



## McGeorge Law Review

Volume 46 | Issue 2

Article 11

1-1-2014

# Chapter 389: Closing the App Gap with Insurance Requirements for Transportation Network Companies

Amanda Kelly  
*Pacific McGeorge School of Law*

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>

 Part of the [Insurance Law Commons](#), [Legislation Commons](#), and the [Transportation Law Commons](#)

### Recommended Citation

Amanda Kelly, *Chapter 389: Closing the App Gap with Insurance Requirements for Transportation Network Companies*, 46 MCGEORGE L. REV. 399 (2014).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol46/iss2/11>

This Comments is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

**Chapter 389: Closing the App Gap with Insurance Requirements for Transportation Network Companies**

*Amanda Kelly*

*Code Sections Affected*

Public Utilities Code §§ 5430–5443 (new)  
AB 2293 (Bonilla); 2014 STAT. Ch. 389.

TABLE OF CONTENTS

I. INTRODUCTION .....	400
II. LEGAL BACKGROUND .....	401
III. CHAPTER 389 .....	404
IV. ANALYSIS.....	406
A. <i>TNCs View Chapter 389 as Over-Regulation of Their Industry</i> .....	407
B. <i>Taxi Drivers Want TNCs Subjected to Their Level of Regulation</i> .....	410
C. <i>Insurance Companies and Consumer Advocates See Chapter 389 as an Appropriate Compromise</i> .....	412
1. <i>Supporters Stress the Importance of Pre-Match Coverage</i> .....	414
2. <i>Pre-Match Insurance Requirements Can Change with Future Legislation</i> .....	415
3. <i>Commercial Insurance Requirement Properly Distributes Risk of TNC Drivers</i> .....	416
4. <i>Supporters Address Further Concerns and Proposals of TNCs</i> .....	417
5. <i>Chapter 389 Sponsors' Response to Taxi Industry Suggestions</i> .....	418
6. <i>The End Result of Chapter 389</i> .....	419
D. <i>Legislative Constraints Limited Chapter 389's Provisions, but Future Legislation or Regulations can Expand the Rules Governing TNCs</i> .....	419
1. <i>Addressing Fraud and Confusion</i> .....	419
2. <i>Improving Access to TNCs for Disabled Riders</i> .....	420
3. <i>Assisting Airports with Enforcement</i> .....	421
4. <i>Providing Tools to Personal Insurance Companies</i> .....	421
5. <i>Improving Public Safety</i> .....	422
V. CONCLUSION.....	422

I. INTRODUCTION

Eight p.m., New Year's Eve 2013.<sup>1</sup> Six-year-old Sophia Liu crosses the street in San Francisco's Tenderloin district with her mother and younger brother.<sup>2</sup> A gray Honda Pilot drives toward them.<sup>3</sup> The driver looks down at his smartphone<sup>4</sup> and makes a right turn at a red light without stopping for the pedestrians in the crosswalk.<sup>5</sup> The driver strikes all three pedestrians, and Sophia dies at the hospital from her injuries.<sup>6</sup>

At the accident scene, the driver told police he was trying to find a passenger on UberX, a smartphone application (app)<sup>7</sup> that connects a person looking for a ride with drivers for hire in the area.<sup>8</sup> But the next day, Uber released a statement that the driver "was not providing services on the Uber system during the time of the accident."<sup>9</sup> Although Uber was required to have \$1,000,000 worth of insurance coverage for each accident that occurred when drivers were working, the company refused to pay for the Liu family's injuries because the driver did not have a passenger at the time of the accident.<sup>10</sup> The driver's personal car

---

1. Andrew Dalton, *Six-Year-Old Girl Struck and Killed in Tenderloin Crosswalk*, SFIST (Jan. 1, 2014), [http://sfist.com/2014/01/01/7-year-old\\_girl\\_struck\\_and\\_killed\\_i.php](http://sfist.com/2014/01/01/7-year-old_girl_struck_and_killed_i.php) (on file with the *McGeorge Law Review*).

2. *Id.*

3. *Id.*

4. *Hearing on AB 2293 Before the S. Ins. Comm.*, 2014 Leg., 2013–2014 Sess. (Cal. 2014) [hereinafter *2293 Ins. Hearing*] (on file with the *McGeorge Law Review*) (quoting Huan Kuang, Sophia's mother, as saying the last thing she remembered was the smartphone illuminating the driver's face).

5. Zach Miners, *Parents Sue Uber over Daughter's Death, Claim its App is Illegal*, PC WORLD (Jan. 27, 2014), <http://www.pcworld.com/article/2091920/parents-sue-uber-over-daughters-death-claim-its-app-is-illegal.html> (on file with the *McGeorge Law Review*); Dalton, *supra* note 1.

6. Carmel Deamicis, *Uber Driver Hits, Kills Six-Year-Old Girl. Is "Not Our Problem" Still an Appropriate Response?*, PANDO DAILY (Jan. 2, 2014), <http://pando.com/2014/01/02/uber-driver-hits-kills-6-year-old-girl-is-not-our-problem-still-an-appropriate-response/> (on file with the *McGeorge Law Review*).

7. An app is defined as: "[a] self-contained program or piece of software designed to fulfill a particular purpose; an application, especially as downloaded by a user to a mobile device." OXFORD DICTIONARIES, [http://www.oxforddictionaries.com/us/definition/american\\_english/app](http://www.oxforddictionaries.com/us/definition/american_english/app) (last visited June 17, 2014) (on file with the *McGeorge Law Review*).

8. Jessica Kwong, *Uber Driver Accused in Fatal Collision Told Police he was Awaiting Fare*, S.F. EXAMINER (Jan. 2, 2014), <http://www.sfexaminer.com/sanfrancisco/uber-driver-arrested-for-vehicular-manslaughter-in-girls-death/Content?oid=2664123> (on file with the *McGeorge Law Review*); Barbara E. Hernandez, *Uber Seeks \$500M; Company Valued at \$12B*, NBC SAN DIEGO (May 22, 2014, 3:51 PM), <http://www.nbcsandiego.com/blogs/press-here/Uber-Seeks-500M-Company-Valued-at-12B-260335051.html> (on file with the *McGeorge Law Review*). "UberX" is the Uber corporation's app in which regular people drive clients in their own personal vehicles; "Uber" or "Uber Black" is the app that provides a user with a black car and a driver who carries commercial livery insurance. Steven Gursten, *What's the Difference Between Uber Black and UberX, and What are my Rights if I am Injured in an Uber Car Crash?*, LEGAL EXAMINER (Mar. 28, 2014, 7:16 AM), <http://detroit.legalexaminer.com/automobile-accidents/uber-black-uberx-rights-if-injured/> (on file with the *McGeorge Law Review*). "Uber" is often used to refer to both services. *See id.* (using "Uber" to describe UberX and black car services).

9. Press Release, Uber, Statement on New Year's Eve Accident (Jan. 1, 2014), available at <http://blog.uber.com/2014/01/01/statement-on-new-years-eve-accident/> (on file with the *McGeorge Law Review*).

10. *Insurance Requirements for TNCs*, CAL. PUB. UTIL. COMM'N, <http://www.cpuc.ca.gov/PUC/>

insurance paid some costs,<sup>11</sup> but under similar circumstances, a personal insurance company could lawfully refuse coverage as most personal policies have a “livery exclusion,” which allows insurers to deny claims that occur while the driver is being paid to operate a personal vehicle.<sup>12</sup>

Assembly Member Susan Bonilla introduced Chapter 389 to prevent insurance battles like the one that followed the tragic death of Sophia Liu.<sup>13</sup> Chapter 389 helps close the insurance gap between the time when a driver for a Transportation Network Company (TNC), like Uber or Lyft, opens the app and when he or she picks up a passenger.<sup>14</sup> Chapter 389 also ensures that the TNC’s insurance policy or a policy the driver holds specifically for TNC activities provides coverage instead of the driver’s personal policy.<sup>15</sup>

## II. LEGAL BACKGROUND

In October 2012, the California Public Utilities Commission (CPUC) determined that several ride-sharing companies were subject to regulation as “charter-party carriers,” which are companies that charge a fee to transport passengers, and ordered them to stop service.<sup>16</sup> The CPUC made temporary agreements with each company so they could continue operating until the CPUC reached a final decision as to whether TNCs would be subject to charter-party carrier regulations.<sup>17</sup>

---

Enforcement/TNC/TNC+Insurance+Requirements.htm (last updated July 17, 2014) (on file with the *McGeorge Law Review*); Lyanne Melendez, *Uber Sued for Wrongful Death of Six-Year-Old Girl in San Francisco*, ABC 7 NEWS (Jan. 27, 2014, 6:17 PM), <http://abc7news.com/archive/9408512/> (on file with the *McGeorge Law Review*).

11. Patrick Hoge, *Uber, Lyft, Hit by Proposed California Insurance Requirements*, SILICON VALLEY BUS. J. (June 11, 2014), <http://www.bizjournals.com/sanjose/news/2014/06/11/uber-lyft-insurance.html?page=all> (on file with the *McGeorge Law Review*) (stating that according to Uber, the driver’s personal insurance was prepared to cover some of the damages, but the policy would have only paid \$30,000).

12. See Memorandum, Cal. Dep’t of Ins., Notice to Transportation Network Company Drivers, <http://www.insurance.ca.gov/0250-insurers/0300-insurers/0200-bulletins/bulletin-notices-commiss-opinion/TransNetwkDrvr.cfm> (last visited June 1, 2014) (on file with the *McGeorge Law Review*) (A standard livery exclusion generally states: “We do not provide coverage . . . arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This exclusion does not apply to a share-the-expense car pool.”).

13. See Patrick Hoge, *Legislation Would Force UberX, Lyft, Sidecar to Provide Primary Driver Insurance*, S.F. BUS. TIMES (May 7, 2014), <http://www.bizjournals.com/sanfrancisco/blog/techflash/2014/05/legislation-primary-insurance-uberx-lyft-sidecar.html> (on file with the *McGeorge Law Review*) (illustrating how the requirements of AB 2293 would have prevented Uber from disclaiming liability in the death of Sophia Liu).

