

Illinois and its municipalities have taken various approaches to regulating the popular and rapidly evolving mode of passenger transportation. Here's a look at state and local ridesharing regulation.

When Ridesharing Comes to Main Street



BY DAVE BARON

ALTHOUGH RIDESHARING FIRST ARRIVED IN ILLINOIS LESS THAN SIX YEARS AGO, its impact has been swift and dramatic. By using smartphone applications, or apps, to connect people seeking a ride with drivers of private vehicles, ridesharing companies like Uber and Lyft disrupted a decades-old passenger transportation system based primarily on licensed taxicabs. Since gaining a foothold in Chicago, ridesharing has expanded to the suburbs and several downstate cities, and there is ample reason to expect some form of ridesharing eventually to find a serviceable market in smaller communities and rural areas.

The range of ridesharing services also continues to grow. Uber now offers an on-demand food delivery service, and Lyft has unveiled a shuttle service that operates on pre-determined but constantly-adjusting routes that maximize rider efficiency. Most notably, these companies are planning for the impending arrival of autonomous cars. Indeed, one can already use an app to summon one of these computerized vehicles in Pittsburgh, where they are being tested. Given that a new Illinois law effective June 1, 2018 preempts municipalities from banning automated driving



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systems, Illinois' roadways are unlikely to be far behind.¹

The state and its municipalities have responded to the ridesharing phenomenon in different ways. In 2015, the Illinois General Assembly created a regulatory class for ridesharing known as transportation network companies ("TNCs"), establishing statewide minimum requirements for insurance, driver qualifications, fare disclosure, and more. Some municipalities also enacted their own ordinances that license ridesharing in a manner similar to taxis and liveries – albeit with varying, and often lighter, regulatory burdens on TNCs. This discrepancy has led to legal challenges against the ridesharing regulations, allowing judges to offer their own views on this emerging form of transit.

In an ever-changing industry, it may seem futile to try to keep pace with the new technologies and products – much less regulate them effectively. But with even more changes approaching, including the seismic shift heralded by autonomous cars, authorities will need to make more decisions about how to ensure convenient transportation options, protect public safety, and encourage innovation. It would benefit municipal attorneys, officials, and lawmakers (as well as anyone with a ridesharing app downloaded on their phone) to take stock of the current trends of ridesharing regulation in Illinois.

Minimum ridesharing standards set by Illinois statute

After a negotiated legislative process that included an executive veto of stricter rules, the Transportation Network Providers Act, 625 ILCS 57/1 *et seq.*, became law in July 2015. The Act established basic standards that ridesharing companies and drivers must satisfy, and it preempts municipalities from regulating them less restrictively.² Though not a complete list of requirements, the following generally summarizes the Act.

The Act defines "TNC Services" as the "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."³ Thus, TNCs are precluded from the paradigmatic province of taxis – accepting street hails from waving customers. The Act also distinguishes TNCs and TNC drivers, stating that "[a] TNC is not deemed to own, control, operate, or manage the vehicles used by TNC drivers."⁴

In terms of insurance, the Act requires TNCs to maintain coverage (at least \$50,000 for death and personal injury per person, \$100,000 for death and personal injury per incident, and \$25,000 for property damage) for the time that a driver is logged into the TNC platform waiting to accept a ride request.⁵ This coverage must be contingent and apply if a driver's policy fails to meet these limits.⁶ For the time between a driver's acceptance and completion of a ride, coverage must be primary in an amount no less than \$1 million for death, personal injury, and property damage, as well as \$50,000 for uninsured motorist coverage – all which may be satisfied by a TNC's policy, the driver's policy, or some combination.⁷

Before operating as a TNC driver, individuals must turn over certain personal information to the TNC, which must conduct, or have a third party conduct, a criminal background check and obtain a driver history report.⁸ No driver can have three or more moving violations or one major violation (e.g., police evasion, reckless driving, driving on a

TAKEAWAYS >>

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- The Transportation Network Providers Act became law in July 2015 and establishes basic standards that ridesharing companies and drivers must satisfy, and it preempts municipalities from regulating them less restrictively.

- While Aurora, Joliet, Naperville, Decatur, Champaign, Urbana, Kankakee, and other municipalities have presently opted not to impose rules beyond what the state requires, several municipalities, including Chicago, Evanston, Bloomington, Normal, Springfield, Peoria, Rockford, and Maywood, have enacted their own ridesharing ordinances. Certain provisions expand upon state protections, and others address separate concerns.

