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HB 225 – Motor Vehicles and Traffic: Motor Carriers

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MOTOR VEHICLES AND TRAFFIC

Motor Carriers: Regulate Transportation for Hire; Amend Chapter 60 of Title 36 of the Official Code of Georgia Annotated, Relating to General Provisions Regarding Provisions Applicable to Counties and Municipal Corporations, so as to Preserve Existing Certificates of Public Necessity and Convenience and Medallion Systems for Taxicabs and to Restrict the Future Use Thereof; Provide That Operators of Taxicabs Have For-Hire License Endorsements; Prohibit the Staging of Certain Vehicles; Provide Certain Insurance Requirements for Taxicabs; Amend Title 40 of the Official Code of Georgia Annotated, Relating to Motor Vehicles, so as to Change Certain Provisions Relating to Commercial Indemnity Liability Insurance for Limousine Carriers; Provide for the Comprehensive Regulation of Transportation Referral Services, Transportation Referral Service Providers, Ride Share Network Services, and Ride Share Drivers; Provide for Definitions; Provide for Legislative Intent; Provide for Registration and Licensing of Such Providers; Provide for Certain Disclosures; Prohibit Certain Practices and to Provide Penalties for Violations; Prohibit the Waiver of Rights by Passengers Under Certain Conditions; Provide for Billing Methods; Provide for Master License Fees for For-Hire Vehicles in Lieu of Sales and Use Taxes on Fares; Provide for For-Hire License Endorsements; Amend Section 3 of Part 1 of Article 1 of Chapter 8 of Title 48 of the Official Code of Georgia Annotated, Relating to Exemptions from Sales and Use Taxes, so as to Provide an Exemption; Provide for Related Matters; Provide for Effective Dates and for Legislative Intent; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS: O.C.G.A. §§ 36-60-25 (amended);
40-1-158, -166 (amended), -190, -191,
-192, -193, -194, -195, -196, -197,
-198, -199, -200 (new); 40-2-168
(amended); 40-5-1, -39 (amended);
48-8-3 (amended)

BILL NUMBER: HB 225

ACT NUMBER: 195

GEORGIA LAWS:	2015 Ga. Laws 1262
SUMMARY:	The Act prevents the creation of future convenience and medallion systems and, instead, requires taxicab and ride-share companies to obtain a for-hire license endorsement or private background check certification. The Act also requires ride-share companies to pay state sales taxes or an annual fee for each car in its network.
EFFECTIVE DATE:	O.C.G.A. §§ 36-60-25, 40-1-158, -190 to -200, 40-5-1, -39, July 1, 2015; §§ 40-2-168, 48-8-3, July 1, 2016

History

In 2010, Travis Kalanick and Garrett Camp, fed up with the difficulty of finding a taxi in San Francisco, launched Uber: a business providing full size luxury cars for hire.¹ The platform is simple: users download the Uber app on their phones, enter credit card information, and select their location.² An Uber driver, driving his own vehicle, then picks up the user and drives to the selected destination.³ Uber gained immense popularity, aggressively expanded nationwide, and is currently worth approximately \$50 billion.⁴ In August 2012, Uber officially launched its services in Atlanta, Georgia.⁵ Because of its novel service and app-based technology, Uber found itself immune to Georgia laws regulating the taxicab industry.⁶ The resulting “turf war” between taxicab drivers and their

1. Edmund Ingham, *Start-Ups Take Note: Uber Made It Big, But Did They Get It Right?*, FORBES (Dec. 5, 2014, 1:16 PM), <http://www.forbes.com/sites/edmundingham/2014/12/05/start-ups-take-note-uber-made-it-big-but-did-they-get-it-right/>.

2. *Id.*

3. UBER, <http://www.uber.com/features> (last visited Oct. 26, 2015).

4. Chris Myers, *Decoding Uber's Proposed \$50B Valuation (And What It Means For You)*, FORBES (May 3, 2015, 10:35 AM), <http://www.forbes.com/sites/chrismyers/2015/05/13/decoding-ubers-50-billion-valuation-and-what-it-means-for-you/>.

5. Keith Radford, *Uber Atlanta Launches*, UBER NEWSROOM (Aug. 24, 2014), <http://newsroom.uber.com/atlanta/2012/08/uber-atlanta-launches-spottietiedopaliscious/>.

6. See Bill Hendrick, *Georgia House Passes Ridesharing Regulation Bill*, INS. J. (Mar. 5, 2015), <http://www.insurancejournal.com/news/southeast/2015/03/05/359470.htm>.

ride-share competitors fueled aggressive lobbying and eventually legislative action.⁷

To operate a taxicab in Atlanta, a potential driver must abide by local regulations.⁸ First, the driver must pay the \$75 registration fee and submit to a background check costing approximately \$20.⁹ There is also a yearly “daylong training session that includes a review of the city’s taxi ordinance[s].”¹⁰ Most importantly, a potential driver must partner with a taxicab company that owns a Certificate of Public Necessity and Convenience, commonly referred to as a “medallion.”¹¹ The city limits the number of medallions sold annually to control the number of taxis operating in Atlanta.¹² After obtaining a medallion and the necessary licensing, drivers are also subject to annual background checks and semi-annual vehicle inspections.¹³

