

HOUSE No. 3351

The Commonwealth of Massachusetts



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GOVERNOR

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
, MA

KARYN POLITO
LIEUTENANT GOVERNOR

April 27, 2015

To the Honorable Senate and House of Representatives,

I am pleased to submit for your consideration, “An Act Establishing Department of Public Utilities Oversight of Transportation Network Companies.”

This legislation empowers the Department of Public Utilities (“DPU”) to provide comprehensive regulation of Transportation Network Companies (“TNC’s”), such as Uber, Lyft and Sidecar.

TNC’s deliver an innovative and important method of transporting customers—through state-of-the-art technology platforms, the TNC’s connect drivers willing to use their private vehicles to carry passengers who initiate requests for service by way of apps on their cell phones.

TNC’s allow hundreds of individuals to work on a part-time basis and provide valuable transportation services to our citizens. At the same time, however, the Commonwealth must take prudent steps to protect the safety of the TNC’s passengers and other motorists on Massachusetts roadways.

Accordingly, this bill requires that TNC’s be regulated by the DPU; and ensures that TNC’s drivers will be: 21 years of age, subject to comprehensive background checks (including checks of criminal records, sex offender records, and driving records), carry adequate insurance (including \$1,000,000 per occurrence in coverage for death, bodily injury and property damage while responding to a request for service and while a passenger is in the vehicle), drive vehicles

that have been properly inspected, provide transparent pricing to customers, and display recognizable external markers on vehicles.

The bill also provides that the regulatory scheme will be funded fully by the TNC's and that the DPU may issue regulations (including fines for violations) to enforce the provisions of the law. During the regulatory process the DPU shall seek input from numerous state agencies and municipalities, and the legislation provides for the creation of a local advisory counsel of five members (including one each from Boston, Somerville and Cambridge) to advise the DPU on an ongoing basis.

The law provides a period of six months from enactment to implementation of the permitting requirements to allow the DPU to create the detailed regulatory framework.

This bill balances supporting the TNC's innovative technology platform while protecting the public's safety and convenience. I urge your prompt enactment of this legislation.

Sincerely,

Charles D. Baker,
Governor

HOUSE No. 3351

Message from His Excellency the Governor recommending legislation relative to Establishing Department of Public Utilities Oversight of Transportation Network Companies.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act Establishing Department of Public Utilities Oversight of Transportation Network Companies.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to establish a framework to oversee transportation network companies that establishes safety and consumer protections, a framework which is immediately needed for public safety and marketplace fairness, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (a) of section 172 of chapter 6 of the General Laws, as amended
2 by section 3 of chapter 10 of the acts of 2015, is hereby amended by inserting after clause (32)
3 the following clauses:–

4 (33) A municipal licensing authority with jurisdiction over livery licensure shall have
5 access to all available criminal offender record information to determine the suitability of any
6 applicant for livery licensure.

7 (34) The department of public utilities shall have access to all available criminal offender
8 record information to determine the suitability of an applicant for a motor bus driver certificate

9 pursuant to section 9 of chapter 159A or to determine the suitability of an applicant to become a
10 transportation network driver pursuant to section 11G of chapter 159A.

11 SECTION 2. Chapter 25 of the General Laws is hereby amended by inserting after
12 section 18A the following section:–

13 Section 18B. The department may make an assessment against each transportation
14 network company under the jurisdictional control of the department pursuant to sections 11C
15 through 11N of chapter 159A. Each transportation network company shall annually report by
16 March 31 its intrastate operating revenues for the previous calendar year to the department. Any
17 assessment shall be apportioned according to each transportation network company’s intrastate
18 operating revenues as shall be determined and certified annually by the department as sufficient
19 to reimburse the commonwealth for funds expended for the oversight of transportation network
20 companies. If a transportation network company fails to report its intrastate operating revenues
21 to the department, the department shall be permitted to estimate the company’s intrastate
22 operating revenues for purposes of apportioning the assessment.

23 Each transportation network company shall pay the amount assessed against it within 30
24 days after receipt of the notice of assessment from the department. The failure to pay the amount
25 assessed within that timeline may, at the discretion of the department, constitute cause to suspend
26 or revoke a transportation network permit pursuant to section 11F of chapter 159A.

27 Any funds unexpended in any fiscal year for the purpose for which such assessments
28 were made shall be credited against the assessment to be made the following fiscal year and the
29 assessment in the following fiscal year shall be reduced by any such unexpended amount.

30 SECTION 3. Chapter 159A of the General Laws is hereby amended by inserting after
31 the section 11B the following 12 sections:

32 Section 11C. The following words and phrases used in this section through section 11O
33 of this chapter shall have the following meanings, unless the context clearly requires otherwise:

34 “Department,” the department of public utilities.