14. CAL. PUB. UTIL. CODE § 5433 (enacted by Chapter 389).

15. *Id.*

16. *Id.* § 5360 (West Supp. 2014); Tomio Geron, *Ride-Sharing Startups Get California Cease-and-Desist Letters*, FORBES (Oct. 8, 2012, 6:21 PM), <http://www.forbes.com/sites/tomiogeron/2012/10/08/ride-sharing-startups-get-california-cess-and-desist-letters/> (on file with the *McGeorge Law Review*).

17. Decision Adopting Rules and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, No. 13-09-045, at 2 n.2 (Cal. Pub. Util. Comm’n Sept. 19, 2013) [hereinafter Decision].

California became the first state to implement regulations regarding ride-sharing startups in September 2013,<sup>18</sup> but the CPUC could not address all of the issues with these companies without a legislative mandate.<sup>19</sup> The CPUC dubbed the businesses “Transportation Network Companies” and required TNCs to obtain permits through the CPUC.<sup>20</sup> In addition, the CPUC ordered each TNC to buy at least a \$1,000,000 commercial liability insurance policy to cover “incidents involving vehicles and drivers while they are providing TNC services.”<sup>21</sup> This created several issues because the language was not clear and liability policies are not comprehensive—they do not cover every type of personal injury or property damage that may occur.<sup>22</sup>

The first problem with the decision was that the CPUC failed to define what driver actions might constitute “providing TNC services.”<sup>23</sup> At least one TNC, Uber, interpreted the phrase to mean while the driver is transporting a passenger or after the TNC has matched a driver with a passenger, but not while the app is merely on, which became evident after the death of Sophia Liu.<sup>24</sup>

Another problem was that the liability policies the CPUC required would only cover property damage or medical expenses of a third party in an accident that the TNC driver caused, but not any injury to the TNC driver or damage to his or her vehicle.<sup>25</sup> Further, if an uninsured or under-insured driver caused the accident, the TNC driver would not be covered under a liability policy.<sup>26</sup> And, the TNC driver’s personal policy would probably not cover any injuries or damage that the TNC policy did not pay because most personal policies contain a livery

---

18. *Id.*; Tomio Geron, *California Becomes First State to Regulate Ridesharing Services Lyft, Sidecar, UberX*, FORBES (Sept. 19, 2013, 3:40 PM), <http://www.forbes.com/sites/tomiogeron/2013/09/19/california-becomes-first-state-to-regulate-ridesharing-services-lyft-sidecar-uberx/> (on file with the *McGeorge Law Review*).

19. See *Hearing on AB 2293 Before the S. Energy, Util., and Comm’n Comm.*, 2014 Leg., 2013–2014 Sess. (Cal. 2014) [hereinafter *2293 Energy Hearing*] (on file with the *McGeorge Law Review*) (addressing the fact that the CPUC’s power did not allow it to require Department of Justice background checks for TNC drivers).

20. Decision, *supra* note 17. There are currently six TNCs licensed to operate in California. *TNC Licenses Issued*, CAL. PUB. UTIL. COMM’N, [http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC\\_Licenses\\_Issued.htm](http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC_Licenses_Issued.htm) (last updated Oct. 13, 2014) (on file with the *McGeorge Law Review*).

21. *Id.*

22. Letter from Jennifer McCune, Attorney, Cal. Dep’t of Ins., to Michael R. Peevey, President, Cal. Pub. Util. Comm’n (Jan. 10, 2014), available at <http://www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140110.pdf> [hereinafter *CDI-CPUC Letter*] (on file with the *McGeorge Law Review*); *What Does Liability Car Insurance Typically Cover?*, ALLSTATE, <http://www.allstate.com/tools-and-resources/car-insurance/liability-car-insurance-cover.aspx> (last visited July 10, 2014) (on file with the *McGeorge Law Review*).

23. CDI-CPUC Letter, *supra* note 22.

24. See Lyanne Melendez, *Uber Sued for Wrongful Death of Six-Year-Old Girl in San Francisco*, ABC 7 NEWS (Jan. 27, 2014, 6:17 PM), <http://abc7news.com/archive/9408512/> (on file with the *McGeorge Law Review*) (interpreting Uber’s statement that “[t]he driver was not providing services . . . [at] the time of the accident,” to mean that he did not have a passenger).

25. CDI-CPUC Letter, *supra* note 22.

26. *Id.*

exclusion, a clause that voids a driver's personal policy if he or she drives for payment, which exists in most personal policies.<sup>27</sup>

In reaction to the issues with the CPUC decision,<sup>28</sup> Assembly Members introduced several relevant bills in 2014.<sup>29</sup> AB 2068, introduced by Assembly Member Adrin Nazarian, would have required TNCs to register as charter-party carriers, meaning they would have to permanently mark their drivers's cars and procure the same insurance as other commercial transportation companies.<sup>30</sup> Taxi associations backed the bill as it would have required stringent regulations identical to those imposed on taxi companies.<sup>31</sup> A second bill that Nazarian introduced, AB 2224, would have mandated that TNCs hold a primary commercial liability insurance policy, similar to policies that taxi companies carry, which would cover up to \$1,000,000 per incident.<sup>32</sup>

Both AB 2068 and AB 2224 died in committee.<sup>33</sup> However, the bills's content found a second life when Nazarian "gutted and amended" AB 612, which previously did not relate to TNCs.<sup>34</sup> Initially, AB 612 would have defined TNCs as charter-party carriers, required TNCs to regularly check its drivers Department of Motor Vehicles records, imposed regular drug and alcohol testing on TNC drivers, and ordered TNCs to purchase full-time commercial insurance coverage.<sup>35</sup> With its new subject matter, the bill underwent significant amendments in committee, at which time the requirement for full-time commercial insurance coverage and the designation of TNCs as charter-party

---

27. See *id.* (explaining that "[m]ost standard auto policies contain some form of an exclusion for livery").

28. 2293 Energy Hearing, *supra* note 19 (statement of Assembly Member Susan Bonilla).

29. AB 2068, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on Apr. 24, 2014, but not enacted); AB 2224, 2013–14 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on Mar. 28, 2014, but not enacted); AB 2293, 2014 Leg., 2013–2014 Sess. (Cal. 2014).

30. CAL. PUB. UTIL. CODE § 5385 (West Supp. 2014); *id.* § 5391 (West 2010); AB 2068, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on Apr. 24, 2014, but not enacted).

31. See Allen Young, *Taxi-Backed Bill Regulating Uber, Lyft Insurance Advances*, SACRAMENTO BUS. J. (Apr. 22, 2014, 5:37 PM), <http://www.bizjournals.com/sacramento/news/2014/04/22/taxi-backed-bill-regulating-uber-lyft-insurance.html?page=all> (on file with the *McGeorge Law Review*) (quoting Uber lobbyist Will Gonzales as calling the bill "overkill" and "a very clear anti-competitive bill").

32. AB 2224, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on Mar. 28, 2014, but not enacted).

33. *Complete Bill History of AB 2068*, [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2051-2100/ab\\_2068\\_bill\\_20140428\\_history.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2051-2100/ab_2068_bill_20140428_history.html) (last visited June 2, 2014) (on file with the *McGeorge Law Review*); *Complete Bill History of AB 2224*, [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab\\_2201-2250/ab\\_2224\\_bill\\_20140428\\_history.html](http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_2201-2250/ab_2224_bill_20140428_history.html) (last visited June 2, 2014) (on file with the *McGeorge Law Review*).

34. AB 612, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on May 29, 2014, but not enacted). When a bill is gutted and amended, the author "remove[s] the current contents in their entirety and replace[s] them with different provisions." CAL. ST. LEG., GLOSSARY OF LEGISLATIVE TERMS (last visited July 10, 2014), available at <http://www.legislature.ca.gov/quicklinks/glossary.html#G> (on file with the *McGeorge Law Review*).

35. AB 612, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on May 29, 2014, but not enacted).

carriers, like taxis, were removed.<sup>36</sup> Despite the elimination of many of its significant restraints on the TNC industry, AB 612 also died in committee.<sup>37</sup>

Assembly Member Susan Bonilla introduced the final bill, AB 2293.<sup>38</sup> The governor ultimately signed the bill into law as Chapter 389.<sup>39</sup>

While AB 2293 was moving through the legislature, the CPUC reopened rulemaking to revise its September 2013 decision and proposed that TNCs maintain \$1,000,000 primary insurance policies that become active when a driver opens his or her app.<sup>40</sup> A further revision to the proposal in July 2014 required \$300,000 in excess commercial coverage when the app is open, but \$1,000,000 in primary insurance once the driver is matched to or is transporting a passenger.<sup>41</sup> Due to ambiguities in the CPUC's proposal regarding the time at which TNCs' insurance coverage needed to activate, as well as concern that the CPUC lacked authority to issue regulations impacting personal injury law, Assembly Member Bonilla believed it was important to continue moving her bill through the legislature to provide definitive guidelines for the regulation of TNCs.<sup>42</sup>

### III. CHAPTER 389

Chapter 389 adds fourteen sections to the Public Utilities Code in order to clarify and enhance insurance requirements for TNCs.<sup>43</sup> First, it defines TNCs as “provid[ing] prearranged transportation services for compensation using an online-enabled application or platform to connect passengers with drivers using a personal vehicle.”<sup>44</sup> Next, it divides insurance requirements for TNCs into two distinct periods of service: the time from which a driver accepts a passenger on the app to the time the transaction is complete, and the period when the driver opens the app and logs in, but the app has not matched the driver to a passenger.<sup>45</sup>

To eliminate ambiguities that previously existed regarding the time at which insurance coverage starts, Chapter 389 specifies that a primary insurance policy providing \$50,000 worth of liability insurance per injury, \$100,000 in liability

---

36. *Hearing on AB 612 Before the S. Energy, Util., and Comm'n Comm.*, 2014 Leg., 2013–2014 Sess. (Cal. 2014) [hereinafter *612 Energy Hearing*] (on file with the *McGeorge Law Review*).

37. Carolyn Said, *Calif. Ride-Insurance Bill May Pass; Background-Check Bill Dies*, S.F. CHRON. (Aug. 27, 2014, 1:24 PM), <http://blog.sfgate.com/techchron/2014/08/27/compromise-near-on-calif-bill-on-insurance-for-lyft-uber-sidecar/> (on file with the *McGeorge Law Review*).

