. 159A½, § 4 (3)(c)(iii) (stating that pricing the ride must not be excessive.) “[T]he digital network used by the applicant to pre-arrange rides employs a clear and conspicuous explanation of the total cost and pricing structure applicable to each pre-arranged ride before the ride begins . . .” *Id.*

¹⁶⁴ See MASS. GEN. LAWS ch. 159A½, § 4 (2)(d) (requiring clear and conspicuous itemization of costs per ride).

Fares are not to be raised during states of emergency.¹⁶⁵ There is explicit language in the law that requires that riders with special needs are accommodated.¹⁶⁶ The TNC network is also required to supply a driver's name, picture and license plate number for each prearranged ride.¹⁶⁷

2. Maintenance of TNC Driver List and Reporting Requirement for TNCs

Each TNC is required to maintain a list of TNC certified drivers, keeping it updated with a driver's background check clearance certificate and TNCs are required to turn over that list to the registry of motor vehicles and state and local law enforcement upon request.¹⁶⁸ TNCs are required to report TNC drivers to the Department

¹⁶⁵ See MASS. GEN. LAWS ch. 159A½, § 4 (2)(e) (restricting increased pricing during Governor declared state of emergencies).

¹⁶⁶ See MASS. GEN. LAWS ch. 159A½, § 4 (3)(c)(vi) (requiring that TNCs accommodate users with disabilities by having wheelchair accessible vehicles in all areas where TNCs operate, non-discrimination practices against both riders and potential riders, and accommodations for service animals).

The division shall ensure the accommodation of riders with special needs. A transportation network company shall not impose additional charges or increase fares when providing services to persons with disabilities and all transportation network drivers shall comply with applicable laws, rules and regulations relating to the accommodation of service animals.

MASS. GEN. LAWS ch. 159A½, § 4 (2)(g).

¹⁶⁷ See MASS. GEN. LAWS ch. 159A½, § 4 (2)(i) (demanding that a TNC provides a driver's name, picture and the license plate number of the vehicle that was arranged on the TNC network for a pre-arranged ride).

¹⁶⁸ See MASS. GEN. LAWS ch. 159A½, § 4 (2)(l) (stating the reporting requirement for TNCs to report violations by their drivers).

A transportation network company shall notify the division upon receipt of information that a driver utilizing its network has violated a law or rule or regulation related to the provision of transportation network services or that the driver is not suitable to provide transportation network services.

Id.

of Utilities Division if the driver has violated any law or regulation.¹⁶⁹ If there has been a violation by a TNC driver, the division will immediately revoke or suspend the background check clearance certificate and will notify the TNC driver.¹⁷⁰ The department is required to come up with a process for a TNC driver to appeal the revocation or suspension of the suitable driver certificate and background

See also MASS. GEN. LAWS ch. 159A½, § 3(c)(vii) (indicating that TNC applicants provide roster information to appropriate law enforcement agencies). Additionally, the statute states to:

. . . maintain and update, pursuant to regulations promulgated by the division, a roster of each transportation network driver certified by the applicant to provide pre-arranged rides using the transportation network company's digital network; (2) upon request and with appropriate legal process, provide those rosters to the division, the registry of motor vehicles and to state and local law enforcement; (3) maintain and update those rosters as required by the division; (4) comply with all requests for information from the division regarding the roster, including verification of completion of a background check as required pursuant to clause (ii).

Id.

¹⁶⁹ *See* MASS. GEN. LAWS ch. 159A½, § 4 (2)(1) (requiring TNCs to notify the division upon a TNCs driver's violation of a law, rule or regulation and to notify the division if such driver is not suitable to provide TNC services).

¹⁷⁰ *See* MASS. GEN. LAWS ch. 159A½, § 4 (3)(d) (describing the process of screening applicants).