On the other hand, before the passage of House Bill (HB) 225, to become an Uber driver, applicants only had to interview with Uber.¹⁴ Uber then verified through a private firm that the driver met Uber’s self-imposed background check and insurance requirements.¹⁵ If a driver met these pre-requisites, the driver could begin driving almost immediately.¹⁶ The differences between the qualifications and regulations of ride-share and traditional taxi services created controversy and sparked new legislation.¹⁷

The first legislative effort came during the 2013–2014 session of the Georgia General Assembly.¹⁸ HB 907, introduced by Representative Alan Powell (R-32nd), sought to regulate the taxicab

7. Thomas Wheatley, *Atlanta’s Taxi Industry Declares War on Uber, Lyft*, CREATIVE LOAFING (Jan. 30, 2014), <http://clatl.com/atlanta/atlantas-taxi-industry-declares-war-on-uber-lyft/Content?oid=10295234>.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* A potential taxicab driver could purchase a medallion on the open market; however, a single medallion costs around \$65,000. *Id.* Taxicab companies, on the other hand, can purchase the medallions and lease them to individual drivers for a monthly fee. *Id.*

12. *Id.*

13. Wheatley, *supra* note 7.

14. *Id.*

15. *Id.*

16. *Id.*

17. Telephone Interview with Rep. Alan Powell (R-32nd) (May 8, 2015) [hereinafter Powell Interview].

18. HB 907, as introduced, 2014 Ga. Gen. Assem.

and ride-sharing industries at a statewide level.¹⁹ The bill attempted to introduce a comprehensive regulatory system of licensing, background checks, safety inspections, and taxation.²⁰ In a press release, Uber called HB 907 “a direct attack on Atlanta consumers and drivers.”²¹ The press release then called on Uber users to protest the bill on social media.²² This initial outcry caused HB 907 to die in committee.²³ Also in 2014, taxicab drivers filed a class-action lawsuit against Uber in Atlanta alleging tortious interference with business relations, unjust enrichment, and bad faith.²⁴ The crux of the taxicab drivers’ action accused Uber of operating illegally as a taxicab business without abiding by the state and local regulations imposed upon other taxicabs.²⁵

A year after HB 907 failed, legislators, again under Representative Powell’s leadership, attempted to reconcile the opposing sides and pass meaningful legislation aimed at “leveling the playing field” for all Georgia for-hire transportation.²⁶ Focused largely on the same major concerns—safety, taxation, and certification—Representative Powell introduced HB 225.²⁷ The bill was filed on February 4, 2015,²⁸ and was the result of the recommendations proffered by the House Study Committee on For-Hire Transportation.²⁹ Speaker David Ralston (R-7th) created the special committee in the fall of 2014.³⁰

19. *Id.*

20. *Id.*

21. *A Not So Peachy Georgia*, UBER NEWSROOM (Feb. 13, 2014), <http://newsroom.uber.com/atlanta/2014/02/a-not-so-peachy-georgia/>.

22. *Id.*

23. State of Georgia Final Composite Status Sheet, HB 907, May 1, 2014.

24. Amended Complaint at 24, 33, 34, *McCandliss v. Uber, Tech.*, No. 1:14-03275-WSD (N.D. Ga. Nov. 26, 2014), ECF No. 29.

25. *Id.*

26. Powell Interview, *supra* note 17.

27. HB 225, as introduced, 2015 Ga. Gen. Assem.; *see also* Video Recording of House Proceedings, Mar. 11, 2015 (PM 2) at 8 min., 1 sec. (remarks by Rep. Alan Powell (R-32nd)), <http://www.gpb.org/lawmakers/2015/day-29> [hereinafter House Video Day 29].

28. *See* Georgia General Assembly, HB 225, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/225>.

29. Jon Richards, *Most of What You’ve Heard About the Uber Bill Is Wrong*, PEACH PUNDIT (Feb. 17, 2015, 9:00 AM), <http://www.peachpundit.com/2015/02/17/youve-heard-uber-bill-wrong/>.

30. *Id.*

*Bill Tracking of HB 225**Consideration and Passage by the House*

Representatives Alan Powell (R-32nd), Emory Dunahoo (R-30th), John Carson (R-46th), Dale Rutledge (R-109th), Bill Hitches (R-161st), and Rick Jasperse (R-11th) sponsored HB 225.³¹ The House read the bill for the first time on February 9, 2015.³² The bill was less than four full pages and contained very little detail.³³ The House read the bill for the second time on February 10, 2015, and Speaker David Ralston (R-7th) assigned the bill to the Regulated Industries Committee.³⁴ The Committee reported the bill by substitute on March 3, 2015.³⁵ The House read the Committee substitute on March 11, 2015.³⁶

The Committee substitute expanded the original bill from four to nineteen pages.³⁷ The substance of the Committee substitute came from HB 224, which was also introduced in the 2015 legislative session.³⁸ It focused on passenger safety, insurance coverage, sales tax liability, and deregulation of the ride-sharing market.³⁹ It established a July 1, 2016, effective date for the sales tax liability provisions and registration fees and a July 1, 2015, effective date for the remaining provisions.⁴⁰ Moreover, the substitute added legislative intent and numerous definitions.⁴¹ Importantly, it provided for private background checks.⁴² The Committee substitute allows private

31. Georgia General Assembly, HB 225, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/225>.

32. State of Georgia Final Composite Status Sheet, HB 225, May 14, 2015.

33. See HB 225, as introduced, 2015 Ga. Gen. Assem. Notably, it required all for-hire drivers to submit fingerprints to a government agency. *Id.* § 4, p. 3, ln. 72–79. This proved to be valuable leverage for ride-share companies during subsequent negotiations that would allow them to conduct their own background checks. See *infra* notes 144–46 and accompanying text.