38. AB 2293: DEFINING COMMERCIAL ACTIVITY FOR TRANSPORTATION NETWORK COMPANIES, FACT SHEET (2014) (on file with the *McGeorge Law Review*).

39. CAL. PUB. UTIL. CODE §§ 5431–5443 (enacted by Chapter 389).

40. Hoge, *supra* note 11.

41. Proposed Decision of Commissioner Peevey Modifying Decision 13-09-045, at 2 (Cal. Pub. Util. Comm'n July 10, 2014).

42. *2293 Ins. Hearing*, *supra* note 4 (statement of Assembly Member Susan Bonilla).

43. AB 2293, 2013–14 Assemb. Reg. Sess. (Cal. 2014); ASSEMBLY INSURANCE COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 1 (May 7, 2014).

44. CAL. PUB. UTIL. CODE § 5431 (enacted by Chapter 389).

45. *Id.* § 5433 (enacted by Chapter 389).

insurance per incident, and \$30,000 in liability insurance to cover property damage must become effective when the driver logs in to the app.<sup>46</sup> The TNC must also provide a \$200,000 liability insurance policy that would cover injuries in an accident if the first policy is inadequate.<sup>47</sup> The bill provides flexibility, however, regarding the source of the primary policy: the TNC may provide the policy, the TNC may require its drivers to purchase a commercial liability policy, or the coverage may come from a combination of the two.<sup>48</sup>

The TNC, the driver, or a combination of the two may purchase the insurance policy covering the period beginning when the driver and passenger are matched on the app.<sup>49</sup> The policy or policies must provide \$1,000,000 worth of coverage in the event of death, injury, or property damage.<sup>50</sup> The TNC must also hold a policy with \$1,000,000 worth of uninsured and underinsured motorist coverage that is in effect any time a passenger is in a TNC driver's car.<sup>51</sup>

Chapter 389 makes it clear that if the driver's policy is to provide coverage, it must be written specifically for TNC services.<sup>52</sup> During commercial operation, if the driver's insurance does not explicitly include coverage for TNC services, his or her personal liability insurer does not have the duty to provide coverage.<sup>53</sup> Also, the personal liability insurer does not have to defend the driver if a claim is brought against him or her nor indemnify the driver if liability is found.<sup>54</sup> In addition, if the driver's commercial liability policy lapses, the TNC's policy must activate and provide coverage "beginning with the first dollar of a claim."<sup>55</sup> Regardless of the policy's source, the driver is required to carry proof of TNC insurance coverage while driving for the company.<sup>56</sup>

In the event of an accident, TNCs must provide data from the app to the insurance companies investigating the accident under the requirements of Chapter 389.<sup>57</sup> If the driver was not logged in at the time of the accident, sharing the fact that the driver was not providing TNC services will help clear up any

---

46. *Id.*

47. *Id.*

48. *Id.* The provision allowing the driver to provide the policy was added when it became clear insurance companies were thinking of creating new types of personal policies that would include livery coverage. Meeting with Sonja Palladino, Legislative Dir., Assembly Member Susan Bonilla, Chris Shultz, Deputy Comm'r, Cal. Dep't of Ins., and Robert Herrell, Legislative Dir. and Deputy Comm'r, Cal. Dep't of Ins., in Sacramento, Cal. (June 3, 2014) [hereinafter Meeting] (notes on file with *McGeorge Law Review*) (referring to Chris Shultz's comment that MetLife was working with Lyft and Sonja Palladino's comment that they would not want to legislate the opportunity for such a policy out of existence).

49. PUB. UTIL. § 5433 (enacted by Chapter 389).

50. *Id.*

51. *Id.*

52. *Id.* § 5434 (enacted by Chapter 389).

53. *Id.*

54. *Id.*

55. *Id.* § 5433 (enacted by Chapter 389).

56. *Id.* § 5442 (enacted by Chapter 389).

57. *Id.* § 5435 (enacted by Chapter 389).



confusion for the driver's personal insurance company and ensure the company does not deny coverage under the livery exclusion when it should not apply.<sup>58</sup>

Chapter 389 also obliges a TNC to disclose the details of its insurance coverage and limits to its drivers, as well as alert its drivers that their personal policies may not cover accidents while the driver works for the TNC.<sup>59</sup>

Additional sections of Chapter 389 include the creation of a joint study of TNCs between the CPUC and the California Department of Insurance,<sup>60</sup> non-disclosure requirements regarding the personal information of TNC passengers,<sup>61</sup> and statements of legislative intent, including (1) that the California Department of Insurance must attempt to "expedite review" when insurance companies propose new commercial liability policies to cover TNC activities, and (2) that the CPUC is to continue its regulation of TNCs.<sup>62</sup>

#### IV. ANALYSIS

Chapter 389 attempts to strike a balance among the interests of insurance companies, TNCs and their drivers, consumer interest groups, consumer attorneys, and taxicab drivers and unions.<sup>63</sup> Stakeholders across several industries collaborated with Assembly Member Susan Bonilla to create the solution to TNC regulation found in Chapter 389.<sup>64</sup> The group was diverse and composed of organizations who are often adversaries, as the lawyer for Sophia Liu's family observed, saying, "when you see the insurance industry and consumer attorneys working together, you know there's a problem [with the law]."<sup>65</sup> Chapter 389's balance, however, has not fully satisfied each side.<sup>66</sup>

This section examines the arguments for and against Chapter 389, as well as regulations that could be promulgated in the future.<sup>67</sup> Part A explores the provisions that TNCs say make Chapter 389 too onerous, while Part B looks at the portions that cause taxi drivers to think that it does not sufficiently regulate TNCs.<sup>68</sup> Part C explores supporters' reasons why Chapter 389 is an appropriate

---

58. Memorandum, Cal. Dep't of Ins., AB 2293 (Bonilla)—Suggested Amendments and Recommendations (June 3, 2014) [hereinafter CDI 2293 Memo] (on file with the *McGeorge Law Review*).

59. PUB. UTIL. § 5432 (enacted by Chapter 389).

60. *Id.* § 5436 (enacted by Chapter 389). The final report of this study is due Dec. 17, 2017. *Id.*

61. *Id.* § 5437 (enacted by Chapter 389).

62. *Id.* §§ 5438, 5441 (enacted by Chapter 389).

63. 2293 *Energy Hearing*, *supra* note 19 (pointing to Assembly Member Susan Bonilla's statement that the "bill is very balanced").

64. *See* 2293 *Ins. Hearing*, *supra* note 4 (listing insurance companies, consumer attorneys, airports, and Teamsters as supporters and stating that Uber and Lyft worked on a compromise).

65. *Id.* (quoting Christopher Dolan).

66. *Infra* Part A–B.

67. *Infra* Part A–D.

68. *Infra* Part A–B.

compromise.<sup>69</sup> Finally, Part D suggests TNC regulatory concepts that could be expanded through future legislation or CPUC regulation.<sup>70</sup>

A. *TNCs View Chapter 389 as Over-Regulation of Their Industry*

Uber says it “connect[s] riders to drivers.”<sup>71</sup> Lyft will match a user with “a friendly, background-checked driver from our community within minutes.”<sup>72</sup> Sidecar “matches everyday people in their own car with people nearby for shared rides.”<sup>73</sup> Wingz promises to “connect you with a super-hero local resident who will drive you to/from the airport with their own car.”<sup>74</sup> These companies “connect” and “match” through apps, but insist that they do not provide transportation.<sup>75</sup> Each of California’s six TNCs considers itself a technology company that drivers use to conduct independent activities, rather than a transportation service, and resists being subject to transportation regulations.<sup>76</sup>

TNCs are afraid that the costs associated with Chapter 389 will put them out of business and prevent the evolution of the taxi industry.<sup>77</sup> TNC representatives argue that “unreasonable insurance requirements . . . will dampen innovation.”<sup>78</sup> Uber told its users that Chapter 389 “attack[s] the innovation that Uber has used to revolutionize transportation.”<sup>79</sup> In addition, politicians supporting the TNCs fear that Chapter 389 could deter entrepreneurship and business growth within the state because of the increased costs that higher insurance amounts would impose on TNCs.<sup>80</sup>

---

69. *Infra* Part C.

70. *Infra* Part D.

71. *About Us*, UBER, <https://www.uber.com/about> (last visited July 12, 2014) (on file with the *McGeorge Law Review*).

72. *How it Works*, LYFT, <https://www.lyft.com/how> (last visited July 12, 2014) (on file with the *McGeorge Law Review*).

73. *Sidecar*, AVALON VENTURES, <http://www.avalon-ventures.com/investment/sidecar> (last visited July 12, 2014) (on file with the *McGeorge Law Review*).

74. *Ride to/from Los Angeles Int'l Airport*, WINGZ, <https://wingz.me/airport/lax> (last visited July 12, 2014) (on file with the *McGeorge Law Review*).

75. *See, e.g., About Us*, *supra* note 71 (stating Uber “connect[s] riders to drivers”).

76. *See* Liz Gannes, *Why is Uber Fighting a Regulatory Battle that it Already Won?*, ALL THINGS D (Oct. 24, 2013, 10:57 AM), <http://allthingsd.com/20131024/why-is-uber-fighting-a-regulatory-battle-that-it-already-won/> (on file with the *McGeorge Law Review*) (explaining Uber’s position that the CPUC should not regulate “technology companies”).

77. *612 Energy Hearing*, *supra* note 36 (reflecting a comparison between TNCs and cell phones from John Doherty, Vice President and General Counsel, TechNet).

78. *2293 Energy Hearing*, *supra* note 19 (quoting Robert Callahan, Executive Director, The Internet Association).

79. E-mail from Uber California to its users (June 12, 2014, 8:34 AM) (on file with the *McGeorge Law Review*).

80. Gavin Newsom, *Viewpoints: Don’t Stifle Innovation by Over-Regulating Uber*, SACRAMENTO BEE (June 16, 2014), <http://www.sacbee.com/2014/06/16/6482456/viewpoints-dont-stifle-innovation.html> (on file with the *McGeorge Law Review*).

