Regulating Transportation Network Companies (TNCs)

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Ground Zero of the Transportation App Revolution
What is a TNC?

• A **TNC** is a person, corporation, partnership, sole proprietorship, or other entity that is licensed and is operating exclusively using a digital network to connect transportation network company passengers to transportation network company drivers who provide TNC prearranged trips.

• A **TNC Vehicle (or Personal Vehicle)** is a vehicle that is used by a TNC to provide a prearranged trip, and that is owned, leased or otherwise authorized for use by the TNC driver.
  • Many times this excludes taxicabs, livery vehicles, black cars, limousines, for-hire vehicles, buses and certain larger vehicles.
  • *Examples: Indiana, New Jersey, West Virginia, South Carolina, Texas, and others.*

App + Uber/Lyft = TNC

App + Taxi/Limo ≠ TNC
As of July 3, 2017, 48 states and the District of Columbia have passed some sort of TNC legislation.
### Examples of State Governing Agencies

<table>
<thead>
<tr>
<th>State</th>
<th>Governing Agencies</th>
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<tbody>
<tr>
<td>Arkansas, California, Colorado, Kansas, Maryland, Nebraska Pennsylvania, New Mexico</td>
<td>Public Utilities Commission (PUC); Public Services Commission (PSC); Consumer Commission (CC); Public Regulation Commission (PRC)</td>
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<td>Delaware, Virginia, New Jersey</td>
<td>Department of Motor Vehicles (DMV); Motor Vehicles Commission (MVC)</td>
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<td>Arizona, Iowa, Louisiana, Nevada</td>
<td>Department of Transportation (DOT); Transportation Authority (TA)</td>
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<td>Michigan, Texas</td>
<td>Department of Licensing and Regulation</td>
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<td>Indiana, Missouri</td>
<td>Department of Revenue (DoR)</td>
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# Typical TNC Laws

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
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<tr>
<td>Licensing</td>
<td>Some laws require TNCs to pay a high licensing fee, e.g. $100,000 USD or more annually.</td>
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| Insurance      | Two levels of Insurance:  
  **Period 1** – when the app is on, but the TNC driver does not have a prearranged rider, typically $50,000 per person/$100,000 per incident/$25,000 property damage.  
  **Period 2** – when the TNC driver is transporting a prearranged rider, typically $1,000,000 or more total insurance. |
| Driver Vetting | TNC drivers undergo a background check which may be conducted by the TNC itself or a third-party vendor using name-based checks. Driving records may also be considered and vetted to ensure no aggressive or dangerous behavior. |
| Accessibility  | No consensus on regulation:  
a) No accessibility requirement;  
b) TNCs pay a fee towards an accessibility fund; or  
c) TNCs are required to study accessibility demand. |
The DMV/MVC Regulatory Framework for TNCs:

- TNCs must be issued a license or permit by the DMV/MVC;
- Drivers must apply to the TNC and be subject to background check conducted by the TNC or third party provider as well as a check of the applicants driving record. Results must comply with standards set by DMV or the applicant is disqualified;
- TNCs must adopt a zero tolerance substance abuse policy;
- TNCs must adopt or implement policies regarding accessibility and discrimination;
- TNC drivers must use personal vehicles, may only accept trips through the digital platform, may not street hail and may not accept payment in cash;
- TNC vehicles must display TNC trade dress.
<table>
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<tr>
<th>State</th>
<th>TNC DMV/MVC Regulations</th>
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<td>New York</td>
<td>• DMV may audit a sample of a TNC’s records chosen at random; however, records containing information that identifies drivers or passengers may be excluded. Additionally, driver information is EXEMPT from Freedom of Information requests.</td>
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<td>• This is in stark contrast to other jurisdictions such as Massachusetts. Following an audit the Department of Public Utilities banned more than 8,200 TNC drivers who had previously passed the TNC background check. The numbers included 51 registered sex offenders and hundreds who were rejected for other sex-related crimes and violent histories.</td>
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<td>• Maryland also audits TNC drivers background check results and since 2015 has removed approximately 6% of the 74,000 drivers previously approved by the TNCs. ¹</td>
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<td>• TNCs can be fined up to $10,000 for violations of the state law.</td>
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<td>New Jersey</td>
<td>• MVC has similar record inspection powers as in New York, however all records are confidential and are not considered government records for the purposes of the Open Public Records Act.</td>
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<td>• A TNC approved to operate in the state must have its method of background checking approved by the Attorney General within six months of that TNC commencing operations. If Attorney General does not approve the TNC’s method, then driver’s must be fingerprinted by the Division of State Police.</td>
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<td>Virginia</td>
<td>• Imposed steep fines in their state law for non-compliant TNC drivers. Any driver who “seeks to avoid or defeat regulation” could be charged with a misdemeanor and fined up to $500 on a first offense and $2,000 for each subsequent offense by DMV.</td>
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<td>• Defined the term “ride-sharing” and distinguished it from service provided by Uber and Lyft.</td>
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<td>West Virginia</td>
<td>• Defined within its state TNC law when a driver is an independent contractor.</td>
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<td>• No Foil exemption provided</td>
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<td>• TNCs exempt from consumer sales and service tax.</td>
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<tr>
<td>North Carolina</td>
<td>• Creates in the state TNC law a presumption that TNC drivers are independent contractors.</td>
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<tr>
<td></td>
<td>• No Foil exemption provided.</td>
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How to Enforce TNC Regulations?

• Audits
• Inspections
• Field Enforcement
• Third-Party Validation
• **Compliance, Safety, Accountability Program (CSA)**¹
  - FMCSA's data-driven safety compliance and enforcement program
  - Designed to improve safety and prevent commercial motor vehicle (CMV) crashes, injuries, and fatalities
  - Consists of three core components;
    - **Safety Measurement System** (SMS)
      - Uses data to identify and intervene with motor carriers who pose risks to safety
      - Organizes data into Behavior Analysis and Safety Improvement categories
      - Data is updated once a month: from roadside inspections, including driver and vehicle violations; every two years: crash reports and investigation results.
    - **Interventions** that evaluate why safety problems occur, recommends remedies, and encourages corrective action when necessary—penalties if carriers fail to comply;
    - **Safety Fitness Determination** (SFD); rating system to determine the safety fitness of motor carriers.

¹ [https://csa.fmcsa.dot.gov/About](https://csa.fmcsa.dot.gov/About)
Third-Party Validation

• What is a “third-party validator”?
  • An objective entity, company or agency that can collect and analyze data of another entity, company or agency to determine if the entity in question is compliant with the law or regulations.
  • **Data analysis is central to the development of practical policy solutions.**

• A **third-party validator** hired by the government and paid for by the TNCs to
  • collect,
  • maintain and
  • analyze data

• **Third-party validators** would ensure objectivity, accuracy, and compliance.

The City of Seattle is considering the proposal of a bill that would enforce the use of third-party validators for all TNCs. The bill includes flagship provisions to address:

• Accessibility
• Vehicle Safety and Emissions Inspections
• Insurance Compliance
• Reporting trip log data
• Driver Safety and Security
International Response to TNCs

Hailo merged with and rebranded as MyTaxi in 2017.
In July, Uber and Yandex announced they will combine their services.
In August, the Philippine transport regulator suspended Uber for a month.

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TNCs operate in 4 provinces: Alberta, Nova Scotia, Ontario, and Quebec.

* Uber and Tappcar are the only TNCs currently operating in Canada.

Typical provincial regulations include:

- Scope and obligations of TNCs
- Licensure requirements
- Insurance requirements
- Legal definitions of TNCs, drivers, and other terms

As opposed to the United States (where we have more or less seen a march towards uniformity in state TNC laws), there are drastic differences in regulation among Canadian provinces.