1. See Pub. Act 100-0352 (amending 625 ILCS 5/11-208). The General Assembly is also looking ahead by considering bills that would impose certain requirements and assign liabilities related to the testing of automated driving systems in Illinois. See H.B. 2747; H.B. 1432.

2. 625 ILCS 57/32.

3. *Id.* at § 57/5.

4. *Id.*

5. *Id.* at § 57/10(b).

6. *Id.*

7. *Id.* at § 57/10(c).

8. *Id.* at § 57/15(a).

UNDER STATE LAW, RIDESHARING SERVICES ARE PRECLUDED FROM THE PARADIGMATIC PROVINCE OF TAXIS – ACCEPTING STREET HAILS FROM WAVING CUSTOMERS.

suspended/revoked license, etc.) during the past three years.⁹ Further, no driver can be a registered sex offender or have been convicted in the past seven years of offenses that include DUI, fraud, sexual offenses, theft, and acts of violence or terror.¹⁰ Drivers cannot be under 19 years old, and they must possess a valid driver's license and proof of registration and insurance in the vehicle to be used.¹¹ The vehicle must also comply with Illinois' safety and emission requirements.¹²

All TNCs must adopt a zero tolerance policy forbidding drivers' use of drugs or alcohol while being logged into a TNC platform.¹³ Upon receipt of a complaint alleging a violation of the policy, the TNC must suspend the driver's platform access until an investigation is completed.¹⁴ TNCs must also adopt a policy precluding discrimination on the basis of a rider's destination and other protected characteristics.¹⁵ Finally, rather than mandating a particular rate, the Act requires TNCs to disclose on their apps the method of fare calculation and an option for users to receive an estimated fare in advance.¹⁶

Perhaps anticipating that changes to the industry could soon render these basic rules obsolete, the General Assembly passed a sunset provision repealing the Act as of June 1, 2020.¹⁷ Unless the legislature extends this date or enacts a new statute, municipalities will be free then to regulate ridesharing on their own accord.

Local ridesharing ordinances

Although an app can arrange for ride-sharing transportation in Aurora, Joliet, Naperville, Decatur, Champaign, Urbana, and Kankakee, these municipalities and others have opted not to impose rules beyond what the state requires. Nonetheless, several municipalities, including Chicago, Evanston, Bloomington, Normal, Springfield, Peoria, Rockford, and Maywood, have enacted their own ridesharing ordinances. As summarized below, certain provisions expand upon state protections, and others address separate concerns.

Licensing and fees. Several jurisdictions license TNCs and require them to pay annual fees – a \$1,500 license fee in Springfield, a \$2,500 application fee in Rockford, a \$3,000 license fee in Peoria, and a \$100 application fee and \$3,000 license fee in Bloomington and Normal.¹⁸ (These last two cities have signed an intergovernmental agreement to administer TNC licensure jointly.)¹⁹ As of October 2017, Chicago imposes a \$10,000 annual fee and the following per-ride fees: \$0.02 administrative fee, \$0.10 accessibility fee, and \$0.40 ground transportation fee that increases by \$5 for all rides to or from the city's airports, Navy Pier, or McCormick Place.²⁰

Investigations. Bloomington and Normal require TNCs to submit a plan detailing the background checks to be conducted on each potential driver by an approved third-party vendor.²¹ Additionally, TNCs must remove a driver from the platform if notified by municipal authorities that he or she was involved in illegal activity and until the charge has been adjudicated and the driver re-qualified.²² This differs from the state rule mandating suspension and investigation solely for a reported violation of the zero tolerance drug and alcohol policy.

Driver qualifications. Certain ordinances supplement Illinois' list of criteria for TNC drivers. For instance, Chicago, Bloomington, and Normal increase the minimum age to 21.²³ Peoria and Rockford generally prohibit drivers with three or more moving violations within the past two years (rather than

three years).²⁴ Peoria also forbids drivers with DUI offenses during the past five years (not seven) and drivers with certain convictions related to drugs, prostitution, child pornography, and hate crimes from any time in the past unless a driver can show sufficient rehabilitation.²⁵ Chicago forbids drivers from operating until any outstanding municipal debts are paid.²⁶ Peoria and Chicago require TNC drivers to obtain their own form of license, which Chicago conditions on passage of an online or in-person training course.²⁷

Vehicles. Chicago, Bloomington, and Normal require annual vehicle inspections, specifying multi-point standards that the vehicles must satisfy.²⁸ In Chicago, vehicles six years or older must be inspected on a semi-annual basis, and Bloomington and Normal prohibit using any vehicles older than 10 years.²⁹

Advertising. Evanston bans the display of advertising signs on ridesharing vehicles that create risk of injury to drivers, passengers, or pedestrians.³⁰

9. *Id.* at § 57/15(b)(1).