These financial fears seem unsubstantiated, at least for the two largest TNCs.<sup>81</sup> Uber, for example, has raised over a billion dollars in capital.<sup>82</sup> Other TNCs with assets equaling just a fraction of Uber's could feel more of a financial impact due to the insurance requirements.<sup>83</sup> It is likely, however, that TNCs will place the burden to provide appropriate insurance on the TNC drivers, thus mitigating costs to the companies.<sup>84</sup> Five out of California's six licensed TNCs are examining hybrid commercial-personal insurance policies, which drivers would purchase individually.<sup>85</sup>

The most contentious portion of Chapter 389 for the TNCs is the requirement to have \$200,000 in excess insurance coverage prior to a passenger match; TNCs think it is too onerous because they assert commercial activity only begins at the time of a match, therefore they should not be responsible for a driver's activities prior to a match.<sup>86</sup> TNC supporters also fear that statutorily setting the insurance amount will make it too difficult to change if it is proven that the pre-match insurance requirements are too high.<sup>87</sup>

Currently, California law requires all drivers to carry a minimum of \$15,000 in liability insurance per injury, \$30,000 in liability insurance per occurrence, and \$5,000 worth of liability insurance to cover property damage.<sup>88</sup> The insurance industry commonly abbreviates this level of coverage as "15/30/5."<sup>89</sup> Even though TNC drivers are subject to regulations beyond that of non-commercial drivers, the TNCs initially argued that 15/30/5 personal policies should provide pre-match coverage, even though those policies' livery exclusions would eliminate coverage.<sup>90</sup>

---

81. See Hernandez, *supra* note 8 (hypothesizing that Uber is valued at \$12 billion or more); see also Mark Rogowsky, *Are Investors 'Nuts' to Value Uber at \$18 Billion? In a Few Years, That'll Seem Like a Bargain*, FORBES (June 9, 2014, 7:49 AM), <http://www.forbes.com/sites/markrogowsky/2014/06/09/are-investors-nuts-to-value-uber-at-18-billion-in-a-few-years-thatll-seem-like-a-bargain/> (on file with the *McGeorge Law Review*) (asserting that Uber has raised \$1.2 billion in revenue).

82. Rogowsky, *supra* note 81.

83. See Yuliya Chernova, *Facing Big Ride-Sharing Competitors, Sidecar Enlists Richard Branson*, WALL ST. J. (Sept. 15, 2014, 7:33 PM), <http://blogs.wsj.com/venturecapital/2014/09/15/facing-big-ride-sharing-competitors-sidecar-enlists-richard-branson/> (on file with the *McGeorge Law Review*) (detailing that Sidecar raised over \$15 million in its latest fundraising efforts).

84. See Carolyn Said, *Hybrid Insurance for Uber, Lyft Drivers is on the Way*, S.F. CHRON. (Nov 14, 2014, 5:17 PM), <http://www.sfgate.com/business/article/Hybrid-insurance-for-Uber-Lyft-drivers-is-on-the-5894075.php> (on file with the *McGeorge Law Review*) (explaining the new types of insurance TNCs are exploring).

85. *Id.*

86. 2293 *Ins. Hearing*, *supra* note 4 (quoting Sally Kay, Public Policy, Uber, who said the time when drivers have the app on, but no passengers is "personal drivers in personal vehicles" and more than 15/30/5 in coverage for that period is too much for "personal time").

87. 2293 *Ins. Hearing*, *supra* note 4 (quoting Senator Jim Nielsen).

88. CAL. VEH. CODE § 16500 (West 2000).

89. Colleen King, *Do You Know What 15-30-5 Means on Your Auto Insurance*, EXAMINER.COM (Aug. 8, 2012), <http://www.examiner.com/article/do-you-know-what-does-15-30-5-means-on-your-auto-insurance> (on file with the *McGeorge Law Review*).

90. See 2293 *Ins. Hearing*, *supra* note 4 (discussing TNCs' desire for 15/30/5 during comments from

After negotiations commenced among TNCs, particularly Lyft and Uber, Chapter 389's sponsors, and Assembly Member Bonilla regarding Chapter 389, TNCs agreed they could provide commercial liability insurance policies covering a little over three times these amounts, or "50/100/30."<sup>91</sup> Even though limousines must carry \$750,000 of insurance protection per accident and taxicabs must have up to \$1,000,000 of coverage,<sup>92</sup> TNCs rejected comparable requirements, maintaining that they are technology companies and should not be subject to the same insurance requirements before a driver-passenger match.<sup>93</sup> They also did not want to have to provide a large pre-match policy when there is no data to support its necessity, although two TNCs, Uber and Lyft, voluntarily purchased \$1,000,000 liability policies to cover activities post-match.<sup>94</sup>

When AB 2293 passed out of the Senate Insurance Committee, its requirements for pre-match insurance would have cost TNCs approximately "30 to 35 percent more than" policies without coverage for that same period.<sup>95</sup> Although the legislature did not codify those higher conditions, TNCs still want to reduce the effects of insurance requirements on their profits, and they believe 50/100/30 "represent[s] a compromise that protects public safety . . . and does not stifle the new TNC transportation model that growing numbers of consumers find convenient and affordable."<sup>96</sup>

TNC representatives also believe initiating insurance coverage when drivers log into the apps does not reflect the apps' real-world use.<sup>97</sup> To them, business begins when the app makes a match.<sup>98</sup> They assert that drivers may leave their apps turned on just to have commercial insurance coverage and to place liability on the companies.<sup>99</sup> If this is the case, then TNCs should not have to insure such drivers during that time.<sup>100</sup>

---

Lyft's Director of Public Policy).

91. 2293 *Ins. Hearing*, *supra* note 4 (paraphrasing Sally Kay, Public Policy, Uber); SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 6 (June 17, 2014).

92. PUB. UTIL. § 5391.2 (West 2010).

93. 2293 *Ins. Hearing*, *supra* note 4 (asserting livery requirements are inappropriate in testimony of Sally Kay, Public Policy, Uber).

94. *Id.* (recounting comments from Lyft's Director of Public Policy); CAL. DEP'T OF INS., INSURANCE AND TRANSPORTATION NETWORK COMPANIES: SOLVING THE INSURANCE CHALLENGES SO PASSENGERS, DRIVERS, PEDESTRIANS, AND PROPERTY OWNERS ARE ADEQUATELY PROTECTED 2 (Apr. 1, 2014), available at <http://www.insurance.ca.gov/0400-news/multimedia/0030VideoHearings/upload/TNCBackground.pdf> [hereinafter CDI REPORT] (on file with the *McGeorge Law Review*).

95. Ben Bergman, *Proposed Insurance Rules Bad for Ridesharing Companies' Bottom Line*, KPCC (July 9, 2014), <http://www.scpr.org/blogs/economy/2014/07/09/16986/proposed-insurance-rules-bad-for-ridesharing-compa/> (on file with the *McGeorge Law Review*) (quoting insurance broker Jerry Sullivan). The pre-match insurance requirement at that point in the legislative process was a \$750,000 liability policy. 2293 *Ins. Hearing*, *supra* note 4.

96. SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 6 (June 17, 2014).

97. 2293 *Energy Hearing*, *supra* note 19 (quoting Robert Callahan, Executive Director, The Internet Association).

98. 2293 *Ins. Hearing*, *supra* note 4 (citing Senator Jim Nielsen's comments).

99. SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB

TNCs have proposed several solutions that would solve what they perceive to be problems with Chapter 389.<sup>101</sup> First, they could self-regulate, purchasing the amount of insurance they feel will appropriately shield their businesses from risks, which Uber and Lyft say they already did when they purchased additional uninsured motorist and collision insurance that is effective after a match.<sup>102</sup> TNCs assert pre-Chapter 389 regulations worked because personal car insurance policies would pay for accidents prior to a match between a driver and passenger.<sup>103</sup> In fact, Uber asserts that an insurance gap did not exist in Sophia Liu's case because the driver's personal insurance policy paid her family.<sup>104</sup>

Second, the state could adopt legislation without the \$200,000 excess policy requirement, which is what the Colorado legislature did.<sup>105</sup> That state's TNC legislation requires companies's insurance policies to cover the time an app is on prior to a match only if the driver's personal insurance denies a claim.<sup>106</sup> The TNC's policy must cover 50/100/30, but, like Chapter 389, the requirement is satisfied if the driver secures a 50/100/30 policy specifically written to include TNC services.<sup>107</sup>

Finally, politicians have recommended more cost-sharing between the TNCs and their drivers, where drivers would pay for the additional \$200,000 worth of liability coverage so that the insurance costs do not diminish the cash flow needed to develop new technologies.<sup>108</sup>

#### *B. Taxi Drivers Want TNCs Subjected to Their Level of Regulation*

Taxi drivers and unions do not agree with TNCs' assertions that they are merely technology companies.<sup>109</sup> They contend driving is driving, whether apps

---

2293, at 5 (June 17, 2014).

100. See 2293 *Ins. Hearing*, *supra* note 4 (paraphrasing testimony of Sally Kay, Public Policy, Uber).

101. See CDI REPORT, *supra* note 94, at 2 (noting TNCs voluntary expansion of insurance coverage).

102. *Id.* at 2 (explaining that "Lyft and Uber voluntarily close[d] some coverage gaps").

103. Bergman, *supra* note 95 (quoting Jon Brooks, KQED).

104. 2293 *Ins. Hearing*, *supra* note 4 (quoting Sally Kay, Public Policy, Uber). Note that the driver's policy covered up to \$30,000, but the Liu family sustained \$500,000 in medical costs alone. Patrick Hoge, *California May Expand Insurance Rules for Uber, Lyft, et al.*, S.F. BUS. TIMES (Mar. 26, 2014, 10:38 AM), <http://www.bizjournals.com/sanfrancisco/blog/2014/03/california-insurance-rules-uber-lyft.html?page=all> (on file with the *McGeorge Law Review*); David Stevenson, *Critics Call Expanded Uber Insurance Policy 'a Sham'*, KTVU.COM (Mar. 14, 2014, 7:25 PM), <http://www.ktvu.com/news/news/crime-law/critics-call-expanded-uber-insurance-policy-sham/nfDPF/> (on file with the *McGeorge Law Review*).

105. 2293 *Ins. Hearing*, *supra* note 4 (quoting Sally Kay, Public Policy, Uber, as saying "Colorado has it right").