35 “Prearranged Ride,” a period of time that begins when a transportation network driver
36 accepts a requested ride through a digital network, continues while said driver transports the
37 transportation network company rider, and ends when said rider departs from the vehicle.

38 “Transportation Network Company,” a corporation, partnership, sole proprietorship or
39 other entity, operating in the Commonwealth that uses a digital network to connect riders to
40 drivers for the purposes of pre-arranging and providing transportation.

41 “Transportation Network Company Permit” or “Permit,” a document that may be issued
42 by the department to a qualifying transportation network company under section 11F of this
43 chapter, effective for a period of two years. A Transportation Network Company shall not be
44 deemed to control, direct or manage the Vehicles or Transportation Network Drivers that connect
45 to its digital network, except where agreed to by written contract.

46 “Transportation Network Driver,” a driver certified by a transportation network company
47 pursuant to section 11G.

48 “Transportation Network Driver Certificate,” a certificate issued by a transportation
49 network company pursuant to section 11G, effective for a period of one year, and which may be
50 provided in an electronic form.

51 “Transportation Network Rider” or “Rider,” a passenger in a pre-arranged ride provided
52 by a transportation network driver, provided that the passenger personally arranged the ride or an
53 arrangement was made on his behalf.

54 “Transportation Network Services” or “Services,” the offering or providing of pre-
55 arranged rides for compensation or on a promotional basis to riders or prospective riders through
56 the transportation network company’s digital network, covering the period beginning when a
57 transportation network driver is logged onto the transportation network company’s digital
58 network and is available to receive a prearranged ride or while in the course of providing a
59 prearranged ride.

60 “Vehicle,” a vehicle that is used by a transportation network driver to provide
61 transportation network services.

62 Section 11D. The department shall have general supervision of all transportation
63 network companies and the manner in which transportation network services are provided with
64 reference to the safety and convenience of the public, as expressly set forth in sections 11C
65 through 11N of this chapter. Notwithstanding any other provision of general or session law,
66 transportation network companies are not subject to the department’s rate or common carrier
67 requirements, other than those expressly set forth in sections 11C through 11N of this chapter,
68 nor are transportation network companies subject to any other provision of this chapter, other
69 than those expressly set forth in sections 11C through 11N.

70 Section 11E. (a) No transportation network company shall operate in the Commonwealth
71 without a permit issued to it by the department.

72 (b) No transportation network driver shall provide transportation network services unless,
73 said driver: (i) is affiliated with a transportation network company that holds a permit issued to it
74 by the department; (ii) has been determined to be suitable to provide transportation network
75 services by the department; (iii) holds a current and valid transportation network driver
76 certificate issued to him by a transportation network company identifying him as a transportation
77 network driver; (iv) uses a vehicle that is listed on his transportation network driver certificate
78 and bears the recognizable external marker required by subsection (f) of section 11H; and (v)
79 carries the proof of insurance required by subsection (d) of section 11H.

80 Section 11F. (a) A transportation network company shall apply for a permit to be issued
81 by the department.

82 (b) At minimum, and subject to such other requirements as the department may establish
83 by regulation, no application for a permit may be granted unless the department determines that
84 the rendering of transportation network services by the applicant is consistent with the public
85 interest; and that the applicant is fit, willing and able to perform such service. In addition, each
86 applicant for a permit must meet the following requirements:

87 (1) Adequate insurance as set forth in section 11H of this chapter.

88 (2) Driver background checks.

89 (i) The transportation network company shall not allow the provision of transportation
90 network services by any driver who has not been determined to be suitable to provide
91 transportation network services through the process set forth in section 11G of this chapter.

92 (ii) The transportation network company shall submit a verification setting forth, in
93 detail, its background check process under clause (2)(i) of subsection (b) of section 11G of this
94 chapter.

95 (3) Vehicle safety. Each vehicle used to provide transportation network services shall be
96 inspected yearly through a process approved by the department pursuant to section 11G of this
97 chapter.

98 (4) Transparent pricing. The digital network used by the transportation network company
99 to pre-arrange rides must have a straightforward explanation of the total cost or pricing structure
100 applicable to each pre-arranged ride before such ride begins.

101 Section 11G. (a) A driver who seeks to be affiliated with a transportation network
102 company shall apply to a transportation network company for a transportation network driver
103 certificate.

104 (b) At minimum, and subject to such other requirements as the department may establish
105 by regulation, the following requirements must be met before a transportation network company
106 may issue a transportation network driver certificate to an applicant for said certificate:

107 (1) The driver shall be at least 21 years of age.

