



ALASKA: RIDESHARING'S LAST FRONTIER

MICHAEL D. FARREN, PE

Research Fellow, Mercatus Center at George Mason University

Alaska House Labor and Commerce Committee
Hearing on HB 132, a bill relating to Transportation Network Companies

March 17, 2017

Good afternoon Chairman Kito, Vice Chairman Wool, and members of the Alaska House Labor and Commerce Committee:

I am grateful for the invitation to discuss research that my colleagues at the Mercatus Center at George Mason University and I have conducted regarding the sharing economy in general and transportation network company (TNC) regulations in particular.¹

The research team I am part of—the Project for the Study of American Capitalism—focuses on understanding how special interest groups twist government policies to benefit themselves. We study discriminatory tax, spending, and regulatory policies that privilege particular industries, firms, or occupations. Our goal is to communicate how these government privileges harm the economy and the very fabric of our society.² This is the perspective through which I will evaluate the current state of taxi and TNC regulations in Alaska.

House Bill 132 (HB132) represents some of the best TNC legislation I have seen to date. It enables TNC operations while at the same time avoiding other states' mistake of enshrining current business practices into law. However, I would argue that HB132 has a hidden flaw—it creates a special legal definition for TNC vehicles and drivers, rather than breaking down the regulatory silos between taxis, TNCs, limos, shuttles, and other for-hire vehicles.

1. Christopher Koopman, Matthew D. Mitchell, and Adam D. Thierer, "The Sharing Economy and Consumer Protection Regulation: The Case for Policy Change," *Journal of Business, Entrepreneurship & the Law* 8, no. 2 (2015); Adam D. Thierer et al., "How the Internet, the Sharing Economy, and Reputational Feedback Mechanisms Solve the 'Lemons Problem'" (Mercatus Working Paper, Mercatus Center at George Mason University, Arlington, VA, May 2015); Michael D. Farren, Christopher Koopman, and Matthew D. Mitchell, "Rethinking Taxi Regulations: The Case for Fundamental Reform" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, July 2016); Christopher Koopman, "Today's Solutions, Tomorrow's Problems," *Cato Unbound*, February 17, 2015.

2. Matthew D. Mitchell, *The Pathology of Privilege: The Economic Consequences of Government Favoritism* (Arlington, VA: Mercatus Center at George Mason University, 2014).

For more information or to meet with the scholar, contact
Sam Pfister, 217-836-6802, spfister@mercatus.gmu.edu
Mercatus Center at George Mason University, 3434 Washington Blvd., 4th Floor, Arlington, Virginia 22201

The ideas presented in this document do not represent official positions of the Mercatus Center or George Mason University.

The rule of law demands that there be generality of application of regulations. The best way to accomplish that, and avoid repeating the long history of local regulatory capture, is to have one common set of for-hire regulations enacted at the state level.

THE PROBLEM OF PRIVILEGE

First and foremost, government-granted privilege harms the economy by restricting competition, meaning that customers face higher prices and lower-quality goods and services. The protection from competition shields producers from the consequences of bad decisions, resulting in higher overall costs and slower economic growth. Furthermore, the fact that producers can compete for political favors encourages “unproductive entrepreneurship.”³ This means that innovators find it more beneficial to court government officials’ favor than to focus on satisfying customers—in essence, the best minds are redirected toward unscrupulous ends. This then creates the public impression that both business and government are corrupt, eroding the unspoken sense of trust that is the foundation of society.⁴

ALASKA’S PROPOSED TNC LEGISLATION

Alaska is now the only state in which TNCs are not currently operating.⁵ The legislation under consideration today represents some of the best state-level TNC regulations thus far proposed. This is because many other states’ TNC laws enshrine the current business practices of Uber and Lyft, rather than create a simple set of regulations that allow for future innovation. In particular, HB132:

- Stipulates that the TNC “may charge a fare” but allows for the possibility that the TNC may only connect the driver and rider without also participating in the fare collection. Most other states do not allow for this flexibility and even forbid cash to be used in the transaction, which, counterproductively, makes tipping your driver illegal. More importantly, a prohibition on cash payments would prevent low-income persons lacking access to credit cards from using the same service available to everyone else.⁶
- Requires that TNCs conduct a national criminal history background check and driving history report, but does not mandate what kind of background check or which crimes, driving citations, or time period considered would disqualify a driver from providing service. This forces the TNC to take greater responsibility for the drivers that it allows to provide service through its network and avoids needlessly forbidding some people from access to much-needed jobs.⁷ By not mandating a specific standard, this approach also allows for greater degree of innovation in background checks,

3. William J. Baumol, “Entrepreneurship: Productive, Unproductive, and Destructive,” *Journal of Political Economy* 98, no. 5, part 1 (1990): 893–921.