10. *Id.* at § 57/15(b)(2)-(3).

11. *Id.* at § 57/15(b)(4)-(7).

12. *Id.* at § 57/25(d).

13. *Id.* at § 57/25(a).

14. *Id.* at § 57/25(c).

15. *Id.* at § 57/20(a)-(d).

16. *Id.* at § 57/30(a)-(b).

17. *Id.* at § 57/34.

18. Code of the City of Bloomington, Illinois, 1960, § 40-1204(a); City of Springfield, Illinois, 1988 City Code, § 110.903; Code of Ordinances of the City of Rockford, Illinois, § 29-206(c); Code of the City of Peoria, Illinois, § 30-72(b).

19. Code of the City of Bloomington, Illinois, 1960, § 40-1201(b).

20. Municipal Code of Chicago, §§ 3-46-030(b-1), 9-115-040(a), (e), 9-115-140(e).

21. Code of the City of Bloomington, Illinois, 1960, § 40-1206(h).

22. *Id.* at § 40-1208(b)(1).

23. Municipal Code of Chicago, § 9-115-150(b)(1)(ii); Code of the City of Bloomington, Illinois, 1960, § 40-1209(b)(7).

24. Code of the City of Peoria, Illinois, § 30-103(a)(5); Code of Ordinances of the City of Rockford, Illinois, § 29-208(b)(9).

25. Code of the City of Peoria, Illinois, §§ 30-103(a)(6)-(7).

26. Municipal Code of Chicago, § 9-115-150(h).

27. Code of the City of Peoria, Illinois, § 30-101; Municipal Code of Chicago, §§ 9-115-150(a), (b)(1)(iv).

28. Municipal Code of Chicago, § 9-115-110(d); Code of the City of Bloomington, Illinois, 1960, § 40-1214(a).

29. Municipal Code of Chicago, §§ 9-115-110(a)-(b); Code of the City of Bloomington, Illinois, 1960, § 40-1214(b).

30. Evanston City Code, § 3-17-14.

Chicago prohibits all commercial advertising on the exterior and interior of a vehicle.³¹ Notably, in ongoing litigation, a federal judge in August 2017 denied a motion to dismiss a claim that Chicago's restriction constitutes an unconstitutional infringement of commercial speech.³²

Operations. Evanston and Chicago preclude ridesharing vehicles from operating at designated taxi stands.³³ Drivers in Rockford may not provide TNC services more than 10 hours on any calendar day – and in Chicago, 10 hours within any 24-hour period.³⁴ Further, Rockford and Peoria permit authorities to suspend a driver for not maintaining a reasonable level of personal hygiene, appearance, or conduct.³⁵ In Maywood, where police received reports of ridesharing being used for drug trafficking, lawmakers have sought to curb the problem by barring TNC drivers from accepting packages for transport unless a rider accompanies them.³⁶

Pricing. A defining characteristic of most TNCs is their practice of raising fares during periods of high demand – known as “Surge” pricing with Uber and “Prime Time” with Lyft. Peoria's ordinance states that in cases of municipal emergency, the mayor and city manager may limit this dynamic pricing.³⁷ Interestingly, a similar restriction was proposed at the last session of the Illinois General Assembly, but the session ended without a vote on the bill.³⁸

Passenger privacy. Springfield prohibits TNCs from disclosing a passenger's personally identifiable information to a third party without consent or unless disclosure is required by legal obligation or to defend the TNC's terms of use.³⁹ Relatedly, Peoria requires that if a third party requests TNC records from the city – under FOIA, for example – the city must assert any applicable confidentiality protections and notify the TNC of the request.⁴⁰

Lawsuits by members of the taxi and livery industries

State and local lawmakers are not the only ones with views on ridesharing regulations. Judges have offered their

own opinions when occasioned by legal challenges from those most disrupted by the emergence of ridesharing.