106. SB 125, 2014 Leg., 2013–2014 Reg. Sess. (Colo. 2014).

107. *Id.*

108. See 2293 *Ins. Hearing*, *supra* note 4 (noting Senator Ted Gaines' comment that technology entrepreneurs should not have to bear the cost of insurance and drivers can purchase \$300,000 to \$500,000 worth of coverage).

109. See 2293 *Energy Hearing*, *supra* note 19 (referring to comments from Barry Broad, Legislative Representative, California Teamsters Public Affairs Council, and Barry Korengold, President, San Francisco Cab Drivers Association.).

are involved or not.<sup>110</sup> TNC “services are no different than taxicabs” and they use technology that taxi companies use, but with the benefit of investment capital to popularize it.<sup>111</sup> At the same time, taxi groups are not opposed to technological innovation, but they want a “level playing field” where TNCs are not free to use “unfair business practices.”<sup>112</sup>

TNCs think \$200,000 in additional insurance prior to a match is excessive, but taxi supporters say it is not enough.<sup>113</sup> Charter-party carriers—which include taxicabs, limousines, and tour buses—are required to have between \$750,000 and \$5,000,000 of commercial liability insurance based on vehicle capacity.<sup>114</sup> Those policies are in force at all times.<sup>115</sup> Taxi drivers pay approximately \$9,500 per year to maintain their insurance policies and believe TNCs or the drivers should have to do the same.<sup>116</sup> They also say TNCs should be subject to the government fees that taxicabs pay; if TNCs are not, the state will have reduced revenue from transportation.<sup>117</sup>

Anecdotal evidence of TNC drivers’ practices shows they do pick up passengers on the street and solicit business while not using an app, despite TNCs’ assertions.<sup>118</sup> One taxi driver testified that on multiple occasions while off-duty TNC drivers asked her, “Would you like a cab ride?”<sup>119</sup> One member of Assembly Member Bonilla’s staff successfully hailed multiple TNC drivers on the street and after one ride she arranged through an app, the driver provided her with his phone number so she could schedule a return ride without using the app.<sup>120</sup> These actions support taxicab drivers’s assertions that TNCs operate like cabs.<sup>121</sup>

Although taxicab companies, drivers, and unions generally want TNC drivers to hold full-time commercial insurance policies, which is beyond the

---

110. *Id.* (indicating comments of Barry Broad, Legislative Representative, California Teamsters Public Affairs Council).

111. *Id.* (quoting Barry Korengold, President, San Francisco Cab Drivers Association and incorporating comments of Trevor Johnson, Director, San Francisco Cab Drivers Association).

112. Ted Morley, *Briefing Report: When Tech Innovations Create Turf Wars, Do Consumers Win?*, CALIFORNIA STATE SENATE REPUBLICAN CAUCUS (Jan. 8, 2014) <http://cssrc.us/content/briefing-report-when-tech-innovations-create-turf-wars-do-consumers-win-2> (on file with the *McGeorge Law Review*).

113. Jon Brooks, *Once Friendly Territory, California Looks to Toughen Rules for Uber, Lyft*, NEWS FIX (June 17, 2014), <http://blogs.kqed.org/newsfix/06/17/2014/Uber-Lyft-Insurance-crack-down> (on file with the *McGeorge Law Review*).

114. CAL. PUB. UTIL. CODE § 5391.2 (West 2010).

115. *Id.*

116. See 2293 *Energy Hearing*, *supra* note 19 (quoting Charles Rotter, San Francisco taxi driver).

117. FREQUENTLY ASKED QUESTIONS ON TNCs, FACT SHEET (2014) [hereinafter TNC FACT SHEET] (on file with the *McGeorge Law Review*).

118. 2293 *Energy Hearing*, *supra* note 19 (citing comments of Barry Korengold, President, San Francisco Cab Drivers Association).

119. *Id.* (quoting Beth Powder, San Francisco taxi driver).

120. Meeting, *supra* note 48 (quoting Sonja Palladino regarding her experiences with TNCs).

121. 2293 *Energy Hearing*, *supra* note 19 (summarizing comments from Barry Korengold, President, San Francisco Cab Drivers Association).

requirements of Chapter 389, some have proposed different or additional regulations for TNCs.<sup>122</sup> Some have suggested deregulating the taxicab industry or reducing the amount of insurance required to the same level enforced upon TNCs.<sup>123</sup> At least one TNC agrees deregulation could be a solution.<sup>124</sup> Or, if deregulation is too extreme, legislators or the CPUC could review taxicab regulations, which have not been revamped since 1990.<sup>125</sup>

San Francisco taxicab drivers would at least like TNCs to be held to the same limitations that taxis in the city must follow.<sup>126</sup> San Francisco sets rates for taxis, including everything from amount per one-fifth mile to airport surcharges to multiplication factors for trips outside the city.<sup>127</sup> There are only 1,900 taxi medallions in the city, yet there are anywhere from 3,500 to 6,500 TNC drivers.<sup>128</sup> Certainly, limiting transportation to 1,900 vehicles in a city with more than 825,000 residents would not be reasonable, but taxicab groups do not want TNCs to grow unimpeded.<sup>129</sup>

*C. Insurance Companies and Consumer Advocates See Chapter 389 as an Appropriate Compromise*

California is not unique in its struggle to strike a balance in setting rules for TNCs.<sup>130</sup> Lawmakers in Arizona, Connecticut, Florida, Georgia, Illinois, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri,

---

122. *See id.* (indicating support for full-time coverage from Jeffrey Rosen, Vice President, San Francisco Cab Drivers Association, and new regulations from Barry Korengold, President, San Francisco Cab Drivers Association).

123. *Id.*

124. Carolyn Said, *Wingz Gets PUC Green Light as Official TNC Provider*, S.F. CHRON. (Mar. 18, 2014, 6:06 PM), <http://blog.sfgate.com/techchron/2014/03/18/wingz-gets-puc-green-light-as-official-tnc-provider/> (on file with the *McGeorge Law Review*) (quoting Geoff Mathieux, CEO, Wingz as saying, “[r]ather than regulate the TNCs more heavily, we say deregulate the . . . taxis and the limos”).

125. *612 Energy Hearing*, *supra* note 36 (attributing supportive comments from Senator Alex Padilla to the industry); SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 3 (June 17, 2014).

126. *See 2293 Energy Hearing*, *supra* note 19 (referring to comments from Barry Korengold, President, San Francisco Cab Drivers Association, that taxis cannot drive on certain streets on Friday and Saturday nights, yet TNCs are unrestricted).

127. *Taxi Rates*, S.F. MUN. TRANSP. AGENCY, <http://www.sfmta.com/getting-around/taxi/taxi-rates> (on file with the *McGeorge Law Review*).

128. SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 5 (June 17, 2014).

129. Dan Schreiber, *San Francisco at One Million: City's Population Booming Once Again*, S.F. EXAMINER (Dec. 29, 2013), <http://www.sfexaminer.com/sanfrancisco/san-francisco-at-1-million-citys-population-is-booming-once-again/Content?oid=2659836> (on file with the *McGeorge Law Review*); *see also 2293 Energy Hearing*, *supra* note 19 (observing that presently, there are no limits to the number of TNC drivers on the road).

130. *See, e.g., Uber Blasts Latest Round of Rules in Springfield*, CRAIN'S CHI. BUS. (May 16, 2014), <http://www.chicagobusiness.com/article/20140516/NEWS02/140519829/uber-blasts-latest-round-of-rules-in-springfield> (on file with the *McGeorge Law Review*) (noting that the Illinois legislature attempted to regulate ridesharing by imposing rules analogous to taxi requirements).

Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin have endeavored to regulate TNCs.<sup>131</sup> Some states, like Pennsylvania and Virginia, immediately issued cease and desist orders to the TNCs upon the start of their operations in order to have time to formulate solutions.<sup>132</sup> Other states, including Massachusetts and Utah, began negotiating with TNCs, taxi companies, airports, and other interested parties without quashing TNC service first.<sup>133</sup> But, since California is home to the largest state population,<sup>134</sup> the most airports,<sup>135</sup> and the Silicon Valley—birthplace of many TNCs<sup>136</sup>—most ridesharing companies operate in the state, extending the state’s regulatory needs beyond those of other states that may only have Uber or Lyft doing business in their largest cities.<sup>137</sup>

As a result of California’s unique position, proponents of Chapter 389 had to attempt to satisfy five licensed TNC companies;<sup>138</sup> approximately 10,000 TNC drivers;<sup>139</sup> automobile insurance companies;<sup>140</sup> taxicab drivers, companies, and

---

131. Don Jergler, *Uber, Lyft, Sidecar Toe-to-Toe with Insurers State-by-State*, INS. J. (June 27, 2014), <http://www.insurancejournal.com/news/national/2014/06/27/332942.htm> (on file with the *McGeorge Law Review*); Al Vaughters, “Ridesharing” Could be Banned in Buffalo, WIVB.COM (May 14, 2014, 3:57 PM), <http://wivb.com/2014/05/14/ridesharing-could-be-banned-in-buffalo/> (on file with the *McGeorge Law Review*).

132. Justine Coyne, *Uber, Lyft Ordered to Cease Operations in Pittsburgh*, PITTSBURGH BUS. TIMES (July 1, 2014, 4:25 PM), <http://www.bizjournals.com/pittsburgh/news/2014/07/01/uber-lyft-ordered-to-cease-operations-in.html?page=all> (on file with the *McGeorge Law Review*); Steven Musil, *Uber, Lyft Hit with Cease and Desist Orders in Virginia*, CNET (June 5, 2014, 5:55 PM), <http://www.cnet.com/news/uber-lyft-hit-with-cease-and-desist-orders-in-virginia/> (on file with the *McGeorge Law Review*).

133. See Martine Powers, *Taxi Drivers say Uber Threatens Their Livelihoods*, BOS. GLOBE (May 22, 2014), <http://www.bostonglobe.com/metro/2014/05/22/taxi-drivers-protest-uber-boston-offices/0YIRN0hHAHVhcxFIQ2X5al/story.html> (on file with the *McGeorge Law Review*) (proclaiming that a transportation task force would assemble to address concerns from both TNCs and taxi companies); see also Robynn Garfield, *Lyft Ride Service in SLC Gaining Support*, KSL.COM (May 14, 2014, 1:52 PM), <http://www.ksl.com/?nid=148&sid=29882791> (on file with the *McGeorge Law Review*) (detailing a petition, directed at the city government and airport ground transportation services, that asks that TNCs not be classified as taxis).