4. Greater trust allows for greater interaction between different individuals, both personally and through trade, which creates a virtuous cycle of increasing trust, trade, and economic growth. Tim Harford, “The Economics of Trust,” *Forbes*, July 21, 2010; Ryan Langrill and Virgil Henry Storr, “The Moral Meanings of Markets,” *Journal of Markets & Morality* 15, no. 2 (2012): 347–62; Stephen Knack and Paul J. Zak, “Building Trust: Public Policy, Interpersonal Trust, and Economic Development,” *Supreme Court Economic Review* 10 (2003): 91–107; Paul J. Zak and Stephen Knack, “Trust and Growth,” *Economic Journal* 111, no. 470 (2001): 295–321.

5. Uber operated in Alaska from October 2014 through March 2015, but left after disagreements over worker classification with the Alaska Department of Labor and Workforce Development. Sean Doogan, “Uber Will Pay Fine to State Workers’ Compensation Division,” *Alaska Dispatch News*, September 3, 2015.

6. Alaska’s proposed legislation also requires that the TNC provide an electronic receipt, which is unusual—merely requiring that the service provider (or TNC acting on her behalf) offer a receipt and allowing the flexibility for either an electronic or paper version would be the more appropriate requirement. It seems odd that an electronic receipt would be a legal requirement.

7. Some groups, such as African-American men, face higher traffic stop and arrest rates than other groups. This can lead to higher rates of false positives in background checks, systematically inhibiting these groups from accessing a valuable employment opportunity. Brad Heath, “Racial Gap in US Arrest Rates: ‘Staggering Disparity,’” *USA Today*, November 18, 2014; Kim Soffen, “The Big Question about Why Police Pull over so Many Black Drivers,” *Washington Post*, July 8, 2016.

meaning that for-hire services might become even safer over time.⁸

- Creates clarity in the employment status of drivers, stipulating that drivers are independent contractors if the TNC does not prescribe working hours, does not prevent drivers from working for competitor TNCs or any other business, and does have a written agreement with the driver on independent contractor status. Importantly, the bill does not force TNCs and drivers to use this kind of employment relationship—for example, it allows for flexibility in employment status if TNCs want to provide some future service whose drivers might need specific training.
- Does not set a particular TNC licensing fee, which could serve as a barrier to entry to smaller competitors. During my recent testimony before the Virginia Joint Transportation Committee,⁹ a representative from the Virginia Department of Motor Vehicles stated that the state’s abnormally high licensing fee—\$100,000—was keeping out several small TNCs that wanted to enter the state to compete with Uber and Lyft.¹⁰

THE MOST CONTROVERSIAL ASPECT OF HB132

Perhaps the most controversial aspect of Alaska’s proposed TNC regulations is the preemption of local regulation of TNCs. In a state that prizes rugged individualism as highly as Alaska, this provision must surely rankle.

However, preemption of local regulations on vehicles for hire—both for TNCs *and* for taxis, limos, and shuttles—is exactly what is needed. For-hire vehicle regulations, especially regarding taxis, are commonly used as the textbook example of overregulation, demonstrating how regulations can be “captured” by the regulated industries themselves.¹¹ Our recent paper, “Rethinking Taxi Regulations: The Case for Fundamental Reform,” lays out how regulatory barriers to entry, price controls, and mandated business practices inhibit competition, thereby granting a measure of monopoly power to established companies.¹²

This privileged status motivates established companies to fight hard to maintain the uneven playing field, which they do by attempting to justify policies like Anchorage’s taxi medallions or Juneau and Kodiak’s requirement that new taxi companies must obtain a certificate of public convenience and necessity.¹³ But a Federal Trade Commission (FTC) report on the history and efficacy of taxi regulations found previous arguments for anti-competitive regulations to be disingenuous:

The discussions of the early 1930s [of taxi regulations across the United States] emphasize that the motivation behind the regulations was “to drive many cut-throat cabs, operating without authority, from the streets” and to enable the organized cab fleets and transit companies to increase their profits. Restriction of entry was not motivated by a concern for congestion or pollution externalities.¹⁴

8. In a commentary to the National Association of Regulatory Utility Commissioners on TNC regulations, I discuss how future background checks might be based on mid-ride fingerprint scans or even retinal scans, which could more clearly identify the driver and provide a corresponding higher degree of safety. NARUC Task Force on Transportation, “Report of the NARUC Task Force on Transportation” (National Association of Regulatory Commissioners, Washington, DC, February 2017).