- Alberta seems to closely mirror TNC laws established in the United States,
- While Manitoba has gone the complete opposite direction and dissolved the Manitoba Taxicab Board in favor of municipal regulation.

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<th>Province</th>
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| Alberta  | Regulatory, Insurance, Licensing              | • Drivers must have a Class 1, 2, or 4 Operator’s License, a Police Information Check and, proof of insurance coverage that specifically covers driving a transportation network automobile for a TNC  
   • TNCs must register with Alberta Transportation prior to operating  
   • TNCs are required to have in place either a motor vehicle liability policy or transportation network automobile insurance policy |

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1 [http://www.lowestrates.ca/blog/ride-sharing-canada-its-complicated](http://www.lowestrates.ca/blog/ride-sharing-canada-its-complicated)

Europe

Case Study: London

- Transport for London licenses both traditional private hire vehicles (mini cabs) and TNCs.
- All types of vehicles are required to carry insurance and undergo periodical inspection.
- Currently TFL is reviewing their position on passengers for hire or reward insurance and whether or not coverage needs to be on the vehicle at all times.
- TFL recently adopted an English language requirement for private hire drivers.
  - The rule has been postponed in the wake of legal challenge by Uber.
  - The rules go beyond British citizenship requirements and Uber has argued it is unnecessary and would put drivers out of work.

- European app companies are positioning themselves as “anti-taxi dispatch centers.”
- The app companies “cut out” the dispatch companies and deal directly with drivers.
- Potential risk of illegal taxi services by unlicensed drivers and uninspected vehicles.
Legal Issues: Uber

• In May, the European Court of Justice ruled that Uber provides a transport service-instead of a digital service- and should be regulated as such.

• This means they could be subject to the same laws that regulate taxi services in European countries
  • Uber will shut down its operations in Denmark following the introduction of new taxi laws.
  • Uber pulled out of Hungary in 2016 after the government passed legislation stating “Its drivers breach regulations other taxis firms must adhere to.”

UberPop

• The company and its executives were fined in France last year for UberPop, which lets drivers without professional licenses use their own car to pick up passengers for lower fees.

• Legal challenges have forced the company to halt UberPop in several other European countries, including the Netherlands, Sweden, and Spain.

• However, it still operates in Estonia, Poland, Czech Republic, Norway, Finland and Switzerland.

1 https://www.theguardian.com/technology/2017/may/11/uber-cabs-taxis-us-app-ecj
2 https://bbj.hu/business/ubers-exit-boosts-hungarian-taxi-traffic_128406
Why TNC Due Diligence Is Needed!

Police: Ride-share driver reportedly forced woman into apartment, raped her for hours - KIRO 7 News, Seattle

Former Uber driver in Tulsa accused of raping woman who passed out - KJHR 2 News, Tulsa

Uber driver busted transporting fentanyl, heroin for drug ring - NY Post

How safe is your Uber? Growing concern as police figures suggest company’s drivers are linked to one sex attack in London per week - Daily Mail, UK

Uber driver ‘smacked female customer leaving her with black eye, called her a white b***h and threw keys at her baby daughter’ - The Sun, UK

UBER ROW Double amputee, 33, told to ‘f*** off’ by Uber driver in London who refused to take her home claiming she was drunk - The Sun, UK

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• **Massachusetts (2017)**
  
  - The Department of Public Utilities reviewed the criminal and driving records of nearly 71,000 drivers who had already passed reviews by the companies.
  - Over 8,000 Uber, Lyft and other app-based vehicle drivers were disqualified for failing a criminal background check.
  - According to the report: “Hundreds were disqualified for having serious crimes on their record, including violent or sexual offenses, and others for driving-related offenses, such as drunken driving or reckless driving.”