108 (2) The driver shall be determined to be suitable to perform transportation network
109 services on the basis of the following, two-part background check process:

110 (i) The transportation network company shall conduct a background check of each
111 applicant that includes a review of the local and national criminal records, sex offender records,
112 and driving records associated with each applicant. The transportation network company shall

113 disqualify applicants on the basis of a suitability standard to be determined in regulations
114 promulgated by the department.

115 (ii) The transportation network company shall submit identifying information regarding
116 an applicant to the department, which shall refer said information to the department of criminal
117 justice information services, which will obtain all available criminal offender record information
118 as defined in section 167 of chapter 6 and pursuant to section 172 of chapter 6; and sex offender
119 registry information. Following a review of the pertinent records, the department or the
120 department of criminal justice information services shall determine whether the applicant has
121 committed an offense that would disqualify him from the provision of transportation network
122 services, according to the department's rules, orders, and regulations. In light of that
123 determination, and following the department's review of all motor vehicle records pertaining to
124 the applicant, the department shall determine within 5 business days of receiving an applicant's
125 identifying information whether the applicant is suitable to provide transportation network
126 services according to regulations promulgated by the department, and shall so notify the
127 transportation network company. Notwithstanding the provisions of Section 11E(b)(ii) of this
128 act, if the department has not notified the transportation network company of its suitability
129 determination within 5 business days after receiving an applicant's identifying information, a
130 transportation network company may provisionally allow an applicant to provide transportation
131 network services, provided that the transportation network company has determined that the
132 applicant meets the department's suitability standard and that all of the other requirements of
133 Section 11E(b) are satisfied. If the department subsequently notifies the transportation network
134 company that the applicant does not meet the suitability standard, the transportation network
135 company shall immediately prohibit the driver from providing transportation network services.

136 (3) The transportation network company shall verify that the vehicle or, where
137 appropriate, each of the vehicles, to be used by the driver to provide transportation network
138 services has been registered in the Commonwealth and inspected pursuant to section 7 of
139 chapter 90 and regulations promulgated thereunder at facility licensed by the registry of motor
140 vehicles; provided, however, that the department may, in its discretion, permit a transportation
141 network vehicle to be registered and inspected in another state with substantially equivalent
142 safety protections.

143 (c) The certification requirements set forth in subsection (b) shall apply to each renewal
144 of a transportation network company permit.

145 (d) A transportation company shall provide to the department a roster of each driver
146 certified by it to be a transportation network driver, and shall update said roster regularly. The
147 department shall make this roster available to the registry of motor vehicles and state and local
148 law enforcement.

149 (e) The department shall approve the form of a transportation network driver certificate;
150 provided, however, that each such certificate shall contain the name, address, and picture of the
151 driver, and the license plate number of each vehicle used by him to provide transportation
152 network services.

153 (f) The department shall establish the requirements for a recognizable external marker to
154 be displayed on a vehicle at all times it is used to provide transportation network services.

155 Section 11H. (a) The insurance requirements set forth in this subsection shall constitute
156 adequate insurance, and shall satisfy the financial responsibility requirement for a motor vehicle
157 under section 34A of chapter 90 and section 113L of chapter 175; provided, however, that the

158 insurance requirements set forth in this section shall only satisfy the financial responsibility
159 requirements for a motor vehicle under section 34A of chapter 90 and section 113L of chapter
160 175 with respect to the provision of transportation network services in a vehicle operated by a
161 transportation network driver, as said driver still must comply with section 34A of chapter 90
162 and section 113L of chapter 175 and maintain insurance coverage for the vehicle during those
163 periods of time when the vehicle is being operated but is not providing transportation network
164 services.

165 (1) The following automobile insurance requirements shall apply while a driver affiliated
166 with a transportation network company is logged onto the transportation network company's
167 digital network and is available to receive transportation requests, but is not engaged in a
168 prearranged ride:

169 (i) Automobile liability insurance that meets at least the minimum coverage requirements
170 established in section 34A of chapter 90 and section 113L of chapter 175.

171 (ii) The insurance may be held by the transportation network driver, the transportation
172 network company, or some combination thereof.

173 (2) The following automobile liability insurance requirements shall apply while a
174 transportation network driver is engaged in prearranged ride:

175 (i) Automobile liability insurance that provides at least \$1,000,000 in per occurrence
176 coverage for death, bodily injury, and property damage, uninsured motorist coverage to extent
177 required by section 113L of chapter 175, and personal injury protection to the extent required by
178 section 34A of chapter 90;

179 (ii) The insurance may be held by the transportation network driver, the transportation
180 network company, or some combination thereof.