9. Michael D. Farren, “Rethinking TNC Regulations: Enshrining the Past Forestalls the Future” (Testimony before the Virginia Joint Transportation Committee, Mercatus Center at George Mason University, Arlington, VA, November 10, 2016).

10. “These costs are relatively insignificant when viewed in the context of companies valued in the billions of dollars; however, they may be insurmountable for most startups looking to begin their own ridesharing venture to compete with those established firms.” Koopman, “Today’s Solutions, Tomorrow’s Problems.”

11. Adam Thierer, “Regulatory Capture: What the Experts Have Found,” *Technology Liberation Front*, December 20, 2010; Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions* (Cambridge, MA: MIT Press, 1988); W. Kip Viscusi, Joseph Emmett Harrington, and John M. Vernon, *Economics of Regulation and Antitrust*, 4th ed. (Cambridge, MA: MIT Press, 2005).

12. Farren, Koopman, and Mitchell, “Rethinking Taxi Regulations.”

13. See appendix A for a comparison of taxi regulations across Alaska.

14. Mark W. Frankena and Paul A. Pautler, “An Economic Analysis of Taxicab Regulation” (Bureau of Economics Staff Report, Federal Trade Commission, Washington, DC, May 1984), 79.

In fact, in 2013 the FTC commented on the proposal to open Anchorage’s taxi market, which was finally passed by the city council last December. Their position, like that of essentially all economists,¹⁵ is that more competition results in greater benefits for consumers:

Because new entry and competition may generate consumer benefits and are unlikely to harm consumers or competition, staff strongly supports eliminating restrictions on the number of vehicles that may provide taxicab service by 2022, or sooner, if practical. Staff also recommends that rates relating to the business of passenger vehicle transportation services should generally be set by competitive forces where there are no restrictions on entry.¹⁶

As might have been expected, though, taxi medallion owners are fighting back against the loss of their regulatory protection. They have now put a proposal on the April 4 ballot to repeal the city law allowing for the sale of more medallions.¹⁷ This essentially follows a pattern repeated state-by-state over the last several years, where the taxi lobby has vehemently opposed allowing new taxis or TNCs to operate. And the taxi lobby has especially opposed state preemption of local regulations since local taxi companies have less influence at the state level.

CONCLUSION

Local leaders, of course, want the best for their constituents, but at the same time, they face strong pressure from taxis to maintain the status quo. It is precisely because of such vigorous resistance by entrenched special interests that state preemption of local regulations can be useful. It allows local lawmakers an acceptable exit from a difficult situation. This is the approach that Michigan just embraced in passing TNC legislation last December, and Texas and California are now also considering statewide taxi deregulation.

In places where taxi regulations have stifled competition and customers have low-quality or insufficient service, state preemption of local for-hire regulations will allow conditions to improve. In other cities that already have relatively light taxi regulations, like Fairbanks, Wasilla, and Kenai, residents might not notice much of a difference, but they’ll be protected from any future regulatory takeovers by taxi special interests.

15. A panel of top economists chosen to represent an array of policy perspectives unanimously agreed that “Letting car services such as Uber or Lyft compete with taxi firms on equal footing regarding genuine safety and insurance requirements, but without restrictions on prices or routes, raises consumer welfare.” IGM Forum, “Taxi Competition,” September 29, 2014.

16. Federal Trade Commission, Office of Policy Planning, Bureau of Competition, Bureau of Consumer Protection, Bureau of Economics, letter to the Honorable Debbie Ossiander, RE: AO NO. 2013-36, April 19, 2013, 1.

17. Devin Kelly, “Repeal Vote on Anchorage Taxi Ordinance Squeaks onto Ballot,” *Alaska Dispatch News*, February 21, 2017.