34. State of Georgia Final Composite Status Sheet, HB 225, May 14, 2015.

35. *Id.*

36. *Id.*

37. Compare HB 225, as introduced, 2015 Ga. Gen. Assem. (spanning four pages), with HB 225 (HCS), 2015 Ga. Gen. Assem. (spanning nineteen pages).

38. Compare HB 225 (HCS), 2015 Ga. Gen. Assem., with HB 224, as introduced, 2015 Ga. Gen. Assem.

39. House Video Day 29, *supra* note 27, at 8 min., 1 sec. (remarks by Rep. Alan Powell (R-32nd)).

40. HB 225 (HCS), § 8, p. 19, ln. 648–49, 2015 Ga. Gen. Assem.

41. *Id.* § 3, p. 3–4, ln. 72–104, 106–29.

42. *Id.* § 6, p. 16, ln. 539–42.

companies to perform their own background checks, rather than requiring drivers to submit to more intrusive, state-sponsored background checks.⁴³

Furthermore, the Committee substitute mandated that ride-sharing companies pay taxes.⁴⁴ Ride-sharing companies, which previously avoided paying sales tax, have two payment options.⁴⁵ They can pay a standard sales tax, or they can pay a flat tax based on the number of vehicles owned: an average of \$300 per vehicle.⁴⁶ Finally, taxicabs, which are traditionally heavily-regulated at the local level, are now regulated at the state level as a result of the Committee substitute.⁴⁷ The House passed the Committee substitute by a vote of 160 to 10.⁴⁸

Consideration and Passage by the Senate

Senator Brandon Beach (R-21st) sponsored HB 225 in the Senate.⁴⁹ The Senate read the bill for the first time on March 13, 2015, and was assigned to the Senate Science and Technology Committee.⁵⁰ On March 26, 2015, Senator Beach presented the substitute bill for vote.⁵¹ Senator Beach formerly opposed the bill; however, he agreed to carry it because it was supported by all of the parties involved.⁵² Moreover, Senator Beach believed the bill's light regulation creates a framework for innovative ride-sharing companies

43. House Video Day 29, *supra* note 27, at 10 min., 24 sec. (remarks by Rep. Alan Powell (R-32nd)).

44. HB 225 (HCS), § 4, p. 12, ln. 382–98, 2015 Ga. Gen. Assem.

45. House Video Day 29, *supra* note 27, at 19 min., 5 sec. (remarks by Rep. Alan Powell (R-32nd)).

46. *Id.* at 19 min., 45 sec.

47. *Id.* at 15 min., 10 sec. As a result of the bill, the state now regulates the registration of for-hire drivers, the insurance requirements, and their taxes while local governments lose control over these previously regulated areas. *See* O.C.G.A. § 40-2-168 (Supp. 2015); O.C.G.A. § 40-5-39 (2014 & Supp. 2015).

48. Georgia House of Representatives Voting Record, HB 225 (Mar. 11, 2015).

49. Georgia General Assembly, HB 225, Bill Tracking, <http://www.legis.ga.gov/Legislation/en-US/display/20152016/HB/225>.

50. State of Georgia Final Composite Status Sheet, HB 225, May 14, 2015.

51. *Id.*; *see also* Video Recording of Senate Proceedings, Mar. 26, 2015 (AM 2) at 43 min., 30 sec. (remarks by Sen. Brandon Beach (R-21st)), <http://www.gpb.org/lawmakers/2015/day-37> [hereinafter Senate Video Day 37].

52. Senate Video Day 37, *supra* note 51, at 45 min., 29 sec. (remarks by Sen. Brandon Beach (R-21st)).

to continue to grow, and the bill's preemptive language prevents local governments from adding regulation.⁵³

The Senate Committee substitute included a revision to Code section 40-1-166 relating to commercial indemnity and liability insurance.⁵⁴ The revision specified that the minimum amount of liability insurance coverage depends on the vehicle's capacity.⁵⁵ Vehicles with a capacity for twelve passengers or fewer must carry a minimum of \$300,000 for bodily injury or death of all persons in any one accident, whereas vehicles with a capacity for more than twelve passengers must carry a minimum of \$500,000.⁵⁶ The Senate Committee substitute was passed by a vote of 48 to 2.⁵⁷

Reconsideration by the House

On March 31, 2015, Representative Powell moved that the House agree to a Senate substitute and introduced an amendment.⁵⁸ The amendment's key change extended the bill's tax effective date from July 1, 2016, to July 1, 2017.⁵⁹ The Governor's Office of Planning and Budget and the Georgia Department of Revenue requested this change to allow them the flexibility to implement their own tax framework.⁶⁰ Additionally, the amendment added a sunset provision wherein the amendment would expire contingent upon a settlement between the ride-share companies and Department of Revenue.⁶¹

The amendment also added language that outlined the second tax option (\$300 per vehicle in lieu of sales tax) in more detail.⁶² Representative Powell's amendment explained how the funds from the annual master license fee would be allocated.⁶³ Specifically, 57% of the funds would be "retained by the state for deposit in the general

53. *Id.* at 46 min., 10 sec.