134. *California Population 2014*, WORLD POPULATION REV., <http://worldpopulationreview.com/states/california-population/> (last updated Oct. 4, 2014) (on file with the *McGeorge Law Review*).

135. *United States Airports*, GLOBALAIR.COM, <http://www.globalair.com/airport/state.aspx> (last visited Jan. 2, 2015) (on file with the *McGeorge Law Review*).

136. See *2293 Energy Hearing*, *supra* note 19 (identifying Uber as a “California home-grown company”).

137. See *TNC Licenses Issued*, CAL. PUB. UTIL. COMM’N, [http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC\\_Licenses\\_Issued.htm](http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC_Licenses_Issued.htm) (last updated Oct. 13, 2014) (on file with the *McGeorge Law Review*) (listing six licensed TNCs in California); see, e.g., Justine Coyne, *Uber, Lyft Ordered to Cease Operations in Pittsburgh*, PITTSBURGH BUS. TIMES (July 1, 2014, 4:25 PM), <http://www.bizjournals.com/pittsburgh/news/2014/07/01/uber-lyft-ordered-to-cease-operations-in.html?page=all> (on file with the *McGeorge Law Review*) (noting the two largest TNCs operate only in Pittsburgh).

138. See *TNC Licenses Issued*, CAL. PUB. UTIL. COMM’N, [http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC\\_Licenses\\_Issued.htm](http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC_Licenses_Issued.htm) (last updated Oct. 13, 2014) (on file with the *McGeorge Law Review*) (listing six licensed TNCs in California).

139. Meeting, *supra* note 48 (referencing Chris Shultz’s comments regarding how many TNC drivers exist).

140. See *2293 Energy Hearing*, *supra* note 19 (including testimony from representatives of Association of California Insurance Companies and Personal Insurance Federation of California).



unions;<sup>141</sup> managers of hundreds of airports;<sup>142</sup> and the 39.3 million potential TNC riders living in California.<sup>143</sup> But, their ultimate goal for Chapter 389 was to protect the public—including pedestrians, TNC and non-TNC drivers, the companies themselves, and insurance providers—even if not every member of the public agreed with their methods.<sup>144</sup>

Assembly Member Bonilla and sponsors of AB 2293 have made it clear they do not want to quell innovation with Chapter 389.<sup>145</sup> They “support innovation, but maintain that such innovation must be ‘responsible innovation,’ and must not compromise the safety of the public.”<sup>146</sup> Likewise, supporters do not want to pit the taxis and TNCs against each other or use legislation to “pick winners and losers among competitors.”<sup>147</sup>

### 1. Supporters Stress the Importance of Pre-Match Coverage

Chapter 389’s proponents are committed to insurance requirements as soon as a driver logs into a TNC app for several reasons.<sup>148</sup> Despite TNCs’ claims, the same business benefit exists when a driver is logged in to the app and when a driver has a passenger.<sup>149</sup> A TNC driver who has not yet been matched to a passenger is analogous to a store that is open, has its sign lit, has products on its shelves, but does not have any customers.<sup>150</sup> The movement of cars on an app’s map or the visibility of fuzzy, pink mustaches on Lyft drivers’ car grills as they hunt for fares help to advertise the TNCs.<sup>151</sup> TNCs have a business relationship with their drivers and the transaction starts when a user looks at which drivers are closest, so supporters say commercial coverage is required prior to the match.<sup>152</sup>

---

141. *See id.* (referring to testimony from representatives of San Francisco Cab Drivers Association and United Taxicab Workers).

142. *United States Airports*, *supra* note 135.

143. *California Population 2014*, *supra* note 134.

144. *See 2293 Ins. Hearing*, *supra* note 4 (paraphrasing Senator Bill Monning).

145. *Id.* (noting Assembly Member Susan Bonilla); *2293 Energy Hearing*, *supra* note 19 (quoting Armand Feliciano, Vice President, Association of California Insurance Companies).

146. Letter from Armand Feliciano, Vice President, Ass’n of Cal. Ins. Companies, to Michael Peevey, President, Cal. Pub. Util. Comm’n (June 30, 2014) [hereinafter ACIC Letter] (on file with the *McGeorge Law Review*).

147. *2293 Ins. Hearing*, *supra* note 4 (quoting Senator Bill Monning).

148. *2293 Energy Hearing*, *supra* note 19 (indicating testimony from Kara Cross, General Counsel, Personal Insurance Federation of California, who said not including pre-match activity defeats the purpose of the bill).

149. *2293 Ins. Hearing*, *supra* note 4 (quoting Robert Herrell, Legislative Director and Deputy Commissioner, California Department of Insurance).

150. *Id.* (referring to comments by Robert Herrell, Legislative Director and Deputy Commissioner, California Department of Insurance).

151. *2293 Energy Hearing*, *supra* note 19 (quoting Scott Wetch, Lobbyist, Carter, Wetch, and Associates).

152. *2293 Ins. Hearing*, *supra* note 4 (quoting Assembly Member Susan Bonilla).

Defining “TNC services” as the time when the driver logs in to the app until he or she logs out actually protects the TNCs with a bright-line rule.<sup>153</sup> Under Chapter 389, TNCs will no longer be subject to needless, post-accident lawsuits that occur when it is unclear whose insurance policy will cover what injuries, which happened before Chapter 389’s enactment.<sup>154</sup>

Chapter 389’s sponsors say that as soon as the driver logs on, “the TNC driver conveys to potential customers that he or she is available for business, drives a little faster to the destination of potential customers, increases the likelihood of distracted driving . . . and travels to places that may be . . . riskier like a ‘beer fest.’”<sup>155</sup> During a committee meeting, Senator Jerry Hill used the UberX app on his phone to watch nearby drivers circle around the Capitol building.<sup>156</sup> The constant movement of available drivers made it clear to him that drivers were searching for passengers, instead of safely parked, and were likely distracted while searching.<sup>157</sup> Since it is possible that the pre-match period is even more unsafe than when a driver is on the way to a passenger or is driving a passenger, Chapter 389 will help protect drivers, passengers, and TNCs.<sup>158</sup>

## 2. Pre-Match Insurance Requirements Can Change with Future Legislation

TNCs have fought app-on, pre-match insurance requirements due to lack of data showing the need for such insurance, yet at least one reason for the lack of data is that TNCs have been unwilling to provide their accident reports for data compilation purposes.<sup>159</sup> To remedy this, Chapter 389 provides for the CPUC and the California Department of Insurance to conduct a study so that the legislature can revisit the required amount, if necessary.<sup>160</sup>

After the study, the amount of insurance required is unlikely to equal the amount taxis must carry, much to the taxi industry’s chagrin.<sup>161</sup> The CPUC’s decisions have made it clear that TNCs are inherently different from taxis, and

---

153. Meeting, *supra* note 48 (paraphrasing Sonja Palladino).

154. Press Release, Office of Assemblywoman Susan A. Bonilla, Assembly Woman Susan Bonilla, CA App-Based Drivers, Parents of Sofia Liu, and Consumer Groups Urge Support of AB 2293 (June 25, 2014) (on file with the *McGeorge Law Review*) (quoting Assembly Member Susan Bonilla).

155. ACIC Letter, *supra* note 146.

156. *2293 Energy Hearing*, *supra* note 19.

157. *Id.*

158. See ACIC Letter, *supra* note 146 (theorizing that driving fast or looking at a phone is more dangerous than transporting passengers).

159. *2293 Ins. Hearing*, *supra* note 4 (recounting comments from Lyft’s Director of Public Policy); Interview with Robert Herrell, Legislative Dir. and Deputy Comm’r, Cal. Dep’t of Ins., in Sacramento, Cal. (June 11, 2014) (notes on file with the *McGeorge Law Review*).

160. CAL. PUB. UTIL. CODE § 5436 (enacted by Chapter 389).

161. See *2293 Energy Hearing*, *supra* note 19 (inferring from Assembly Member Susan Bonilla’s comments that she will not seek 24/7 commercial insurance for TNCs).

the legislature will not interfere with the CPUC's findings, which have already shown coverage can be significantly less than \$750,000 prior to a match.<sup>162</sup>

3. *Commercial Insurance Requirement Properly Distributes Risk of TNC Drivers*

TNCs contend that the risks their drivers pose are not very high because one-third drive only five hours per week or fewer and most are employed outside of TNC driving.<sup>163</sup> Prior to the enactment of Chapter 389, TNC drivers used their own personal insurance policies, but were sometimes driving for many more hours per week than the average person.<sup>164</sup> Insurance companies determine personal automobile insurance rates through the creation of a "risk profile," which looks at the claims and activities of a large number of insurance customers and then develops an average rate for a period of time.<sup>165</sup> Insurance companies did not predict the development of TNCs, so when they analyzed driver risks in order to set their rates, commercial use of personal vehicles was not included.<sup>166</sup>

Even though some TNC drivers may drive less than a non-TNC driver, approximately 10 percent of TNC drivers make it their full-time job.<sup>167</sup> The risk profile of a driver only conducting personal business is different than one driving tens of thousands of miles per year and earning money for doing so.<sup>168</sup> Taxi insurance is several times more expensive than personal insurance because taxi drivers are on the road full-time, and therefore the risk profile of a taxi driver is several times higher than a non-commercial driver.<sup>169</sup> Although not all TNC drivers are driving for significantly more hours than they did prior to working for a TNC, those who do and submit claims on their personal insurance policies effectively force all personal car insurance purchasers to subsidize their activities.<sup>170</sup> Requiring TNCs to provide commercial policies or the driver and company to buy TNC-specific policies, shifts the risk of those drivers out of a

---

162. PUB. UTIL. § 5441 (enacted by Chapter 389); *see also* Decision, *supra* note 17 (creating a new category of Transportation Charter Parties, a Transportation Network Company).

163. SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 2 (June 17, 2014) (using Lyft's data).

164. *See id.* (acknowledging that only 10 percent of TNC drivers drive more than 30 hours per week).