• **Houston (2015)**
  
  - April: Mayor Annise Parker demanded that Uber audit all Uber drivers and permits with the city or the TNC license would be revoked.
  - Some drivers were operating on the app without a proper license.
  - After conducting a manual audit, Uber found more than 500 drivers needed licenses from the city after Uber shut their accounts down.
  - The city commended Uber’s swift action, but it calls into question the methodology and consistency.
Other TNC Business Models

Food Delivery – TNCs using drivers to deliver food or take passengers to restaurants.

- **2014:** UberEATS begins as a meal ordering and delivery platform.
- **2017:** Lyft and Taco Bell partner to take passengers to the closest Taco Bell, calling it “Taco Mode.”

Freight and Logistics – TNCs delivering goods via trucks or other vehicles.

- **2017:** Uber Freight is launched, used to match long-haul trucking companies with drivers.
- U.S. DOT\(^1\) reports “with over 20 billion miles per year driven by empty trucks in the United States, matching shipments to drivers could dramatically improve efficiency.”

1 https://www.rita.dot.gov/publications/technology_scan/on_demand
TNCs & Transport App Automated Vehicle Partnerships

General Motors, Lyft, and Cruise Automation
Expect to develop AVs by 2018

Fiat Chrysler and Waymo (Google)
Currently testing AVs in the U.S.

Volvo and Uber
Currently testing AVs in the U.S.

Ford and SAIPs (Israel)
Expect to develop AV by 2021

Daimler/Mercedes-Benz and Bosch
Expect to develop AVs by 2020

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The Expanding Transportation Network Company (TNC) “Equity Gap”—Adverse Impacts on Passengers with Disabilities, Underserved Communities, the Environment and the On-Demand Workforce:


This report was published by the UTRC in August 2016, and will also be published by NYU Law School and Cornell University in a textbook: Who is an Employee and Who is the Employer?: Proceedings of the New York University 68th Annual Conference on Labor (LexisNexis, 2016) (series editor: Samuel Estreicher; volume editor: Kati L. Griffith).
CUNY /UTRC Report on “Leveling the Playing Field” Between TNCs and Taxicabs/For-Hire Vehicles. I recently completed a comprehensive report entitled: “Post-TNC Transportation Policy & Planning: Who and What Should be Regulated & How to “Level the Playing Field” with Taxicabs and For-Hire Services?” (“Leveling the Playing Field Article”), (September 2016), through the University Transportation Research Center (Region 2) at The City College of NY, of the City University of NY, which is available on the University Transportation Research Center website at:


A condensed version was also published by the American Planning Association as a sidebar in Planning for Shared Mobility, at:


An edited version and condensed version of this white paper was re-published in the summer edition 2017 (cover feature article) of the Municipal Lawyer Journal of the International Municipal Lawyers Association.
“ONE STANDARD FOR ALL”

Safety, Effectiveness & Best Practices for Taxi, For-Hire & TNC Driver Criminal Background Checks

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Canadian TNC Regulatory Developments

“Study of Regulations for Transportation Network Companies for the City of Mississauga, Ontario, Canada.” (February 2016)

STUDY OF PILOT PROGRAMS FOR TRANSPORTATION NETWORK COMPANIES (“TNCs”)

June 7, 2016
Pending book chapter entitled Ground Transportation Big Data Analytics and Third Party Validation - Solutions for a New Era of Regulation and Private Sector Innovation. This chapter will examine how big data has been used by both the TLC and TNCs, and more importantly, highlight the pertinent issues within the realm of ground transportation such as data accuracy, security, privacy, transparency and compliance.
Sheraton Austin Hotel at the Capitol
September 24-27, 2017

AAMVA is an Official IATR Advisory Board Member for the 2017 Conference!
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• Autonomous Vehicles
• Accessibility Workshop
• De-regulation/Self-Regulation

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• Takes place on **Sunday, September 24th**

• Topics include:
  
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  • *Regulatory Management:*
  
  • *Licensing, Enforcement, Data Management & Performance Measures*
  
  • *Regulatory Policymaking & Legislative/
  
  • *Rulemaking Drafting & Procedures*
  
• **FREE** with conference registration.
Thank You!

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