APPENDIX A: COMPARISON OF ALASKA CITY TAXI REGULATIONS

City	Barriers to Entry	Price Controls	Mandated Business Practices
<p>Anchorage (Extremely heavy regulations)</p>	<ul style="list-style-type: none"> Entry is limited by number of medallions (188) Medallion prices peaked in 2013 at \$155,000, nearly triple the \$50,000 price in 1995 Entrepreneurs must obtain an Alaska (\$50) business license and special chauffer (\$65+\$75) license Also requires medical certificate (\$105), drug test (\$35), and fingerprint-based background check (\$65) 	<ul style="list-style-type: none"> City sets prices for limos and taxis 	<ul style="list-style-type: none"> Taxis, limos, and shuttles are separately identified and competitively isolated Connection to a taxi dispatch service required (and drivers may not connect to more than one) Odd set of rules allows for a nonprofit to run a limited WAV taxicab fleet; this is evidence that regulations are so onerous and anticompetitive that they keep this kind of service from offered under normal circumstances Insurance mandate, 300/50; 700/50 for 7+ seat vehicles Taximeter, transmission, differential, and wheels must be sealed to prevent tampering Taxicabs must have 2-way radio/computer, roof light, specific interior light, taximeter, silent alarm, video surveillance, and GPS Record keeping required for all trips Limo drivers may not talk on phone in front of passengers
<p>Fairbanks (Mild regulations)</p>	<ul style="list-style-type: none"> No restriction on entry (226 taxi permits as of Dec. 31, 2014) Entrepreneurs must obtain 5 licenses: Alaska (\$50) and Fairbanks (\$40) business licenses, special taxi chauffer (\$175), vehicle (\$200), and company licenses (\$500) 	<ul style="list-style-type: none"> No price controls; prices must simply be posted in the taxicab 	<ul style="list-style-type: none"> Connection to a taxi dispatch service required Insurance mandate, 300/50 Record keeping of all trips and calls and monthly data reporting Anti-jitney policy—may not provide service to multiple passengers without permission City conducts background check
<p>Juneau (Heavy regulations)</p>	<ul style="list-style-type: none"> Entry is limited (71 taxi permits as of Dec. 31, 2014) Entrepreneurs need a certificate of public convenience and necessity Entrepreneurs must obtain 4 licenses: Alaska (\$50) and CPCN (\$1,500) business licenses, special taxi chauffer (\$75+\$25), and vehicle (\$50) licenses Also requires medical certificate Minimum 6 vehicles per company 	<ul style="list-style-type: none"> City sets prices for limos and taxis, even for product deliveries and roadside assistance battery jumps 	<ul style="list-style-type: none"> Taxis and limos/shuttles are separately identified and competitively isolated Taxicabs may not have more than 11 seats Insurance mandate, 300/50 Twice-annual vehicle inspections, plus up to 4 unannounced inspections Taxicabs must have a dome light with the word “taxi”; other vehicles must have signs with 6-inch letters
<p>Kenai (Lightest taxi regulations in Alaska)</p>	<ul style="list-style-type: none"> No restriction on entry Entrepreneurs must obtain an Alaska business license (\$50), a local sales tax number, and a person/vehicle combination taxi license (\$250) 	<ul style="list-style-type: none"> No price controls; prices must simply be posted in the taxicab 	<ul style="list-style-type: none"> Taximeters must be used Charter rates must be arranged 3 hours prior to travel Insurance mandate, 300/50 No background check required Drivers may not solicit business
<p>Kodiak (Heavy regulations)</p>	<ul style="list-style-type: none"> Entry is limited (26 taxi permits) Entrepreneurs need a certificate of public convenience and necessity Entrepreneurs must obtain 4 licenses: Alaska (\$50) business license, special taxi chauffer (\$120), vehicle (\$200), and dispatch licenses (\$200) Also requires medical certificate and drug test 	<ul style="list-style-type: none"> City sets prices for limos and taxis, even for product deliveries 	<ul style="list-style-type: none"> Taxis, limos, and tour vehicles are separately identified and competitively isolated Shuttles are prohibited Record keeping of all trips Anti-jitney policy—may not provide service to multiple passengers without permission Insurance mandate, 300/50 Annual vehicle safety inspection
<p>Wasilla (Light regulations)</p>	<ul style="list-style-type: none"> No restriction on entry Entrepreneurs must obtain 4 licenses: Alaska (\$50) and Wasilla (\$25) business licenses, special taxi chauffer (\$?), and vehicle (\$75) licenses 	<ul style="list-style-type: none"> No price controls 	<ul style="list-style-type: none"> Taxicabs must have a light or recognizable emblem mounted to the roof Annual vehicle safety inspection May not use vehicles with more than 15 seats Insurance mandate, 300/50 Alaska background check

Sources: City government websites for Anchorage, Fairbanks, Juneau, Kenai, Kodiak, and Wasilla.