181 (b) In every instance where insurance maintained by a transportation network driver to
182 fulfill the insurance requirements set forth in subsection (a) has lapsed, failed to provide the
183 required coverage, denied a claim for the required coverage, or otherwise ceased to exist,
184 insurance maintained by a transportation network company shall provide the coverage required
185 by subsection (a) beginning with the first dollar of a claim and shall have the duty to investigate
186 and defend such claim.

187 (c) Coverage under an automobile insurance policy maintained by the transportation
188 network company shall not be dependent on a personal automobile insurer first denying a claim
189 nor shall a personal automobile insurer be required to first deny a claim.

190 (d) Insurance required by this section 11H must be placed with an insurer authorized to
191 do business in the state or, if such coverage is not available, then with a surplus lines insurer
192 eligible under chapter 175, section 168.

193 (e) A transportation network company driver shall carry proof of coverage satisfying
194 subsection (a) with him at all times he is providing transportation network company services. In
195 the event of an incident giving rise to personal injury or property damage, a transportation
196 network driver shall provide this insurance coverage information to the directly interested
197 parties, automobile insurers, and investigating police officers. Upon request, a transportation
198 network driver shall also disclose to directly interested parties, automobile drivers, automobile
199 insurers, and investigating police officers, whether he was providing transportation network
200 services, including whether such services included a prearranged ride, at the time of the incident.

201 (f) A transportation network company shall disclose in writing to transportation network
202 drivers the following relative to insurance before they are allowed to accept a request for a
203 prearranged ride:

204 (i) The insurance coverage, including the types of coverage and the limits for each
205 coverage, that the transportation network company provides while the transportation network
206 driver uses his vehicle to provide transportation network services; and

207 (ii) That the transportation network driver's own automobile insurance policy might not
208 provide coverage while the driver is providing transportation network services, depending on its
209 terms.

210 (f) In a claims coverage investigation, a transportation network company, a transportation
211 network driver, and any insurer responding to a claim involving transportation network services
212 shall cooperate to facilitate the exchange of relevant information with directly involved parties,
213 including, but not limited to, the precise times that a transportation network company driver
214 logged on and off of the transportation network company's digital network in the twelve hour
215 period immediately preceding and in the twelve hour period immediately following the accident
216 and disclose to one another a clear description of the coverage, exclusions and limits provided
217 under any automobile insurance maintained under section 11H.

218 (h) Insurers that write automobile insurance in Massachusetts may exclude any and all
219 coverage afforded under the policy issued to an owner or operator of a vehicle for any loss or
220 injury that occurs while a driver is providing transportation network services or while a driver
221 provides a prearranged ride. This right to exclude all coverage may apply to any coverage
222 included in an automobile insurance policy including, but not limited to:

- 223 (i) Liability coverage for bodily injury and property damage;
- 224 (ii) Personal injury protection coverage as defined in chapter 90, section 34A;
- 225 (iii) Uninsured and underinsured motorist coverage;
- 226 (iv) Medical payments coverage;
- 227 (v) Comprehensive physical damage coverage; and
- 228 (vi) Collision physical damage coverage.

229 Such exclusions shall apply notwithstanding any requirement under chapter 90, section
230 34A and chapter 175, section 113L. Nothing in this section 11H implies or requires that a
231 personal automobile insurance policy provide coverage while the driver is logged on to the
232 transportation network company's digital network, while the driver is engaged in a prearranged
233 ride or while the driver otherwise uses a vehicle to transport passengers for compensation.

234 Nothing shall be deemed to preclude an insurer from providing coverage for the
235 transportation network company driver's vehicle, if it so chooses to do so by contract or
236 endorsement.

237 Automobile insurers that exclude the coverage described in section 11H shall have no
238 duty to defend or indemnify any claim expressly excluded thereunder. Nothing in this Section
239 shall be deemed to invalidate or limit an exclusion contained in a policy including any policy in
240 use or approved for use in Massachusetts prior to the enactment of this Section that excludes
241 coverage for vehicles used to carry persons or property for a charge or available for hire by the
242 public. An automobile insurer that defends or indemnifies a claim against a driver that is
243 excluded under the terms of its policy, shall have a right of contribution against other insurers

244 that provide automobile insurance to the same driver in satisfaction of the coverage requirements
245 of section 11H at the time of loss.

246 Section 11I. The department may, following notice and a hearing, suspend or revoke a
247 transportation network company permit for cause.

248 Section 11J. (a) The department may order a transportation network company to revoke
249 the permit of a transportation network driver, and to report to the department immediately upon
250 having done so, upon receipt of information indicating that the driver is not suitable to provide
251 transportation network services.