54. HB 225 (SCS), § 2-1, p. 3, ln. 74–90, 2015 Ga. Gen. Assem.

55. *See id.*

56. *Id.* § 2-1, p. 3, ln. 83–84, 87–88.

57. Georgia Senate Voting Record, HB 225 (Mar. 26, 2015).

58. Video Recording of House Proceedings, Mar. 31, 2015 (PM 1) at 1 hr., 38 min., 43 sec. (remarks by Rep. Alan Powell (R-32nd)), <http://www.gpb.org/lawmakers/2015/day-39> [hereinafter House Video Day 39].

59. *Id.* at 1 hr., 41 min., 10 sec.

60. *Id.*

61. *Id.*

62. *See* HB 225 (AM 28 1440), p. 2, ln. 56–59, 2015 Gen. Assem.

63. *Id.* p. 2, ln. 35–45.

fund of the state treasury.”⁶⁴ The remaining 43% would be “divided by the department proportionately according to population to the county or counties set forth in such declaration.”⁶⁵ This Senate substitute as amended by the House passed by a vote of 146 to 21.⁶⁶

Reconsideration by the Senate

On April 2, 2015, Senator Beach presented the final version of the bill to the Senate.⁶⁷ The Senate agreed to the House floor amendments. The final version of the bill passed the Senate by a vote of 48 to 4.⁶⁸ HB 225 was sent to Governor Nathan Deal (R) on April 14, 2015, and signed into law on May 6, 2015.⁶⁹

The Act

The Act first amends Chapter 60 of Title 36 of the Official Code of Georgia Annotated, “relating to general provisions . . . applicable to counties and municipal corporations.”⁷⁰ The purpose of this change was to preserve the existing medallion system for taxicabs while simultaneously restricting its future use to allow increasing for-hire license endorsements.⁷¹ It also prohibits the staging of certain vehicles and provides for certain insurance requirements for taxicabs.⁷²

Section 1 of the Act amends Code section 36-60-25 by restricting the medallion system.⁷³ This section now provides that no new medallions will be issued, but also that taxicabs currently operating under a medallion system can continue to do so.⁷⁴ Section 2 of the Act amends Code sections 40-1-158 and 40-1-166.⁷⁵ Section

64. *Id.* p. 2, ln. 35–36.

65. *Id.* p. 2, ln. 38–41.

66. Georgia House of Representatives Voting Record, HB 225 (Mar. 31, 2015).

67. Video Recording of Senate Proceedings, Apr. 2, 2015 (PM 3) at 1 hr., 36 min., 52 sec. (remarks by Sen. Brandon Beach (R-21st)), <http://www.gpb.org/lawmakers/2015/day-40-sine-die>.

68. Georgia Senate Voting Record, HB 225 (Apr. 2, 2015).

69. State of Georgia Final Composite Status Sheet, HB 225, May 14, 2015.

70. 2015 Ga. Laws 1262, at 1262.

71. *Id.*

72. *Id.*

73. 2015 Ga. Laws 1262, § 1, at 1263.

74. O.C.G.A. § 36-60-25 (2012 & Supp. 2015).

75. 2015 Ga. Laws 1262, § 2–2–1, at 1264.

40-1-158 sets forth the requirement that taxicabs must obtain either for-hire license endorsements or private background check certifications.⁷⁶ Section 40-1-166 requires that limousine carriers obtain and maintain commercial indemnity and liability insurance with an insurance company.⁷⁷ The minimum coverage amount depends on whether the limousine has the capacity for twelve passengers or less (\$300,000 minimum) or for more than twelve passengers (\$500,000 minimum).⁷⁸

Section 3 of the Act adds ten new Code sections, 40-1-190 through 40-1-200.⁷⁹ Section 40-1-190 provides pertinent definitions, including “ride share driver” and “ride share network service.”⁸⁰ Section 40-1-191 establishes legislative intent, finding “that it is in the public interest to provide uniform administration and parity among ride share network services [and] transportation referral services . . . including taxi services”⁸¹ Section 40-1-192 establishes the registration guidelines for transportation referral services.⁸² These companies must obtain a license from the state,⁸³ maintain an updated list of all limousine carriers and taxi services it utilized,⁸⁴ and ensure that all drivers are properly permitted,⁸⁵ obtain proper background checks,⁸⁶ and acquire the state-required insurance.⁸⁷ Section 40-1-193 provides the registration guidelines for ride-share networks.⁸⁸ These networks must also register with the state,⁸⁹ maintain a list of all drivers,⁹⁰ and ensure that all drivers

76. O.C.G.A. § 40-1-158 (2014 & Supp. 2015).

77. O.C.G.A. § 40-1-166 (2014 & Supp. 2015).

78. *Id.*

79. 2015 Ga. Laws 1262, § 3, at 1265–72.

