

HOUSE No. 931

The Commonwealth of Massachusetts

PRESENTED BY:

William Smitty Pignatelli

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to transportation network company services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>1/15/2015</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>9/5/2019</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>	<i>9/5/2019</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>9/5/2019</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>	<i>9/5/2019</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>9/5/2019</i>
<i>Danielle W. Gregoire</i>	<i>4th Middlesex</i>	<i>9/5/2019</i>
<i>Edward F. Copping</i>	<i>10th Suffolk</i>	<i>9/5/2019</i>
<i>Brian M. Ashe</i>	<i>2nd Hampden</i>	<i>9/5/2019</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>	<i>9/5/2019</i>

HOUSE No. 931

By Mr. Pignatelli of Lenox, a petition (accompanied by bill, House, No. 931) of William Smitty Pignatelli and others relative to insurance for transportation service companies that use digital networks or software application services to connect passengers to services provided by transportation network company drivers. Financial Services.

The Commonwealth of Massachusetts

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

An Act relative to transportation network company services.

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. Section 12F of chapter 25, as so appearing, is hereby amended by inserting
2 after the second paragraph, the following sentence:-

3 Further, said division, subject to such supervision and control, shall perform such
4 functions in relation to the administration and enforcement of chapter 90J imposed upon the
5 department by said chapter.

6 SECTION 2. The General Laws are hereby amended by inserting after chapter 90I the
7 following chapter:-

8 CHAPTER 90J

9 TRANSPORTATION NETWORK COMPANY SERVICES

10 Section 1. As used in this Chapter:

“Department” shall mean the Department of Public Utilities.

“Transportation Network Company” or “TNC” shall mean an entity licensed pursuant to this Chapter and operating in the commonwealth that uses a digital network or software application service to connect passengers to Transportation Network Company Services provided by Transportation Network Company Drivers. A TNC is not deemed to own, control, operate or manage the vehicles used by TNC Drivers, and is not a taxicab association or a for-hire vehicle owner.

“Transportation Network Company (TNC) Driver” shall mean an individual who operates a motor vehicle that is:

(a) Owned, leased or otherwise authorized for use by the individual;

(b) Not a taxicab or hackney carriage however defined, or vehicle for hire; and

(c) Used to provide Transportation Network Company Services.

“Transportation Network Company (TNC) Services” shall mean transportation of a passenger between points chosen by the passenger and prearranged with a TNC Driver through the use of a TNC digital network or software application. TNC Services shall begin when a TNC Driver accepts a request for transportation received through the TNC’s digital network or software application service, continue while the TNC Driver transports the passenger in the TNC Driver’s vehicle, and end when the passenger exits the TNC Driver’s vehicle. TNC Service is not taxicab, for-hire vehicle or street hail service.

Section 2. TNCs or TNC Drivers are not common carriers of passengers or motor carriers subject to regulation under chapter 159A of the general laws nor do they provide taxicab or for-hire vehicle service.

Section 3. A person shall not operate a TNC in the Commonwealth without first having obtained a permit from the Department. The Department shall issue a permit to each applicant that meets the requirements for a TNC set forth in this Chapter, and pays an annual permit fee of \$5,000 to the Department.

Section 4. The TNC must maintain an agent for service of process in the Commonwealth.

Section 5. A TNC may charge a fare for the services provided to passengers; provided that, if a fare is charged, the TNC shall disclose to passengers the fare calculation method on its website or within the software application service. The TNC shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC Driver's vehicle.

Section 6. The TNC's software application or website shall display a picture of the TNC Driver, and the license plate number of the motor vehicle utilized for providing the TNC Service before the passenger enters the TNC Driver's vehicle.

Section 7. Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the passenger that lists:

(a) The origin and destination of the trip;

(b) The total time and distance of the trip; and

(c) An itemization of the total fare paid, if any.

Section 8.

(a) On or before ninety (90) days after the effective date of this Act and thereafter, TNCs and TNC Drivers shall comply with the automobile liability insurance requirements of this Section 8.

(b) The following automobile liability insurance requirements shall apply during the time that a TNC Driver is logged into the TNC's digital network and available to receive requests for transportation but is not providing TNC Services

(1) Automobile liability insurance that meets at least the minimum coverage requirements per section 34A of chapter 90 and section 113L of chapter 175.

(2) Automobile liability insurance in the amounts required in paragraph (1) of subsection (b) shall be maintained by a TNC and provide coverage in the event a participating TNC Driver's own automobile liability policy excludes coverage according to its policy terms or does not provide coverage of at least the limits required in paragraph (1) of subsection (b).

(c) The following automobile liability insurance requirements shall apply while a TNC Driver is providing TNC Services:

(1) Provides primary automobile liability insurance that recognizes the TNC Driver's provision of TNC Services;

(2) Provides automobile liability insurance of at least \$1,000,000 for death, personal injury and property damage;

(3) Provides uninsured motorist coverage as required by section 113L of chapter 175.

(4) The coverage requirements of this subsection (c) may be satisfied by any of the following:

(A) Automobile liability insurance maintained by the TNC Driver; or

(B) Automobile liability insurance maintained by the TNC; or

(C) Any combination of subparagraphs (A) and (B).

(d) In every instance where insurance maintained by a TNC Driver to fulfill the insurance requirements of this Section 8 has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by a TNC shall provide the coverage required by this section beginning with the first dollar of a claim.

(e) Insurance required by this Section 8 may be placed with an insurer authorized to do business in the state or with a surplus lines insurer eligible under section 168 of chapter 175.

(f) Insurance required by this Section 8 shall be deemed to satisfy the financial responsibility requirement for a motor vehicle under section 34A of chapter 90 and section 113L of chapter 175.