After obtaining the information required under clause (ii) of subsection (c) of section 4, the division shall determine whether the driver applicant has committed an offense that would disqualify the driver applicant from providing transportation network services, according to the division's rules, orders and regulations. The division shall determine if the driver applicant is suitable and, if determined to be suitable, shall provide the transportation network company and the driver applicant with a background check clearance certificate. The division shall conduct a background check pursuant to clause (ii) of subsection (c) of section 4 not less than annually. If the division finds that a driver is not suitable under the annual background check, the division shall notify the driver and each relevant transportation network company that the background check clearance certificate is revoked or suspended.

Id.

check clearance certificate.¹⁷¹

3. TNCs Ability to Use the Taxi Lane at the Airport

Previously, TNC vehicles were not permitted to use the taxicab lane at the airport.¹⁷² Massachusetts Port Authority legislation did not permit TNC vehicles to use the taxicab lane at the airport previously, since that lane was dedicated to registered livery vehicles.¹⁷³ The new legislation does not explicitly restrict TNC vehicles from picking up and dropping off passengers but instead, the legislation leaves the decision up to the Massachusetts Port Authority to make rules and regulations to allow TNCs to use the taxi lane at the airport.¹⁷⁴

¹⁷¹ See *id.* at ch. 159A½, § 4(2)(m) (stating that the division shall issue rules and regulations to establish a process for a driver to appeal a revocation or suspension. The rules or regulations shall include an opportunity for a hearing).

¹⁷² See Adam Vaccaro, *A new law would thwart Uber's quest to allow more drivers at Logan Airport: The ride-for-hire service has still been able to dispatch drivers despite a Massport ban*, BOSTON.COM (Mar. 24, 2016), available at <https://www.boston.com/news/business/2016/03/24/uber-is-already-banned-from-logan-airport-sort-of> (establishing that TNCs could not use the taxi lane at the airport).

¹⁷³ See *First Statewide Mass. TNC Bill Is a Considerable NELA Win*, CHAUFFEUR DRIVEN (Aug. 9, 2016), archived at <https://perma.cc/8T42-69SM> (stating that the Massachusetts Port Authority does not restrict TNCs at any state airport).

Besides, Szilagyi says that NELA hasn't "lost the Logan Airport battle yet," as Massachusetts Port Authority (or Massport), which owns and operates three Massachusetts airports, including Logan, is not currently restricting TNC activity to and from them—but the port authority does have a decision to make in terms of operating authority.

Id.

¹⁷⁴ See MASS. GEN. LAWS ch. 159A½, § 10 (outlining the Massachusetts Port Authority's ability to regulate livery vehicles).

IV. Analysis

Overall, the four bills contained similarities on how to properly regulate TNCs.¹⁷⁵ The goals of the bills were to strike a balance between taxicab drivers remaining in the market and the regulation of TNCs to protect passengers.¹⁷⁶ These efforts are not sufficient to level the playing field for taxicab drivers; TNCs provide efficiency and speed, which is unmatched by taxicab drivers.¹⁷⁷ Traditional taxicab drivers will continue to be forced out of the market, and this legislation will not delay the inevitable.¹⁷⁸ Although this legislation does remedy many of the safety concerns for TNC passengers, it does not do enough to prevent potential issues that could arise from the constant offering of new services.¹⁷⁹

The Massachusetts Port Authority, established in section 2 of chapter 465 of the acts of 1956, may not permit a transportation network vehicle that is not registered as a livery vehicle to accept a prearranged ride through a digital network at the General Edward Lawrence Logan International Airport terminal until such time as the authority promulgates rules for the operation of transportation network vehicles, consistent with federal regulations, to ensure the safety of passengers and effective operation of transportation services to and from the airport.

Id. See also *First Statewide Mass. TNC Bill Is a Considerable NELA Win*, *supra* note 173 (stating that the Massachusetts Port Authority has the authority to decide whether or not TNCs can operate at Massachusetts airports).

¹⁷⁵ See MASS. GEN. LAWS ch. 159A½, § 4 (defining Transportation Network Companies). “[A TNC is] a corporation, partnership, sole proprietorship or other entity that uses a digital network to connect riders to drivers to pre-arrange and provide transportation.” *Id.*

¹⁷⁶ See Rosenberg, *supra* note 5 (attempting to regulate the TNCs in a similar fashion to how taxicabs have been regulated in the past, striving to make it more fair for taxicab drivers to remain in the market by regulating TNCs similarly).