80. O.C.G.A. § 40-1-190 (Supp. 2015) (defining a “ride share driver” as a person who uses a personal passenger car to “provide transportation for passengers arranged through a ride share network service,” and defining “ride share network service” as a person or entity that uses a network to connect passengers with ride share drivers for prearranged transportation).

81. O.C.G.A. § 40-1-191 (Supp. 2015).

82. O.C.G.A. § 40-1-192 (Supp. 2015).

83. O.C.G.A. § 40-1-192(b) (Supp. 2015).

84. O.C.G.A. § 40-1-192(c) (Supp. 2015).

85. O.C.G.A. § 40-1-192(d)(2) (Supp. 2015).

86. O.C.G.A. § 40-1-192(d)(5) (Supp. 2015).

87. O.C.G.A. § 40-1-192(d)(7) (Supp. 2015).

88. O.C.G.A. § 40-1-193 (Supp. 2015).

89. O.C.G.A. § 40-1-193(a) (Supp. 2015).

90. O.C.G.A. § 40-1-193(b) (Supp. 2015).

acquire permits,⁹¹ submit to background checks,⁹² and maintain proper insurance.⁹³ Additionally, ride-share drivers must maintain a digital identification on their smartphone.⁹⁴ Section 40-1-194 makes it a misdemeanor for a company to refer, utilize, or contract with a driver who is not properly licensed and registered under the Act.⁹⁵ Section 40-1-195 requires ride-share drivers to display “consistent and distinctive” signage to identify the network with which the driver is affiliated.⁹⁶ Section 40-1-196 requires that all fares charged by ride-share networks be calculated by one or more of an established set of factors, including distance and time.⁹⁷ Section 40-1-197 authorizes the State to promulgate rules and regulations to implement the Act.⁹⁸ Section 40-1-198 requires transportation referral services to maintain a list of all employed drivers in the state.⁹⁹ Section 40-1-199 establishes guidelines for any waiver of rights on behalf of a customer.¹⁰⁰ Lastly, Section 40-1-200 provides an exception for “equine drawn vehicles” and non-motorized vehicles from Part 4 of Article 3 of Chapter 1 in Title 40 of the Official Code of Georgia Annotated.¹⁰¹

Section 4 of the Act amends Code section 40-2-168 and sets forth the requirements for obtaining a distinctive license plate for taxicab and limousine drivers.¹⁰² Moreover, this section establishes guidelines and an annual fee structure for master licenses.¹⁰³ For-hire drivers must either display their master license decals on their vehicles or maintain a physical or electronic copy of their certificate at all times.¹⁰⁴ The fees increase based on the number of for-hire vehicles.¹⁰⁵ The following subsections explain how the proceeds of

91. O.C.G.A. § 40-1-193(c)(1) (Supp. 2015).

92. O.C.G.A. § 40-1-193(c)(2) (Supp. 2015).

93. O.C.G.A. § 40-1-193(c)(4) (Supp. 2015).

94. O.C.G.A. § 40-1-193(d) (Supp. 2015).

95. O.C.G.A. § 40-1-194 (Supp. 2015).

96. O.C.G.A. § 40-1-195(b) (Supp. 2015).

97. O.C.G.A. § 40-1-196 (Supp. 2015).

98. O.C.G.A. § 40-1-197 (Supp. 2015).

99. O.C.G.A. § 40-1-198(a) (Supp. 2015).

100. O.C.G.A. § 40-1-199 (Supp. 2015).

101. O.C.G.A. § 40-1-200 (Supp. 2015).

102. 2015 Ga. Laws 1262, § 4, at 1272.

103. O.C.G.A. § 40-2-168 (2014 & Supp. 2015).

104. O.C.G.A. § 40-2-168(b)(3) (Supp. 2015).

105. O.C.G.A. § 40-2-168(b)(4) (Supp. 2015).

the master licensing fees will be distributed.¹⁰⁶ Lastly, Section 4 contains a “sunset provision” set to expire on July 1, 2017, barring further legislative action.¹⁰⁷

Section 5 amends paragraphs 9 and 11 of Code section 40-5-1.¹⁰⁸ This section defines the Act’s terms.¹⁰⁹ Specifically, this section defines the terms “for hire,”¹¹⁰ “for-hire license endorsement,”¹¹¹ “limousine carrier,”¹¹² “ride share driver,”¹¹³ “ride share network service,”¹¹⁴ and “taxi service.”¹¹⁵ Section 6 of the Act amends Code section 40-5-39 and establishes the requirements for operating a motor vehicle for hire in Georgia.¹¹⁶ Drivers in for-hire services must have a for-hire license,¹¹⁷ a background check certification,¹¹⁸ and liability insurance.¹¹⁹ To obtain a for-hire license, an applicant must be eighteen years old,¹²⁰ have a valid driver’s license,¹²¹ and not have been convicted or served time for a felony seven years prior to application.¹²² Further, the driver must submit a fingerprint to the Federal Bureau of Investigation¹²³ and be a United States citizen.¹²⁴