165. *See Risk Profile*, BUSINESS DICTIONARY, <http://www.businessdictionary.com/definition/risk-profile.html> (last visited Jan. 2, 2015) (on file with the *McGeorge Law Review*) (defining a "risk profile" as an analysis of a the number of potential risks, the types of risks likely presented, and the potential effects of these risks).

166. Letter from Dave Jones, Ins. Comm'r, Cal. Dep't of Ins., to Michael R. Peevey, President, Cal. Pub. Util. Comm'n (Apr. 7, 2014), *available at* <http://www.insurance.ca.gov/video/0030VideoHearings/upload/CDI-CPUC20140407.pdf> (on file with the *McGeorge Law Review*).

167. SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 2 (June 17, 2014) (using Lyft's data).

168. Meeting, *supra* note 48 (paraphrasing Robert Herrell).

169. *Id.* (referring to comments by Robert Herrell).

170. SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 2 (June 17, 2014) (using Lyft's data); ACIC Letter, *supra* note 146.

pool of all individual drivers to a pool consisting of only commercial and TNC drivers.<sup>171</sup>

#### 4. Supporters Address Further Concerns and Proposals of TNCs

During the development of Chapter 389, Assembly Member Bonilla worked with stakeholders and incorporated appropriate solutions for TNC regulation into the bill.<sup>172</sup> The TNCs' desire for self-regulation did not work for Chapter 389 supporters; they say the companies did not voluntarily fill the gaps in insurance coverage when drivers logged on but had not been matched with a passenger because the policy amounts were very low and the policies were excess, not primary.<sup>173</sup> One TNC's voluntary, pre-match policy would have covered up to \$50,000 for bodily injury, but only if the driver's personal insurance did not provide coverage.<sup>174</sup> Limiting pre-match insurance requirements to 50/100/30 coverage would not have helped Sophia Liu's family, who suffered \$500,000 in medical bills and was the impetus for the legislation.<sup>175</sup> Of course, even though the additional \$200,000 policy requirement will satisfy most injury claims, it would still not have been enough to cover the Lius' injuries.<sup>176</sup>

Chapter 389's sponsors found the assertion that personal policies generally cover accidents when an app is on to be questionable and consequently they did not want the legislation to rely on such policies.<sup>177</sup> When personal policies did pay claims made during TNC activities, it was likely done to mitigate the costs and time of litigation.<sup>178</sup> Supporters also felt it was inappropriate to make personal policies cover activities outside of their scope and effectively ask the driving public to subsidize TNC business expenses.<sup>179</sup>

In response to TNCs' belief that drivers may commit insurance fraud and turn on their apps just to have coverage, Chapter 389 supporters point out that

---

171. See ACIC Letter, *supra* note 146 (requiring personal insurance policies to cover TNC drivers leads to personal drivers subsidizing the commercial driving of TNCs).

172. See 2293 Energy Hearing, *supra* note 19 (discussing Assembly Member Bonilla's negotiations).

173. *Id.* (citing comments from Kara Cross, General Counsel, Personal Insurance Federation of California).

174. Stevenson, *supra* note 104.

175. *Id.* (citing the amount of the Liu family's medical bills); 2293 Energy Hearing, *supra* note 19 (quoting Assembly Member Susan Bonilla).

176. Stevenson, *supra* note 104; interview with Robert Herrell, Legislative Dir. and Deputy Comm'r, Cal. Dep't of Ins., in Sacramento, Cal. (Sept. 10, 2014) (notes on file with the *McGeorge Law Review*) (explaining what extra insurance would cover). Approximately five percent of accidents result in injury claims of more than \$100,000, and two percent involve injury costs over \$300,000. Ron Lieber, *How to Know if You Have Enough Auto Insurance*, N.Y. TIMES (Aug. 24, 2012), <http://www.nytimes.com/2012/08/25/your-money/auto-insurance/how-to-know-if-you-have-enough-auto-insurance.html?pagewanted=all&r=0> (on file with the *McGeorge Law Review*).

177. CDI REPORT, *supra* note 94, at 5.

178. *Id.* at 5.

179. Letter from Kara Cross, Gen. Counsel, Pers. Ins. Fed'n of Cal., to Michael Peevey, President, Cal. Pub. Util. Comm'n (June 30, 2014) [hereinafter PIFC Letter] (on file with the *McGeorge Law Review*).

there is actually a disincentive to do so.<sup>180</sup> TNC apps evaluate drivers based on their response times and how many fares they turn down; if one is driving without intending to pick up a passenger and rejects ride requests, it will affect his or her rating and subsequent business.<sup>181</sup> Presumably, the TNC would also be able to identify this ongoing behavior and ban a driver if lower rankings alone do not effectively eliminate him or her.<sup>182</sup> Further, the driver would be ill-advised to try to use the commercial liability policy rather than his or her personal policy because the TNC's pre-match policy only compensates others for injuries and damage, so it would not pay for repairs to the driver's own vehicle.<sup>183</sup>

##### 5. Chapter 389 Sponsors' Response to Taxi Industry Suggestions

Although Assembly Member Bonilla recognized the taxi industry's concerns regarding the lack of coverage when drivers pick up off-app passengers or turn off their apps to rush to a popular area where they could earn higher fares,<sup>184</sup> full-time coverage would not have been appropriate because the drivers spend many hours of personal time in their personal vehicles and livery coverage would be excessive.<sup>185</sup> The Legislature could have written Chapter 389 to examine profits earned or miles driven to determine whether a specific driver is performing services more like a taxi driver than a TNC driver and then require full-time insurance for full-time drivers, but this would have complicated regulations and increased work for insurance companies and TNCs.<sup>186</sup> The legislature made it clear that TNCs are inherently unlike taxi companies in rejecting other bills that aimed to regulate TNCs like taxi companies.<sup>187</sup> To regulate some, but not all, TNC drivers as if they were taxi drivers would have contradicted this sentiment.<sup>188</sup>

---

180. 2293 *Ins. Hearing*, *supra* note 4 (highlighting comments from Kara Cross, General Counsel, Personal Insurance Federation of California).

181. *Id.*

182. *Id.*

183. CDI-CPUC Letter, *supra* note 22.

184. See 2293 *Energy Hearing*, *supra* note 19 (citing comments of Barry Korengold, President, San Francisco Cab Drivers Association). Areas like entertainment districts and times like Friday and Saturday nights are often subject to "surge pricing," or increased fares. SENATE ENERGY, UTILITIES, AND COMMUNICATIONS COMMITTEE, COMMITTEE ANALYSIS OF AB 2293, at 5 (June 17, 2014). TNC drivers may speed or practice unsafe driving in order to quickly get to these areas. *Id.*

185. 2293 *Energy Hearing*, *supra* note 19 (inferring from Assembly Member Susan Bonilla's comments that she would not pursue 24/7 commercial insurance for TNCs).

186. Meeting, *supra* note 48 (citing comments by Robert Herrell evaluating when a driver is like a taxi and what pickup requirements would be necessary).

187. 612 *Energy Hearing*, *supra* note 36.

188. See *id.* (ensuring removal of any TNC regulations contrary to the CPUC decision, which stated TNCs were not charter-party carriers).

6. *The End Result of Chapter 389*

Although it was difficult to set the amount of app-on, pre-match insurance coverage, it was “important to err on the side of public safety.”<sup>189</sup> Chapter 389’s requirements strike a balance, protecting TNCs and their drivers without making companies cover drivers’ personal activities.<sup>190</sup>

Since the TNCs are concerned about their bottom lines, they can find a solution to pass the costs on to customers, just as they do with \$1 safety fees to cover the costs of background checks.<sup>191</sup> TNCs are also likely to impose the costs of the insurance policies on their drivers.<sup>192</sup> But there is, perhaps, enough of a financial cushion for some of the companies so that they will not have to charge customers more or make drivers buy their own policies.<sup>193</sup> Uber’s value is upwards of \$18 billion, while Lyft is worth \$700 million.<sup>194</sup> Chapter 389’s sponsors believe the compromise over the policy amount requirements will ensure future innovations are not inhibited due to insurance costs.<sup>195</sup>

D. *Legislative Constraints Limited Chapter 389’s Provisions, but Future Legislation or Regulations can Expand the Rules Governing TNCs*

Chapter 389 treads new ground for the California legislature.<sup>196</sup> Lawmakers could have attempted to create rules for every aspect of TNCs, but instead tried to balance matters that required legislative attention immediately with issues the CPUC or legislature could handle in the future.<sup>197</sup> As a result, there are a number of proposed concepts that did not make it into Chapter 389, but have the potential to become laws at a later time.<sup>198</sup>

1. *Addressing Fraud and Confusion*

Future legislation could further reduce TNCs’ fears of app-on fraud by imposing penalties for logging into an app without intent to provide TNC

---

189. 2293 *Ins. Hearing*, *supra* note 4 (quoting Senator Lou Correa).

190. *Id.*

191. *Id.* (referring to comments from Assembly Member Susan Bonilla, as well as Uber and Lyft representatives).

192. *Said*, *supra* note 84.

193. *See Hernandez*, *supra* note 8 (hypothesizing that Uber is valued at \$12 billion or more); *see also Rogowsky*, *supra* note 81 (asserting that Uber has raised \$1.2 billion in revenue).

194. Sam Frizell, *Lyft Co-Founder: Uber’s Strategy to Contain Us Didn’t Work*, TIME (Dec. 3, 2014), <http://time.com/3616382/lyft-co-founder-ubers-strategy/> (on file with the *McGeorge Law Review*).

195. Press Release, Property Casualty Insurers Association of America, California Legislature Approves AB 2293: Bill Balances Consumer Protection and Responsible Innovation (Aug. 28, 2014) (<http://www.pciaa.net/LegTrack/web/NAIIPublications.nsf/lookupwebcontent/3845065E84C6855486257D43000808F>) (on file with the *McGeorge Law Review*).

196. 2293 *Energy Hearing*, *supra* note 19 (quoting Senator Alex Padilla).

197. *Id.* (quoting Senator Alex Padilla).