¹⁷⁷ See Boroyan, *supra* note 72 (describing the lack of regulation for the constant offering of new services and how these new services could put consumer and passenger safety at risk).

¹⁷⁸ See adamg, *supra* note 72 (referencing the lawsuit filed by Boston taxi drivers who claimed the ride sharing service companies have an unfair advantage in the market since they do not face the same regulation as traditional taxicab service drivers); see also Boroyan, *supra* note 72 (citing the City of Boston rules and regulations for hackney carriage holders, which TNCs operate outside of due to their self-proclaimed status as “technology companies” and “internet companies” operating under legal gray areas).

¹⁷⁹ See Vaccaro, *supra* note 172 (cautioning that the legislation is not perfect). *But see* Rosenberg, *supra* note 5 (highlighting the innovation of the legislation).

A. *Importance of the Legislation*

This legislation established the status of companies like Uber and Lyft as Transportation Network Companies.¹⁸⁰ These companies did not recognize themselves as transportation providers; rather, they consider themselves technology companies.¹⁸¹ Uber considered itself to be a technology company¹⁸² and Lyft claimed it was an Internet site protected by section 230 of the Communications Decency Act.¹⁸³ By establishing that these companies are in fact Transportation Network Companies, they are now subject to regulation similar to the

¹⁸⁰ See MASS. GEN. LAWS ch. 159A½, § 4 (defining transportation network companies); see also *Boston*, *supra* note 18 (describing Uber's claim for their status as a transportation "matcher" between drivers and passengers and nothing more).

¹⁸¹ See MASS. GEN. LAWS ch. 159A½, § 4 (inferring that Uber, Lyft and Sidecar are Transportation Network Companies and not technology companies).

¹⁸² See Blackbourn, *supra* note 71 (discussing how ride-sharing services are currently regulated and how the proposed legislation in Massachusetts could change that); Ward, *supra* note 17 (citing the legislation that currently regulates Lyft as a technology company); see also *Boston*, *supra* note 18 (stating that "Uber is not a transportation provider... all tolls are charged at commercial rates regardless of the amount actually paid, go to your transportation provider, and are not retained by Uber."); CDA 230, *supra* note 72 (describing the Rule 403 loophole technology companies are using to avoid being labeled as taxis).

¹⁸³ See CDA 230, *supra* note 72 (describing the loophole in which the ride-sharing services are currently operating under which prevents them from being regulated as taxis). Lyft claims it is an Internet site and protected by section 230 of the Communications Decency Act, which states, "no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." *Id.*

regulations of taxi and livery services and not technology companies.¹⁸⁴ The legislation requires background checks,¹⁸⁵ that driver information be collected in a database,¹⁸⁶ and mandatory markings¹⁸⁷ that allow passengers to see the company that the driver works for.¹⁸⁸

B. Drivers as Employees or Subcontractors

This legislation had the ability to label drivers of TNCs as subcontractors as was held in the taxicab case.¹⁸⁹ Transportation Network Companies do not consider their drivers to be employees; instead, the companies view themselves as passive in the operations that provide passengers with a driver and a ride to their destination and claim they are only “act[ing] as an intermediary” . . . allowing

¹⁸⁴ See MASS. GEN. LAWS ch. 159A½, § 7 (establishing a task force to review laws regulating taxis and transportation network companies to make recommendations for public safety); see also *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (inferring that the TNCs are subject to regulation under the Department of Public Utilities, similar to regulations imposed upon taxis).

¹⁸⁵ See MASS. GEN. LAWS ch. 159A½, § 1(33) (creating a division within the Department of Public Utilities to establish rules and regulations for transportation network service companies and drivers). The legislation also gives authority to the Department of Public Utilities to obtain all criminal offender record information to determine if an applicant is suitable to obtain a transportation network driver certificate. *Id.* See also Schoenberg, *supra* note 112 (stating that new regulations are imposed on ride-sharing services require background checks, but are still less strict than taxi regulations); see also *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (giving the Department of Public Utilities the authority to regulate TNCs).