Specifically, members of the taxi and livery industries, including drivers, dispatchers, trade associations, and lenders, have sued cities across the country for regulating ridesharing separately. These plaintiffs have alleged that in all relevant respects TNCs are de facto taxis and liveries, and to impose a different, and purportedly lighter, regulatory burden on TNCs unfairly disadvantages taxis and liveries.

Although the plaintiffs' theories of public takings, contract, and estoppel generally have been rejected,⁴¹ their equal protection claims have fared slightly better. Where a law does not implicate a suspect class or improper motive, such claims are reviewed under the rational basis standard, according to which the separate treatment of TNCs from taxis or liveries is valid so long as there is a reasonable justification for the distinction. The issue has not been considered under the Illinois Constitution's Equal Protection Clause, but several federal courts, including those in Illinois, have evaluated claims under the federal counterpart.

In *Illinois Transportation Trade Association v. City of Chicago*, the Northern

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31. Municipal Code of Chicago, § 9-115-130.

32. *Vugo, Inc. v. City of Chicago*, 2017 WL 3421568, *2-7 (N.D. Ill. Aug. 9, 2017) (holding that the city must demonstrate through discovery that the restriction can withstand intermediate scrutiny).

33. Evanston City Code, § 3-17-7; Municipal Code of Chicago, § 9-115-180(b)(2).

34. Municipal Code of Chicago, § 9-115-190(c); Code of Ordinances of the City of Rockford, Illinois, § 29-208(f).

35. Code of Ordinances of the City of Rockford, Illinois, § 29-213(f); Code of the City of Peoria, Illinois, § 30-109(7).

36. Maywood Village Code, § 126.03.

37. Code of the City of Peoria, Illinois, § 30-31(e).

38. H.B. 4027 (2015).

39. City of Springfield, Illinois, 1988 City Code, § 110-917.

40. Code of the City of Peoria, Illinois, § 30-49(d).

41. See, e.g., *Illinois Transportation Trade Ass'n v. City of Chicago*, 134 F. Supp. 3d 1108, 1112-14 (N.D. Ill. 2016).

Cars that drive themselves: Regulating autonomous vehicles

A recently enacted Illinois law and federal legislative and regulatory action are part of a bipartisan effort to create a regulatory framework that promotes development of self-driving cars.

Illinois. P.A. 100-0352, signed into law by Governor Rauner on Aug. 25, provides that “[a] unit of local government, including a home rule unit, may not enact an ordinance prohibiting the use of Automated Driving System equipped vehicles on its roadways.”

Federal. The U.S. House of Representatives in September passed H.R. 3388, the Self Drive Act, and in October the Senate Committee on Science, Commerce and Transportation sent the AV Start Act to the full Senate. Among other things, the bills would pre-empt states from implementing certain laws governing the new technology and would allow makers of self-driving vehicles to apply for exemptions from transportation safety regulations forbidding vehicles without human controls. Also, the National Highway and Transportation Safety Administration released guidelines in September for “Automated Driving Systems” that ease some of those regulatory obstacles.

District of Illinois held that the plaintiffs had adequately stated an equal protection claim against Chicago's ridesharing ordinance.⁴² However, on interlocutory appeal, the seventh circuit reversed.

In an opinion by Judge Richard Posner that focused primarily on taxis and TNCs, the court held that the transportation models were sufficiently distinct to warrant separate treatment: "Taxis but not [TNCs] are permitted to take on as passengers persons who hail them on the street," and therefore it is rational "for the City to try to protect passengers by screening the taxi drivers

to assure that they're competent and by imposing a uniform set of rules based on time or distance or both."⁴³ Further, different vehicle criteria are reasonable because TNCs extensively partner with part-time drivers whose vehicles are less likely to experience the wear that taxis face from "constantly patrolling the streets in hope of being hailed."⁴⁴ Since the case was decided, other federal courts have dismissed similar equal protection challenges, often highlighting the ability of taxis to accept street hails as the core difference between taxis and TNCs.⁴⁵

These rulings are unlikely the last

on the expanding ridesharing industry. While the opinions offer a conditional green light to this growth (perhaps more of a yellow light), they also emphasize that regulators should remain mindful to tether distinctions between various transportation options to rational, articulable justifications. **EB**

42. *Id.* at 1114-15.

43. *Illinois Transportation Trade Ass'n v. City of Chicago*, 839 F.3d 594, 598 (7th Cir. 2016).

44. *Id.*

45. See, e.g., *Desoto CAB Company v. Picker*, 228 F. Supp. 3d 950, 960-62 (N.D. Cal. 2017).

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