Section 9.

(a) The TNC shall disclose in writing to TNC Drivers the following before they are allowed to accept a request for TNC Services on the TNC's digital network:

(1) The insurance coverage and limits of liability that the TNC provides while the TNC Driver uses a personal vehicle in connection with a TNC's digital network; and

(2) That the TNC Driver's own insurance policy may not provide coverage while the TNC Driver uses a vehicle in connection with a TNC's digital network depending on its terms.

(b) Provided the insurer notifies an insured after a loss, and within the time required by ALM GL ch. 176D, § 3(9)(n) that the insurer has no duty to defend or indemnify any person or organization for liability for a loss that is properly excluded pursuant to the terms of the applicable primary or excess insurance policy, insurers that write automobile liability insurance in Massachusetts may:

(1) Exclude any and all coverage and the duty to defend afforded under the owner's insurance policy for any loss or injury that occurs while an insured vehicle provides or is available to provide TNC Services, provided such exclusion is expressly set forth in the policy and approved for sale in Massachusetts. This right to exclude coverage and the duty to indemnify and defend may apply to any coverage included in an automobile liability insurance policy including, but not limited to:

(A) Liability coverage for bodily injury and property damage;

(B) Uninsured and underinsured motorist coverage;

(C) Medical payments coverage;

(D) Personal injury protection;

(E) Comprehensive physical damage coverage; and

(F) Collision physical damage coverage.

(c) Insurers that write automobile liability insurance in Massachusetts must disclose on its application for insurance, in a prominent place, whether or not the insurance policy provides coverage while an insured vehicle provides or is available to provide TNC Services. If an automobile liability insurance policy contains an exclusion for TNC Services, the insurer or its agent must disclose in writing the exact language of such exclusion to the applicant during the application process.

(d) In a claims coverage investigation, TNCs and any insurer providing coverage under Section 9 shall cooperate to facilitate the exchange of information, including the precise times that a TNC Driver logged on and off of the TNC's digital network in the twenty-four hour period immediately preceding the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any insurance policy each party issued or maintained.

Section 10. (a) Prior to permitting an individual to act as a TNC Driver on its digital platform, the TNC shall:

(1) Require the individual to submit an application to the TNC, which includes information regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC;

(2) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include:

130 (A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial
131 nationwide database with validation (primary source search); and

132 (B) National Sex Offender Registry database;

133 (3) Obtain and review a driving history research report for such individual.

134 (b) The TNC shall not permit an individual to act as a TNC Driver on its digital platform
135 who:

136 (1) Has had more than three moving violations in the prior three-year period, or one
137 major violation in the prior three-year period (including, but not limited to, attempting to evade
138 the police, reckless driving, or driving on a suspended or revoked license);

139 (2) Has been convicted, within the past seven years, of driving under the influence of
140 drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime
141 involving property damage, and/or theft, acts of violence, or acts of terror;

142 (3) Is a match in the National Sex Offender Registry database;

143 (4) Does not possess a valid driver's license;

144 (5) Does not possess proof of registration for the motor vehicle(s) used to provide TNC
145 Services;

146 (6) Does not possess proof of automobile liability insurance for the motor vehicle(s)
147 used to provide TNC Services; or

148 (7) Is not at least 19 years of age.

Section 11. A TNC shall require that any motor vehicle(s) that a TNC Driver will use to provide TNC Services satisfies the applicable safety and emissions requirements of the state in which the vehicle is registered.

Section 12. A TNC Driver shall exclusively accept rides booked through a TNC's digital network or software application service and shall not solicit or accept street hails.

Section 13. A TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify TNC Drivers of such policy. TNC Drivers shall not solicit or accept cash payments from passengers. Any payment for TNC Services shall be made only electronically using the TNC's digital network or software application.

Section 14. (a) A TNC shall adopt a policy of non-discrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age or sexual orientation/identity with respect to passengers and potential passengers and notify TNC Drivers of such policy.

(b) TNC Drivers shall comply with all applicable laws regarding non-discrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation, or gender identity.

(c) TNC Drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing services to persons with physical disabilities because of those disabilities.

(e) A TNC shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC Service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

Section 15. There shall be established and set up on the books of the Commonwealth a separate fund to be known as the Massachusetts Accessible Transportation Fund. The fund shall consist of an annual surcharge fee of no more than ten thousand dollars per year by any TNC that does not provide wheelchair-accessible service and all other monies credited or transferred to the fund from any other source under law. The Department shall be the trustee of the fund and may only expend monies in the fund, without further appropriation, to enhance wheelchair-accessible service within the TNC industry.

Section 16. A TNC shall maintain:

(a) individual trip records for at least one (1) year from the date each trip was provided; and

(b) TNC Driver records at least until the one year anniversary of the date on which a TNC Driver's activation on the TNC digital network has ended.

Section 17. A TNC shall not disclose a passenger's personally identifiable information to a third party unless: the passenger consents, disclosure is required by a legal obligation, or disclosure is required to protect or defend the terms of use of the service or to investigate violations of those terms. In addition to the foregoing, a TNC shall be permitted to share a passenger's name and/or telephone number with the TNC Driver providing TNC Services to such

190 passenger in order to facilitate correct identification of the passenger by the TNC Driver, or to
191 facilitate communication between the passenger and the TNC Driver.

192 Section 18. Notwithstanding any other provision of law, TNCs and TNC Drivers are
193 governed exclusively by this Chapter and any rules promulgated by the Department consistent
194 with this Chapter. No municipality or other local entity may impose a fee, levy or tax on, or
195 require a license for, a TNC or a TNC Driver or subject a TNC to the municipality or other local
196 entity's rate, entry, operational or other requirements.