252 (b) The department may order a transportation network company to suspend a
253 transportation network driver certificate, and to report to the department immediately upon
254 having done so, upon the driver's arrest for a crime that would render him unsuitable to provide
255 transportation network services or upon his citation for a driving infraction that would render
256 him unsuitable to provide transportation network services for such period of time as necessary to
257 determine whether continued provision of transportation network services by said driver is
258 consistent with the public interest.

259 Section 11K. (a) Whenever the department determines that any transportation network
260 company is in violation of any provision of sections 11C through 11N of this chapter or any
261 regulation or rule promulgated thereunder, the department may issue a monetary penalty,
262 suspend or revoke a permit, or take such other action that the department deems necessary. In
263 determining the amount of the penalty, the department shall consider the size of the
264 transportation network company, the gravity of the violation, the good faith, if any, of the

265 transportation network company in attempting to achieve compliance and remedying non-
266 compliance, and any previous violations.

267 (b) Any driver providing transportation network services who is not in compliance with
268 clause (b) of section 11E has committed a civil motor vehicle infraction as that term is used in
269 section 1 of chapter 90C; may be issued a civil citation by state or local law enforcement; and, if
270 so cited, shall be subject to a fine of not less than 350 dollars.

271 Section 11L. The department shall recommend and the secretary of administration and
272 finance shall establish, pursuant to section 3B of chapter 7, the cost associated with undertaking
273 a suitability determination under section 11G, which cost may be payable by the applicant or the
274 transportation network company.

275 Section 11M. The department may establish regulations, rules, and orders to effectuate
276 sections 11C through 11N of this chapter, and shall consider comments provided to it by the
277 transportation network company local advisory commission; provided that the department shall
278 consult with the division of insurance in the development of any regulations related to insurance
279 coverage; provided further that the department shall consult with the executive office of public
280 safety and security, the City of Boston, and other municipalities as identified by the department,
281 in the development of any regulations related to the suitability of transportation network drivers
282 in light of criminal, sex offender, or driving history; and provided further that the regulatory
283 authority of the department shall extend, but shall not be limited, to the accessibility of
284 transportation network services by those with special needs.

285 Section 11N. (a) In the enforcement of sections 11C through 11N of this chapter, the
286 department may prescribe records to be maintained by transportation network companies,

287 including, but not limited to, records pertaining to service accessibility and pricing. Each
288 transportation network company or any applicant for a transportation network company permit
289 shall furnish all information and documents related to the condition, management, and operation
290 of the company upon the department's request; provided, however, that any such request must be
291 reasonably related to the requirement set forth in sections 11C through 11M of this chapter and
292 any regulations promulgated thereunder.

293 (b) Any record furnished to the department may exclude information that would tend to
294 identify specific passengers, unless such information is pertinent to the enforcement processes
295 established in section 11K of this chapter.

296 (c) Any record furnished to the department or any other state agency by a transportation
297 network company pursuant to sections 11C through 11N of this chapter, including but not
298 limited to the roster of permitted transportation network drivers required by subsection (d) of
299 section 11G shall not be considered a public record as that term is used in clause 26 of section 7
300 of chapter 4 or chapter 66; provided, however, that an application for a transportation network
301 company permit submitted pursuant to section 11F of this chapter shall be a public record;
302 provided further that any such application may be withheld from disclosure, in whole or in part,
303 for reasons set forth in clause 26 of section 7 of chapter 4 or chapter 66.

304 Section 11O. There shall be a transportation network company local advisory
305 commission to consult with the department as it develops regulations to effectuate sections 11C
306 through 11N of this chapter. The commission shall consist of 5 members, each appointed by the
307 governor, and shall include: 1 representative of the city of Boston, from a list of names submitted

308 by the city; 1 representative of the city of Cambridge, from a list of names submitted by the city;
309 and 1 representative of the city of Somerville, from a list of names submitted by the city.

310 SECTION 4. The department of public utilities and the registry of motor vehicles shall
311 develop a report concerning the feasibility of conducting statewide criminal offender record
312 information checks for each operator of a livery vehicle, and submit said report to the clerks of
313 the house of representatives and the senate, not later than one year after the enactment of this act.

314 SECTION 5. Except as otherwise provided, this act shall take effect upon its enactment.

315 SECTION 6. That portion of SECTION 3 codifying section 11E of chapter 159A of the
316 General Laws shall take effect 6 months after the enactment of this act; provided, however, that
317 on no more than 6 occasions, the department of public utilities, in its sole discretion, may extend
318 the effective date of section 11E by one month.