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CHANGE IS ON ITS WAY

## State Decides To Regulate Ride Share Companies

Fingerprinting Requirements Not Included In Last Year's Regs, But May Still Come To Pass

By [William F. Lyons Jr.](#) | Jan 1, 2017

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After several years of posturing and wrangling, the commonwealth enacted legislation in August to regulate ride sharing companies – also known as Transportation Network Companies (TNCs) – much more closely. Uber and Lyft are the best known TNCs, but there are many more TNCs and the list seems to grow daily. The scope and breadth of this industry is tremendous, with Uber alone worth more than Ford or General Motors by some estimates. With this kind of economic potential, it was only a matter of time before the industry became regulated and taxed. The questions is whether the right regulations were adopted.

The ramifications of these new regulations are just beginning to be felt. A suit filed by the taxi industry against the city of Boston in which they claimed that their equal protection rights were violated because TNCs are not regulated like taxis was dismissed in late December. The court found, correctly, that the new state statute preempted the ability of cities to regulate TNCs. The new statute and the court finding have effectively closed the door on the taxi industry's hopes of having equal treatment for both industries.

The new regulatory framework created by the legislature calls for aggressive background checks to be conducted twice per year (but not including fingerprints), a requirement that Uber has resisted in the past. By some estimates, the background check requirements are the strictest in the nation. While Uber and Lyft have been supportive of the regulation, it remains to be seen whether or not they will react as they did in Austin, Texas, where Uber discontinued service due to a background check requirement.

The absence from the law of fingerprinting for the background checks is noticeable. This particular requirement was omitted, ostensibly at the request of the TNC industry. But safety advocates, such as Boston's police commissioner, argued strongly in favor of fingerprinting. It is widely expected that a fingerprinting requirement will be the subject of a new push in the next legislative session.

In addition to the background check requirement, the legislation establishes that drivers must be at least 21 years of age and the vehicle must have a minimum of \$1 million of insurance. These appear to be very common sense requirements. There is no controversy over these provisions.

## New Taxes On Rides

What is controversial is a new tax imposed on TNC fares. A tax of 20 cents per ride will be imposed on all trips by TNC drivers. The tax will be divided up between taxi drivers, municipalities and the state. For every trip, five cents will go to the Massachusetts Development Finance Authority (MassDevelopment) to help the taxi industry, five cents will go to the state transportation fund and 10 cents will go to the municipality hosting the ride. Notably, the assistance to the taxi industry will sunset in 10 years. In addition, the TNCs are explicitly prohibited from passing along this tax to the drivers or passengers.

On balance, the regulation represents progress for the safety and protection of consumers. Ensuring that serious criminals, especially violent criminals, are not serving as drivers for the TNCs is a very important step forward. In this respect, the taxi industry had a very legitimate complaint about the lack of regulation of TNCs. If TNCs are to compete on an equal footing with taxis, then there should be some measure of parity in the regulation of the two industries. However, the absence of fingerprinting (a requirement for taxi drivers in Boston) is likely to bring calls for fingerprinting in the new year. Adoption of a fingerprinting requirement may ultimately push TNCs out of the state.

The imposition of a new tax is perhaps the most difficult to understand. While the desire to help the taxi industry is admirable, taxing their competition is an unnecessary brake on innovation and simply unfair. We don't tax high tech companies to provide worker retraining or loans for low tech manufacturing. If the state wants to offer these programs, it should have the taxpayer step up. Yes, there are limits to our fiscal resources, but making hard decisions about priorities is what our elected officials are paid to do.

The future of TNCs in Massachusetts is hardly settled. The battle is just beginning. While the taxi industry has lost the first few battles, there is more innovation and evolution coming in the year ahead. Hold on for a bumpy ride.

*William F. Lyons Jr. is president of Fort Hill Cos. of Boston.*

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