¹⁸⁶ See MASS. GEN. LAWS ch. 159A½, § 3 (c)(vii) (stating the reporting requirement for TNCs to report violations by their drivers).

¹⁸⁷ See MASS. GEN. LAWS ch. 159A½, § 4(2)(b) (requiring removable decals to be affixed to the front and rear of the Transportation Network Vehicle while the vehicle is engaged in transportation network services); see also Schoenberg, *supra* note 112 (indicating the requirement of decals without the need for commercial license plates).

¹⁸⁸ See Schoenberg, *supra* note 112 (explaining how passengers are able to vet their Uber drivers).

¹⁸⁹ See *O'Connor*, 82 F.Supp 3d at 1135 (outlining the claim brought by Uber drivers alleging they were employees). The court held that taxicab drivers are presumptively employees, and the dispute as to whether they are employees or subcontractors is a question of fact for the jury. *Id.* at 1145. See also Ward, *supra* note 17 (highlighting how the TNC's do not view drivers as employees).

two individuals to connect.”¹⁹⁰ The legislation had the ability to prevent litigation over the status of TNC drivers, but chose to remain silent on the issue.¹⁹¹

C. Legislation and Consumer Concerns

Investors¹⁹² and consumers¹⁹³ have been supportive of TNCs in the Commonwealth and some of the consumer concerns have been addressed by the new legislation.¹⁹⁴ While the support of consumers should be applauded, their concerns should also be addressed, which the legislation somewhat succeeds in doing.¹⁹⁵ The legislation requires drivers to be licensed by the state in which they operate.¹⁹⁶ The importance of TNC drivers having a state issued certificate to operate is highlighted by the question of, “would you like to have an

¹⁹⁰ See Ward, *supra* note 17 (analyzing the legal gray area in which Uber operates and citing Uber’s claims that their drivers are subcontractors and not employees); Our Story, *supra* note 15 (thanking customers for over a billion connections).

¹⁹¹ See Ward, *supra* note 17 (highlighting how the TNC’s do not view drivers as employees).

¹⁹² See Boroyan, *supra* note 16 (citing the statistics that reveal the continued support for TNCs, specifically Uber). Investors are continuing to finance the companies helping to provide them with the funding to pilot new programs. Uber raised \$258 million during the past year, one provider of funding was Google Ventures. *Id.* Sidecar also received \$10 million in financing from Google ventures and Lyft, and has received similar funding, raising, \$82 million. *Id.*

¹⁹³ See Boroyan, *supra* note 16 (stating the number of Uber drivers in Boston).

With almost 10,000 drivers, Boston is Uber’s sixth largest U.S. market; when compared to the only 1,825 licensed cabs in Boston, that number looks even more impressive. However, Uber’s largest market, Los Angeles, more than doubles the size of the hub’s Uber fleet, with more than 20,000 partner driver signed up.

Id.

See also Justin L, *supra* note 37 (showing how Uber gives back to its supporters by offering reduced fares for their continued support). In an email dated October 27, 2015 Uber offered \$4 rides from 4-8pm as a “thank you” for continued support. *Id.*

¹⁹⁴ See Justin L, *supra* note 37 (illustrating the correlation between more consumers and an increased Uber presence in Boston).

¹⁹⁵ See Rosenberg, *supra* note 5 (citing the success of the new bill).

¹⁹⁶ See MASS. GEN. LAWS ch. 159A½, § 3 (determining if drivers are suitable applicants to obtain a transportation network driver certificate.)

unlicensed pharmacist or doctor? It's along the same lines."¹⁹⁷ By requiring drivers to be registered with the state and to go through a process to receive a certificate to operate as a TNC driver, this also allows the Department of Transportation to review drivers' national and state backgrounds, including driving histories and would also provide an in-state residence if the driver ever needed to be located.¹⁹⁸

1. Protection of the Rights of Individuals with Disabilities

The legislation provides protections for individuals with disabilities.¹⁹⁹ The legislation requires that the TNCs have vehicles readily available to accommodate those with disabilities.²⁰⁰ These accommodations for passengers with disabilities requiring additional space or wheelchair accessible vehicles is also a requirement found in the regulation of the city of Boston Hackney carriage license holders.²⁰¹

¹⁹⁷ See Ward, *supra* note 17 (quoting Los Angeles lawyer and prior San Francisco Taxi Commission's executive director Jordanna Thigpen).

