Uber and Lyft to Return to Austin, Texas?

Insights
5.24.17

One year after Uber and Lyft terminated operations in Austin, Texas, the ride-sharing platforms may be ready to return. The issue stems from a City of Austin ordinance that requires all "transportation network companies" (TNCs) to conduct fingerprint-based criminal background checks on individual drivers. The ordinance passed in December 2015, and went into effect in May 2016. Immediately after the ordinance went into effect, Uber and Lyft announced they were terminating service in the Austin market, primarily because of concerns over the length of time required to complete the background checks (a difficult impediment for a business model reliant upon quick onboarding of new drivers). Lyft, at the time, commented that it "doesn't operate our peer-to-peer service in any market where mandatory fingerprinting requirements exist."

But just last week, the Texas Legislature passed a bill providing for the comprehensive regulation of TNCs. The bill would preempt and render void all local ordinances governing TNCs. Significantly for platforms such as Uber and Lyft, the bill contains no requirement that TNCs subject their drivers to fingerprint-based background checks. Rather, TNCs would be required to conduct local, state, and national criminal background checks for prospective drivers that includes the use of a multi-jurisdiction criminal records locator and the national sex offender website maintained by the U.S. Department of Justice. Individuals with certain driving offenses or criminal convictions, and registered sex offenders, would not be permitted to drive for a TNC. TNCs would also be required to verify the prospective driver's age, driver's license, proof of insurance and registration, and driving record.

The Texas bill is also significant for the fact that it specifically provides that drivers of TNCs will be considered independent contractors, not employees, where certain conditions are met, specifically: (1) where the driver and the TNC agree in writing that the driver is an independent contractor; and (2) where the TNC does not specify the hours during which the driver must be logged into the TNC's network, does not limit the driver's ability to drive for other TNCs or work in other occupations, and does not limit the territory in which the driver may work.

Texas' governor has indicated he will soon sign the bill into law, and both Uber and Lyft have represented that they will resume operations in Austin immediately thereafter. The bill is significant not only for the fact that it reduces regulations on TNCs (and will seemingly result in Uber and Lyft restoring services to Austin), but also for the fact that is represents another example in the growing trend of states electing to enact legislation preempting municipal regulation of TNCs.

Related People

Philip J. Azzara
Partner
949.798.2167
Email