Section 7 of the Act amends Code section 48-8-3, “relating to exemptions from sales and use taxes,”¹²⁵ by allowing “taxi services, limousine carriers, ride share network services, or the owners of such vehicles [to] purchase[] a for-hire master license in lieu of paying sales and use taxes on fares”¹²⁶ Notably, this does not relieve them from “tax liability on fares incurred prior to the purchase of [a]

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106. O.C.G.A. § 40-2-168(5) (Supp. 2015).
 107. O.C.G.A. § 40-2-168(7) (Supp. 2015).
 108. 2015 Ga. Laws 1262, § 5, at 1276.
 109. O.C.G.A. § 40-5-1 (2014 & Supp. 2015).
 110. O.C.G.A. § 40-5-1(9) (2014 & Supp. 2015).
 111. O.C.G.A. § 40-5-1(9.1) (Supp. 2015).
 112. O.C.G.A. § 40-5-1(11) (2014 & Supp. 2015).
 113. O.C.G.A. § 40-5-1(16.01) (Supp. 2015).
 114. O.C.G.A. § 40-5-1(16.02) (Supp. 2015).
 115. O.C.G.A. § 40-5-1(18) (Supp. 2015).
 116. 2015 Ga. Laws 1262, § 6, at 1277–79.
 117. O.C.G.A. § 40-5-39(a)(1) (2014 & Supp. 2015).
 118. O.C.G.A. § 40-5-39(a)(2) (2014 & Supp. 2015).
 119. *Id.*
 120. O.C.G.A. § 40-5-39(b)(1) (Supp. 2015).
 121. O.C.G.A. § 40-5-39(b)(2) (Supp. 2015).
 122. O.C.G.A. § 40-5-39(b)(3) (Supp. 2015).
 123. O.C.G.A. § 40-5-39(b)(4) (Supp. 2015).
 124. O.C.G.A. § 40-5-39(b)(5) (Supp. 2015).
 125. 2015 Ga. Laws 1262, § 7, at 1279.
 126. O.C.G.A. § 48-8-3(25) (2013 & Supp. 2015).

for-hire master license.”¹²⁷ This “sunset provision” expires on July 1, 2017, barring further legislative action.¹²⁸

Analysis

Intended Consequences and Public Policy

After the 2013–2014 legislative effort to regulate Georgia’s taxicab and ride-sharing industries failed, Representative Alan Powell (R-32nd) focused on passenger safety concerns to gain support for HB 225.¹²⁹ According to Representative Powell, the focus of HB 225 throughout the legislative process was singular: to “level the playing field.”¹³⁰ The ride-sharing phenomenon has created a public policy passenger safety concern that is not unique to Georgia.¹³¹ For example, in light of such concerns, Kansas’ legislature enacted strict regulations that ultimately led Uber to cease doing business in that state.¹³² Uber initially opposed the similar regulations proposed by Georgia’s legislature.¹³³

Facing resistance to further regulation,¹³⁴ Georgia’s legislature proved to be more receptive to the ride-share companies’ needs than

127. *Id.*

128. *Id.*

129. House Video Day 29, *supra* note 27, at 12 min., 7 sec. (remarks by Rep. Alan Powell (R-32nd)).

130. *Id.*

131. *Id.* (explaining that ride-share companies face regulatory and legislative challenges in other states); Powell Interview, *supra* note 17 (noting that the ride-share companies are having the same problems nationwide); *see, e.g.*, Ashlee Kieler, *Uber Halts Operations in Kansas After Legislature Votes to Mandate Background Checks, Insurance Coverage*, CONSUMERIST (May 6, 2015), <http://consumerist.com/2015/05/06/uber-halts-operations-in-kansas-after-legislature-votes-to-mandate-background-checks-insurance-coverage/> (quoting Kansas representatives stating that the state’s increased regulations were not about singling out ride-share companies, but rather were “about the future of transportation and consumer safety in the state”).

132. Bryan Lowry & Dion Lefler, *Uber to Pull Out of Kansas After Legislature Overrides Brownback’s Veto*, THE WICHITA EAGLE (May 5, 2015), <http://www.kansas.com/news/politics-government/article20280291.html>. The Kansas legislature required Uber drivers to undergo background checks through the Kansas Bureau of Investigation and to hold additional insurance coverage for the entire period in which drivers had their mobile app activated. *Id.* Nevertheless, Senate President Susan Wagle called Uber’s resistance to the bill, and its decision to pull out of Kansas, “pure political theatre.” *Id.* She says that Uber has “a consistent pattern of irrational behavior, and this is just the latest example.” *Id.*

133. Powell Interview, *supra* note 17 (stating that ride-share companies did not initially have to follow for-hire driver regulations because they did not fit the definition of taxicab or limousine, and when regulations were proposed the ride-share companies went “into full scale attack”).