198. *Id.*; 612 *Energy Hearing*, *supra* note 36; 2293 *Ins. Hearing*, *supra* note 4.

services.<sup>199</sup> The problem, however, is that reporting and enforcing such penalties could prove difficult.<sup>200</sup> Turning the app on just to get insurance coverage is already illegal because it is insurance fraud, but explicit codification would at least remove doubt and discourage drivers from considering it.<sup>201</sup>

Chapter 389's requirement that a TNC must disclose the limitations of its insurance policy only sets general standards for what the disclosure must include.<sup>202</sup> This will help reduce driver confusion that existed prior to enactment.<sup>203</sup> Legislators could clarify this provision, however, by declaring a TNC must warn its drivers that it will not provide coverage if the driver accepts a street hail or a private client who contacted the driver directly.<sup>204</sup> This would help deter drivers from taking private clients when their apps are turned off.<sup>205</sup>

## 2. Improving Access to TNCs for Disabled Riders

Disability advocates had hoped Chapter 389 would mandate accessibility in TNC vehicles.<sup>206</sup> The CPUC already requires each TNC to submit an accessibility plan detailing how the apps will allow requests for accessible vehicles, how the TNCs will secure wheelchair accessible vehicles, and other plans to increase accessibility and combat discrimination.<sup>207</sup> Some users, however, have reported that TNC drivers discriminate against disabled users, such as refusing to transport riders with service dogs.<sup>208</sup> Legislators were open to a bill that would set access mandates for TNCs but did not want to pursue them as part of Chapter 389.<sup>209</sup>

---

199. 2293 *Energy Hearing*, *supra* note 19 (expanding on insurance fraud comments of Armand Feliciano, Vice President, Association of California Insurance Companies).

200. See Jon Brooks, *Once Friendly Territory, California Looks to Toughen Rules for Uber, Lyft*, NEWS FIX (June 17, 2014), <http://blogs.kqed.org/newsfix/06/17/2014/Uber-Lyft-Insurance-crack-down> (referencing Stuart Nelson, President, Point West Insurance, explaining how easy it would be to engage in fraud).

201. CAL. PENAL CODE § 550 (West Supp. 2014).

202. PUB. UTIL. § 5432 (enacted by Chapter 389).

203. 2293 *Energy Hearing*, *supra* note 19 (paraphrasing Assembly Member Susan Bonilla about protecting drivers so they cannot "be sued for all of their personal property"); 612 *Energy Hearing*, *supra* note 36 (acknowledging the belief of several TNC drivers that they would have to buy more insurance).

204. CDI 2293 Memo, *supra* note 58.

205. 2293 *Energy Hearing*, *supra* note 19 (quoting Mark Gruberg, Spokesperson, United Taxicab Workers).

206. 2293 *Ins. Hearing*, *supra* note 4 (referring to comments from Sergio Alunan, former Taxi Commissioner, City and County of San Francisco, and a spokesperson for the Taxi Paratransit Association of California).

207. *Required Reports TNCs Must Provide the CPUC*, CAL. PUB. UTIL. COMM'N, <http://www.cpuc.ca.gov/PUC/Enforcement/TNC/TNC+Required+Reports.htm> (last modified Feb. 12, 2014) (on file with the *McGeorge Law Review*).

208. Christina Farr, *Uber Facing Probe in San Francisco Over Drivers Shunning Guide Dogs*, REUTERS (May 20, 2014, 8:20 PM), <http://www.reuters.com/article/2014/05/21/us-uber-blind-idUSKBN0E100J20140521> (on file with the *McGeorge Law Review*); 2293 *Ins. Hearing*, *supra* note 4 (citing testimony from a spokesperson for the Taxi Paratransit Association of California).

209. 2293 *Ins. Hearing*, *supra* note 4 (referring to comments by Senators Bill Monning and Ellen Corbett).

### 3. Assisting Airports with Enforcement

Airport managers have been trying to work with TNCs to ensure that drivers are properly permitted to transport riders to and from airports.<sup>210</sup> The CPUC has given airports the power to handle TNC regulations on airport property,<sup>211</sup> but airports have made it clear they want legislation that requires commercial insurance coverage for TNC drivers on airport property whether their apps are on or off.<sup>212</sup> The legislature could also require drivers to turn on their apps any time they are at an airport.<sup>213</sup>

Taxi and airport groups assert that TNC drivers are engaged in fraud that Chapter 389 does not address.<sup>214</sup> TNC drivers sometimes remove markings from their cars, called “trade dress,” that identify their affiliations with TNCs.<sup>215</sup> “[c]oncealing the use of . . . vehicles for livery or commercial purposes . . . could be considered fraud.”<sup>216</sup> Even if it is not fraudulent, it makes enforcement more difficult for entities like the San Francisco International Airport, which requires TNC drivers to have permits to enter airport property.<sup>217</sup> Legislation could require permanent markings or mandate use of trade dress while at an airport, in order to reduce issues of airport permit enforcement.<sup>218</sup>

### 4. Providing Tools to Personal Insurance Companies

Several suggested additions to TNC regulations are related to accident prevention and protocol when there is an accident, which would build off of Chapter 389’s requirement to share app information during a claims investigation.<sup>219</sup> Because TNC drivers are using an app that could—if it does not already—track their activities, safety advocates would like the apps to monitor

---

210. Lillian Kim, *SFO Fed up with Ride-Sharing Companies*, ABC 7 NEWS (May 16, 2014), <http://abc7news.com/travel/sfo-fed-up-with-ride-sharing-companies/64404/> (on file with the *McGeorge Law Review*).

211. Decision, *supra* note 17.

212. *2293 Energy Hearing*, *supra* note 19 (referring to comments of Eva Cheong, Associate Deputy Director, San Francisco International Airport, and Jim Lites, Executive Director, California Airports Council).

213. *See id.* (referring to a comment made by Don Gilbert, San Francisco International Airport representative, that the current legislation isn’t a “perfect fix”).

214. TNC FACT SHEET, *supra* note 117.

215. Kim, *supra* note 210.

216. TNC FACT SHEET, *supra* note 117.

217. *See 612 Energy Hearing*, *supra* note 36 (interpreting comments from Senator Alex Padilla regarding CHP enforcement); *2293 Energy Hearing*, *supra* note 19 (referring to comments of Eva Cheong, Associate Deputy Director, San Francisco International Airport).

218. *612 Energy Hearing*, *supra* note 36 (referring to comments of Assembly Member Adrin Nazarian).

219. CAL. PUB. UTIL. CODE § 5435 (enacted by Chapter 389); *2293 Energy Hearing*, *supra* note 19 (reporting comments by Barry Broad, Legislative Representative, California Teamsters Public Affairs Council); CDI 2293 Memo, *supra* note 58.



the number of hours drivers are logged in and disable use of the app after a certain number of hours in a day so that drivers are not fatigued.<sup>220</sup>

To help eliminate finger-pointing when a TNC driver is in an accident, legislation or regulations could require drivers to inform their personal insurance companies that they are driving for TNCs.<sup>221</sup> The TNCs could then require each driver to submit proof of such a disclosure in order to provide services.<sup>222</sup> Since some drivers have reported that their insurance companies canceled their coverage when they merely inquired about TNCs, any requirements should include protections for the driver.<sup>223</sup>

### 5. Improving Public Safety

Legislators have also discussed public disclosure of driver information, or at least disclosure to law enforcement.<sup>224</sup> TNCs could be required to submit their background checks on their drivers to the CPUC or even post them on the drivers' app profile pages.<sup>225</sup> Some would like airport police and the California Highway Patrol to have access to TNC driver information so they can ensure the driver registered on the app is the driver who they have pulled over.<sup>226</sup>

## V. CONCLUSION

Chapter 389's final solution, which allows commercial car insurance to be turned on and off, is "historic and unprecedented."<sup>227</sup> The parties who sponsored this legislation feel closing the app gap with insurance requirements for TNCs is a step in the right direction.<sup>228</sup> Permitting TNCs and their drivers to meet Chapter 389 requirements with a combination of policies avoids deterring innovation for both TNCs and the insurance industry.<sup>229</sup> Insurance coverage requirements for the most contested portion of Chapter 389, when the app is on but there is not a driver-passenger match, reflect a middle ground between full-time, \$1,000,000

---

220. 2293 *Energy Hearing*, *supra* note 19 (indicating testimony by Barry Broad, Legislative Representative, California Teamsters Public Affairs Council).

221. CDI 2293 Memo, *supra* note 58.

222. *Id.*

223. Meeting, *supra* note 48 (paraphrasing Chris Shultz).

224. 612 *Energy Hearing*, *supra* note 36.

225. *Id.* (quoting Senator Alex Padilla).

226. *Id.* (quoting Senator Alex Padilla).

227. 2293 *Energy Hearing*, *supra* note 19 (quoting Ted Pahos, Partner, Kester/Pahos).

228. See *California Legislature Approves AB 2293: Bill Balances Consumer Protection and Responsible Innovation*, INSURANCENEWSNET.COM (Aug. 29, 2014), <http://insurancenewsnet.com/oarticle/2014/08/29/california-legislature-approves-ab-2293-bill-balances-consumer-protection-and-r-a-549662.html> (on file with the *McGeorge Law Review*) (characterizing the bill as one that protects the public through reasonable insurance requirements).

229. PIFC Letter, *supra* note 179.

primary coverage and a 15/30/5 policy, the minimum required for non-commercial drivers.<sup>230</sup>

Although Chapter 389 is only the first step in the legislative regulation of TNCs, legislators are willing to revisit related issues in coming sessions.<sup>231</sup> The volume and variety of stakeholders' suggestions show that the CPUC or legislature could implement many more parameters for TNCs in the future.<sup>232</sup> The 2017 completion of a report on appropriate coverage will further guide the legislature to find solutions based on real TNC data.<sup>233</sup>

---

230. See 2293 *Energy Hearing*, *supra* note 19 (discussing Assembly Member Bonilla's negotiations).

231. 2293 *Ins. Hearing*, *supra* note 4 (referring to comments by Senators Bill Monning and Ellen Corbett).

232. *Id.*; 2293 *Energy Hearing*, *supra* note 19; 612 *Energy Hearing*, *supra* note 36.

233. CAL. PUB. UTIL. CODE § 5436 (enacted by Chapter 389); interview with Robert Herrell, Legislative Dir. and Deputy Comm'r, Cal. Dep't of Ins., in Sacramento, Cal. (Sept. 10, 2014) (on file with the *McGeorge Law Review*).