¹⁹⁸ See MASS. GEN. LAWS ch. 159A½, § 3 (creating a division within the Department of Public Utilities to establish rules and regulations for transportation network service companies and drivers). The legislation also gives authority to the Department of Public Utilities to obtain all criminal offender record information to determine if an applicant is suitable to obtain a transportation network driver certificate. *Id.* See also *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (describing the bill as having regulatory authorities over TNCs); Schoenberg, *supra* note 112 (noting new fees and requirements imposed on ride-sharing services, although these regulations are not as severe as those faced by taxi drivers).

¹⁹⁹ See MASS. GEN. LAWS ch. 159A½, § 4(c)(vi) (indicating that accommodations for users with disabilities include: having wheelchair accessible vehicles in all areas where TNCs operate, and accommodations for service animals).

²⁰⁰ See *id.* (requiring that TNC vehicles accommodate passengers or potential passengers with disabilities).

²⁰¹ See *Hackney Carriage Rules and Regulations*, *supra* note 73 at 25 (citing the anti-discrimination clause). "A Hackney Carriage Driver may not refuse any passenger on the basis of race, sex, religion, disability, sexual orientation, national origin, or location of the passenger's pick-up or destination in any circumstance." *Id.*

2. Insurance Coverage

There have been issues where there have been gaps in the insurance policy coverage of TNC drivers.²⁰² In the state of Massachusetts, a personal auto insurance policy may not be used to cover motor vehicle accidents that were a result of commercial driving.²⁰³ Since TNC drivers use their personal vehicles and have personal auto insurance policies, when they are driving passengers for Uber, as soon as they pick up a passenger, their personal auto insurance policy does not cover the ride.²⁰⁴ Insurance policies that allow both personal and commercial driving are not currently available in the state of Massachusetts.²⁰⁵ This is a huge concern for passengers as well as TNCs driver who may be required to pay out of pocket for damages sustained as a result of a motor vehicle collision while driving a passenger.²⁰⁶ The legislation requires mandatory insurance coverage for

²⁰² See MASS. GEN. LAWS ch. 175, § 228(e) (illustrating TNC's requirement for providing insurance regardless of any lapse); *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (implying the consequences of the lack of coverage will be suffered by both passengers and drivers in TNCs); see also Graham, *supra* note 157 (arguing that a diverse transportation network is in the interest of travelers).

²⁰³ See *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (pointing out the proposed bill's sections on required insurance policy coverage for drivers and the requirement that the TNC's have insurance coverage to pick up any gaps in TNC driver coverage).

²⁰⁴ See Ward, *supra* note 17 (noting the opinion of those who believe TNCs have a passive role and should not be required to have additional insurance coverage when there is a gap in their TNC driver's automobile policies).

²⁰⁵ See Ward, *supra* note 17 (highlighting the increased risks for TNC passengers since TNCs are not regulated by Massachusetts law or by the cities and towns within Massachusetts in which they operate).

²⁰⁶ See Ward, *supra* note 17 (arguing TNCs are just matchmakers for drivers and passengers and act in a passive manner). Some have denied that TNCs should also be responsible for a lack of insurance coverage if a TNC driver's coverage lapses or does not have the required amount. *Id.* In a recent case in San Francisco Superior Court, involving a personal injury suit, the court stated:

[a]n Uber in-house lawyer asked Atkinson to let the business out of the action, and compares the TNC business to Facebook. If you arranged a ride with a Facebook friend and got in an accident, Atkinson says the Uber Lawyer told him, the social media site would not be liable.