134. *Id.* (noting that HB 907 was ultimately tabled because “so much animosity had been generated

its Kansas counterpart.¹³⁵ Two factors led to widespread support for the bill. First, both Uber and Lyft, two of the most prominent ride-sharing companies, provided letters of support for the bill.¹³⁶ Second, the Committee separated the liability insurance issue and designated it to a separate bill.¹³⁷ When Georgia Governor Nathan Deal (R) signed HB 225 and HB 190 at the Georgia Capitol on May 6, 2015, he noted that the two bills strike a balance between passenger safety and the ride-share industry’s “innovative approach.”¹³⁸

Balancing Public Safety and the Unique Needs of Ride-Share Companies

In Georgia, traditional taxicab and limousine drivers are required to go through a state-issued background check to obtain a license endorsement indicating that the driver is authorized to operate a vehicle to transport passengers for pay.¹³⁹ Ride-share companies faced no such requirement.¹⁴⁰ The Act remedies this discrepancy by requiring ride-share drivers to also go through background checks to secure license endorsements.¹⁴¹

by” the ride-share companies, “Uber especially”).

135. See *supra* notes 132–33 and accompanying text.

136. Greg Bluestein, *A Bill to Require Background Checks for Uber, Lyft Drivers in Georgia Gains Traction*, AJC.COM: POL. INSIDER BLOG (Mar. 11, 2015), <http://politics.blog.ajc.com/2015/03/11/a-bill-to-require-background-checks-for-uber-lyft-drivers-in-georgia-gains-traction/>. Uber’s letter read, in part: “This is [a] big step forward for ridesharing in Georgia[,] and we thank Chairmen Powell and Maxwell for their leadership. This legislation protects public safety while supporting innovation. We look forward to continuing to provide Georgians with opportunity and choice as we work with the Senate to finalize this bill.” *Id.*

137. House Video Day 29, *supra* note 27, at 17 min., 20 sec. (remarks by Rep. Alan Powell (R-32nd)); see also HB 190, as introduced, 2015 Ga. Gen. Assem.

138. Bill Hendrick, *Gov. Deal Signs Bill Regulating Ride Hailing in Georgia*, ONLINEATHENS (May 7, 2015, 6:05 AM), <http://onlineathens.com/general-assembly/2015-05-06/gov-deal-signs-bills-regulating-ride-hailing-georgia>; see also Governor Nathan Deal (@governordeal), INSTAGRAM, <http://instagram.com/governordeal> (last visited Sept. 14, 2015) (“HB 225 and HB 190, both of which I signed today, aim to help innovative companies such as @uber and @lyft thrive in Georgia, while also ensuring the safety and well-being of our citizens. Striking that balance is good business, both for our families and our economy.”).

139. See generally O.C.G.A. § 40-5-39(c) (2014 & Supp. 2015).

140. Powell Interview, *supra* note 17.

141. See Dave Williams, *Gov. Deal Signs Ride-Sharing Service Bills*, ATLANTA BUS. CHRON., May 6, 2015, available at 2015 WLNR 13269981.

A key point of controversy was who would conduct these background checks.¹⁴² The ride-share companies were adamantly opposed to a governmental agency performing the background checks.¹⁴³ Ultimately, a balance was struck: the ride-share companies would be permitted to conduct their own background checks.¹⁴⁴ However, in exchange, ride-share drivers would be required to submit to fingerprint checks.¹⁴⁵ This compromise was crucial for the Act to gain support from both the ride-share companies and the legislature.¹⁴⁶

The Act also requires ride-share companies to pay state taxes.¹⁴⁷ The Act further accommodates ride-share companies in this regard: The companies have the option to pay either traditional state sales taxes or pay an annual fee for each car in its network.¹⁴⁸ Moreover, ride-share companies must obtain the same levels of liability insurance as taxicab and limousine companies.¹⁴⁹

Taxation and Certification

The Act did far more than improve passenger safety. Although Representative Powell used passenger safety as his primary selling point to garner support for the Act,¹⁵⁰ it also focused on taxation and certification.¹⁵¹ The Georgia legislature stressed the importance of Uber and Lyft, as businesses operating in Georgia, to pay sales tax.¹⁵² Georgia currently imposes a 7% sales tax, and Representative Powell thought it only fair that these ride-share companies pay the same tax

142. See Bill Hendrick, *Georgia Lawmakers File Bills to Control Ridesharing Services*, INS. J. (Feb. 13, 2015), <http://www.insurancejournal.com/news/southeast/2015/02/13/357379.htm>.

143. *Id.* (quoting an Uber spokesman, Taylor Bennett, that the requirement that background checks must be performed by a governmental agency “would make it difficult to operate” in Georgia and that “Uber’s background checks are more thorough than [the governmental background checks] required for taxi and limo drivers”).

144. See Williams, *supra* note 141 (noting, “[h]owever, in a compromise reached with the [ride-share companies, they] will be allowed to retain third parties to conduct the [background] checks”).

145. O.C.G.A. § 40-5-39(b)(4) (Supp. 2015).

146. See Bluestein, *supra* note 136.

147. O.C.G.A. § 48-8-3(25) (2014 & Supp. 2015).

148. *Id.*

149. O.C.G.A. § 40-1-166 (2014 & Supp. 2015). See also HB 190, as passed, 2015 Gen. Assem.

150. Powell Interview, *supra* note 17.

151. See *infra* notes 79–107 and accompanying text.

152. See, e.g., Powell Interview, *supra* note 17.

as companies doing business in Georgia.¹⁵³ Currently, the ride-share companies and the Georgia Department of Revenue are negotiating a settlement for back taxes owed due to these companies not paying.¹⁵⁴

All drivers, whether ride-share or taxi, must attain a “for-hire” attachment to their driver’s license.¹⁵⁵ This attachment requires a \$15 application fee and submission to a background check.¹⁵⁶ The ride-share companies can do their own background checks, as long as they equate the checks run by the state.¹⁵⁷ Additionally, ride-share drivers must keep a digital identification on their smartphone at all times.¹⁵⁸ This identification must include the make of the vehicle, the model of the vehicle, and the driver’s personal identification.¹⁵⁹ To ensure that ride-share companies are following these regulations, the Department of Driver Services will periodically audit the companies’ record-keeping.¹⁶⁰

The Future of Ride-Share Companies in Georgia

As far as taxation and registration, HB 225 serves as a comprehensive solution. Representative Powell stated that the ride-share companies have accepted HB 225, and he does not foresee any related issues going forward.¹⁶¹ However, ride-share companies are still new, unique business models certain to spawn other legal issues of first impression in the future. One such issue is whether ride-share drivers are employees or independent contractors.¹⁶²

In California, Uber/Lyft drivers are currently litigating the issue of whether such drivers are independent contractors or employees.¹⁶³ On June 3, 2015, the California Labor Commissioner’s Office ruled that Uber drivers should be classified as employees, not—as they had

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

158. O.C.G.A. § 40-1-193(d) (Supp. 2015).

159. *Id.*

160. *See* O.C.G.A. § 40-1-193(b) (Supp. 2015).

161. Powell Interview, *supra* note 17.

162. *See infra* notes 164–73 and accompanying text.

163. Mike Isaac & Natasha Singer, *California Says Uber Driver Is Employee, Not a Contractor*, N.Y. TIMES, June 17, 2015, at 15, available at 2015 WLNR 18001766.

previously been—as independent contractors.¹⁶⁴ This ruling does not create precedent in courts or cases beyond that of the individual plaintiff; however, the order formally lays out legal arguments for why Uber drivers are employees.¹⁶⁵ The language of this ruling will undoubtedly be incorporated into the legal arguments made in the pending class-action lawsuit against Uber in California concerning the same issue.¹⁶⁶ In that case, District Judge Edward Chen denied summary judgment to Uber on March 11, 2015, and the issue will now continue to trial.¹⁶⁷ District Judge Vince Chhabria, who is handling a similar case brought against Lyft in California, also denied summary judgment to the ride-share company.¹⁶⁸ Judge Chhabria, recognizing that there is no easy answer as to whether the drivers are employees, wrote “[t]he jury in this case will be handed a square peg and asked to choose between two round holes.”¹⁶⁹

Other states are litigating this issue as well. In May 2015, the Florida Department of Economic Opportunity declared that an Uber driver is an employee for purposes of collecting unemployment insurance.¹⁷⁰ In Boston, a putative class action was filed in June 2014 on behalf of Uber drivers classified as independent contractors as well.¹⁷¹ These legal issues arise out of the same problems that spurred HB 225: Uber’s business model exploded on the scene before laws and regulations could be crafted accordingly. If ride-share drivers are ruled to be employees “then that suddenly makes their business

164. *Id.* This case involved an individual Uber driver, Barbara Ann Berwick, attempting to recover statutorily authorized business expenses reimbursements available to California employees. *Id.* Uber’s appeal is pending. *Id.*

165. *Berwick v. Uber Tech.*, No. 11-46739 EK, 2015 WL 4153765, at *8 (Cal. Dep’t of Labor June 3, 2015) (concluding that “[d]efendants retained all necessary control over the operation as a whole”).

166. *See Isaac & Singer, supra* note 163.

167. *O’Connor v. Uber Tech.*, 58 F. Supp. 3d 989, 1008 (N.D. Cal. 2014) (order denying summary judgment and granting Uber’s motion for judgment on the pleadings).

168. *See Dan Levine & Edwin Chan, Uber, Lyft Rebuffed in Bids to Deem Drivers Independent Contractors*, REUTERS (Mar. 11, 2015, 11:21 PM), <http://www.reuters.com/article/2015/03/11/lyft-drivers-idUSL1N0WD2ME20150311?irpc=932>.

169. *Id.*

170. Heather Somerville, *Uber Driver Must Be Treated As Employee*, SAN JOSE MERCURY NEWS (June 17, 2015), http://www.mercurynews.com/business/ci_28330170/uber-drivers-must-be-treated-workers-state-agency?source=infinite-up; *see also* Douglas Hanks, *For Uber, Loyal Drivers and a New Fight for Benefits*, MIAMI HERALD (May 21, 2015), <http://www.miamiherald.com/news/business/article21599697.html>.

171. Michael B. Farrell, *Suit Claims Uber Exploits Drivers*, BOS. GLOBE, June 26, 2014, at B, available at 2014 WLNR 17455857.

model untenable.”¹⁷² Uber would then owe its employees benefits, wage protections, and overtime premiums depending on the state and classification.¹⁷³ These pending actions could drastically affect how Uber operates nationwide.

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172. *Id.*

173. *See id.*