TNC drivers, and this recognition of TNCs allows TNC rides to be covered by insurance policies, which benefits and protects other drivers on the road, passengers of TNCs, and drivers of TNCs.²⁰⁷

3. Clearly Marked Vehicles

The legislation requires TNC vehicles to be clearly marked with a label stating which company the TNC driver is associated with.²⁰⁸ The decals will help to prevent the frequent mishap where a passenger assumes a vehicle is his or her TNC ride and enters a non-TNC vehicle mistakenly.²⁰⁹ This regulation is also intended to make it more difficult for a non-TNC driver to imitate TNC drivers and pick up unsuspecting passengers.²¹⁰

D. Taxicab Drivers' Concerns with the Regulation of TNCs

The legislation protects consumers by controlling fare rates and restraining surge pricing to certain times.²¹¹ The legislation

Id. Some argue that TNCs only match passengers and drivers and do nothing more. *Id.* Others believe the TNCs have more of an active role and should be responsible for gaps in their driver's insurance policies. *Id.* This debate goes back to the fundamental issue of the role of the TNCs in relation to the TNC drivers and the TNC driver's status as employees or subcontractors. *Id.*

²⁰⁷ See MASS. GEN. LAWS ch. 175, § 228(e) (mandating insurance coverage for all lapses in insurance); see also *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (describing liability and coverage requirements for TNCs and their drivers); Graham, *supra* note 157 (showing how transportation is embracing innovation).

²⁰⁸ See MASS. GEN. LAWS ch. 159A½, § 2(b) (requiring removable decals to be affixed to the front and rear of the Transportation Network Vehicle while the vehicle is engaged in transportation network services).

²⁰⁹ See Picchi, *supra* note 122 (implying the importance of having TNC drivers' information in an easy accessible in-state database in the hands of the Department of Transportation to prosecute such perpetrator).

²¹⁰ See Picchi, *supra* note 122 (citing cases where TNC passengers have been victims of crimes committed).

²¹¹ See MASS. GEN. LAWS ch. 159A½, § 4(3)(c)(iv) (pricing the ride must not be excessive). “. . . [T]he digital network used by the applicant to pre-arrange rides employs a clear and conspicuous explanation of the total cost and pricing structure applicable to each pre-arranged ride before the ride begins . . .” *Id.* at ch. 159A½, § 4(3)(c)(iii); see also Diakopoulos, *supra* note 21 (studying Uber's policy on surge pricing and providing a case study on the practice and the actual effects of the increased price causing drivers to enter the high demand neighborhood rather than encouraging more drivers to get on the road).

requires the estimated cost of the fare to be provided before the passenger enters the vehicle, and for the surge pricing to not occur during a time of state of emergency.²¹² By providing more transparency in the area of surge pricing, this will be one less area that taxicab drivers will bring complaints against TNCs for unfair business practices.²¹³

E. Benefits of Ride-Sharing Services

It is not disputed that ridesharing services provide a quick and efficient way to get a ride and are constantly offering new services, which is unmatched by traditional driving services.²¹⁴ These companies not only provide rides, but additional services that not only deliver people to their destination, but goods and services as well.²¹⁵ Some of these services include delivering clam chowder, offering flu shots by registered nurses, providing mentor trading from company executives, allowing passengers to donate to causes such as (RED) and veterans programs.²¹⁶ With these new services come new responsibilities and regulations should be put in place to protect consumers.

F. The Legislation Needs to Do More

With all the positives stemming from the legislation and the many problems it seeks to remedy, the legislation still needs to do

²¹² See MASS. GEN. LAWS ch.159A½, § 4(2)(e) (restricting surge pricing to be put in place by TNCs during a declared state of emergency).

²¹³ See *Boston Cab Dispatch, Inc.*, 2015 U.S. Dist. LEXIS 8508, at * 1-2 (citing the Plaintiff's claim against Uber for unfair business practices as a result of taxicab drivers facing lower profits).

²¹⁴ See Justin L, *supra* note 32 (describing the various additional services provided by Uber).

²¹⁵ See Justin L, *supra* note 32 (highlighting the pilot programs Uber has recently launched).

²¹⁶ See *UberCHOWDER*, *supra* note 32 (citing the New England clam chowder delivery service); Justin L, *supra* note 32 (highlighting the mentorship program, which included a free fifteen minute session with an Uber executive); Verena, *supra* note 32 (describing the free flu shot with a registered nurse program); *Uber + (RED)*, *supra* note 31 (citing the program that allowed Uber users to give donations to the RED cause which fights against AIDS); Justin L, *supra* note 40 (highlighting the uberPOOL service provided for New Year's Eve, which provided trolleys for groups of people at a set rate of \$5 per person).

more; however, there are great challenges in regulating TNCs due to the constant innovation and the increase in new services they provide.²¹⁷ Uber, Lyft and Sidecar do more than just deliver passengers, they have begun to offer new programs that deliver goods and services, piloting new services constantly.²¹⁸ These services are completely left out of the legislation.²¹⁹ By not regulating the offering of new services, it can be seen as a way to not constrict or constrain TNCs from growing, but it is an area that could deserve increased consumer protection when it is offering medical services such as providing flu shots to passengers and handling shellfish food products, and this is where the legislation falls short.²²⁰

1. Delivering Clam Chowder

Uber offered a promotional service where they delivered clam chowder from Legal Seafood.²²¹ Although this may seem like a great idea, issues concerning the transportation of seafood products in proper temperatures, and the handling of food without contamination to prevent people from getting sick is a huge concern.²²² The legisla-

²¹⁷ See *UberCHOWDER*, *supra* note 32 (citing the expansion of delivery services); Justin L, *supra* note 32 (highlighting the enhanced mentorship program); Verena, *supra* note 32 (describing the medical service program); Uber + (RED), *supra* note 31 (emphasizing the RED donation program); Justin L, *supra* note 40 (describing the uberPOOL New Year's Eve service).

²¹⁸ See Boroyan, *supra* note 72 (inferring that Uber's continued growth and innovation will cripple taxi medallion values).

²¹⁹ See Ward, *supra* note 17 (noting how Lyft considers itself immune from liability under Section 230 of the Communications Decency Act).

²²⁰ See *UberCHOWDER*, *supra* note 32 (stating the pilot program Uber offered allowed app users to have clam chowder delivered to them); Verena, *supra* note 32 (describing the free flu shot with a registered nurse program).

²²¹ See *UberCHOWDER*, *supra* note 32 (citing the New England clam chowder delivery service). The promotional delivery also provided that for every bowl of clam chowder purchased, Uber and Legal Sea Foods would each donate \$1.00 to the Greater Boston Food Bank. *Id.* To order the clam chowder there was a restriction of a minimum of two bowls per request and a maximum of six bowls was allowed, each bowl costing \$10.00. *Id.* There was an additional prize called the "The Golden Spoon" where "[f]ive lucky winners will find a Golden Spoon with their chowder, along with \$100 in Uber credit AND a \$100 Legal Sea Foods gift card!" *Id.*

²²² See Rocheleau, *supra* note 6 (highlighting the different food borne illnesses that can result from improper storage of food).

tion needs to address the handling of food products as it would a restaurant or more similarly, a food truck and provide regulation that requires the type of food to be stored at proper temperatures and to be handled with proper care, making sure that the food products are labeled correctly.²²³ If something were to cause a consumer to get sick, the issue of liability would need to be addressed whether the handler of such food product is responsible or the producer of the product is to blame.²²⁴ This should not be left up to TNCs to decide the way they see best to deliver such products.

2. Flu Shots

“On Thursday, we’re bringing house calls back with UberHEALTH across more than 35 US cities.”²²⁵ A “Fluzone” vaccine was provided by a registered nurse from Passport Health for up to ten people at no cost.²²⁶ The nurse was to handle all of the “paperwork and consent forms.”²²⁷ Uber’s pilot program from the previous year was published in the “Annals of Internal Medicine.”²²⁸ By providing more than just delivery of people, there needs to be additional regulation on how much the state is going to allow the TNCs to self-regulate their delivery of goods and services.²²⁹ The legislation should require that the TNC apply for a license 60 days before offering these

²²³ See Rocheleau, *supra* note 6 (stating that food borne illness causing violations were found at 1,350 Boston restaurants in 2014).

²²⁴ See Rocheleau, *supra* note 6 (citing most violations as the result of human error).

²²⁵ See Verena, *supra* note 32 (citing the at home flu shot delivery service Uber piloted the previous year and offered again this year). “From 11 am until 3 pm, [Uber delivered] wellness packs for \$10. If you request and receive a wellness pack, you’ll also have the option to request a free flu shot from a registered nurse for up to ten people.” *Id.*

²²⁶ See Verena, *supra* note 32 (discussing the specifics of how many people per trip can be given a flu vaccination and other restrictions upon the flu delivery service).

²²⁷ See Verena, *supra* note 32 (stating that a nurse will be responsible for consent forms and paperwork).

²²⁸ See Verena, *supra* note 32 (inferring the safety and innovation of the flu shots provided by nurses due to the publication of the service in a journal of medicine).

²²⁹ See *Governor Signs Legislation Supporting Innovative Transportation Options*, *supra* note 149 (citing the current legislation, which does not include additional regulation).

new services.²³⁰ In order for a TNC to provide a new service, the TNC should be required to write a description of: the new service, how it will be offered, and the precautions that would be put in place.²³¹ Once this description has been submitted, the proper state department should conduct an investigation into the new proposed service to make sure the safety measures are similar to those put in place in the relevant profession that offers that service.²³² For example, if a TNC is delivering a nurse to a consumer to provide a flu shot or vaccination, there needs to be oversight by the state, to make sure the nurse is properly registered and that he or she has the proper license while they are administering such shots or vaccinations.²³³

G. Impersonating a TNC Driver Should be a Crime

The legislation needs an additional section making it illegal to impersonate a TNC driver, the consequence being a fine or jail time.²³⁴ This additional regulation would deter individuals from luring unsuspecting individuals into their vehicles claiming they are “Uber drivers” or TNC drivers.²³⁵ There have been many instances of non-TNC drivers claiming to be TNC drivers, getting passengers into their motor vehicles under such misrepresentation, which was used as a way to gain the passenger’s trust in order to commit a crime.²³⁶ By setting the standard in making it illegal to do so, this will hopefully deter individuals from using TNCs as a way to take advantage of passengers.

²³⁰ See Governor Signs Legislation Supporting Innovative Transportation Options, *supra* note 149 (describing the lack of license requirement in the current legislation).

²³¹ See Rocheleau, *supra* note 6 (noting state department investigations are used to prevent and correct infractions).

²³² See Rocheleau, *supra* note 6 (noting state department investigations are used to correct infractions).

²³³ See Verena, *supra* note 32 (describing the importance of making sure nurses are registered within the state they are administering the vaccines).

²³⁴ See Lindsay, *supra* note 6 (describing an alleged assault which occurred when a Holyoke man impersonated an Uber driver).

²³⁵ See Picchi, *supra* note 122 (citing numerous instances of Uber drivers committing crimes against their passengers).

²³⁶ See Lindsay, *supra* note 6 (noting that there may have been other instances of impersonating an Uber driver).

V. Conclusion

The legislation does not do enough to regulate TNCs and completely ignores regulating the constant offering of new services. The legislation makes great strides in making the transportation arena regulation of TNCs similar to that of regulation of traditional livery services. Although the regulation of TNCs and traditional livery services is much more similar than before this legislation, TNCs are too efficient and easy to use that the TNCs will continue to drive out traditional taxicab services out of the market. There are many great ideas in the legislation including creating a database, which will allow accountability for these TCNs drivers if they are involved in crimes and will make it much easier for authorities to investigate by having all of their necessary information. Overall, the legislation would help solve many consumer and passenger concerns, but there is room for improvement.