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## Along for the Ride: Regulating Transportation Network Companies

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## ALONG FOR THE RIDE: REGULATING TRANSPORTATION NETWORK COMPANIES

### I. INTRODUCTION

On New Year's Eve, 2013, a vehicle struck and killed six-year-old Sofia Liu as she crossed the street with her family.<sup>1</sup> Sofia's mother and five-year-old brother sustained serious injuries in the incident.<sup>2</sup> The family had the right of way to cross the street when the driver, failing to yield, turned right and struck them.<sup>3</sup> The driver of the vehicle, Syed Muzaffar, drove for Uber.<sup>4</sup> Uber is a ridesharing company, also known as a transportation network company (TNC) under some regulations.<sup>5</sup> Though Muzaffar did not have passengers in his vehicle at the time of the incident, he reportedly had the Uber app open and active in his vehicle.<sup>6</sup> Uber initially refused to cover the accident with its insurance, arguing that a driver must have passengers in the car in order to qualify for Uber insurance coverage.<sup>7</sup> Sofia's family filed suit against Uber, and those parties reached an undisclosed settlement in July 2015.<sup>8</sup> Had Syed Muzaffar driven for a taxi company at the time of the accident, the company's insurance would have automatically covered the accident in full, regardless of the absence of passengers in Muzaffar's vehicle.<sup>9</sup>

Uber, like other TNCs, "connects riders to drivers through . . . [smartphone] apps."<sup>10</sup> TNCs operating throughout the United States include, among others, Uber, Lyft, and Sidecar.<sup>11</sup> When a customer wishes to use a TNC, they download a company's app onto

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1. Complaint at 4, *Liu v. Uber*, No. CGC-14-53-6979 (Cal. Super. Ct. Jan. 27, 2014) [hereinafter *Liu Complaint*]; David Streitfeld, *Uber and a Child's Death, Bits*, N.Y. TIMES (Jan. 27, 2014, 7:00 AM), [http://bits.blogs.nytimes.com/2014/01/27/uber-and-a-childs-death/?\\_php=true&\\_type=blogs&\\_r=0](http://bits.blogs.nytimes.com/2014/01/27/uber-and-a-childs-death/?_php=true&_type=blogs&_r=0).

2. *Liu Complaint*, *supra* note 1, at 4; Alyson Shontell, *Uber and UberX Lawsuit*, BUS. INSIDER, (Jan. 27, 2014, 4:21 PM), <http://www.businessinsider.com/uber-and-uberx-lawsuit-2014-1>.

3. *Liu Complaint*, *supra* note 1, at 4.

4. *Id.* at 5; Shontell, *supra* note 2.

5. The California Public Utilities Commission "defines a TNC as an organization whether a corporation, partnership, sole proprietor, or other form, operating in California that provides prearranged transportation services for compensation using [an app] to connect passengers with drivers using their personal vehicles." Decision Adopting Rule and Regulations to Protect Public Safety While Allowing New Entrants to the Transportation Industry, CAL. PUB. UTIL. COMM'N R. 12-12-011 (2013) [hereinafter *California Decision on Regulations*].

6. *Liu Complaint*, *supra* note 1, at 5.

7. Streitfeld, *supra* note 1.

8. *Liu Complaint*, *supra* note 1; Order Granting Petition to Approve Compromise of a Minor's Claim, *Liu*, No. CGC-14-53-6979.

9. Barry Korengold, *Insurance? We Don't Need No Stinkin' Insurance*, S.F. CAB DRIVER'S ASS'N (Aug. 12, 2014), <http://www.sfcd.org/archives/1316>.

10. *The Company*, UBER, <https://www.uber.com/about>.

11. *California Decision on Regulations*, *supra* note 5; *The Company*, UBER, <https://www.uber.com/about>;

their smartphone and enter their credit card information.<sup>12</sup> The customer opens the app any time they want a ride, and a map shows the customer's location in relation to available drivers at that moment in time.<sup>13</sup> Once a customer requests a ride, the app provides the passenger with the name of the driver, the driver's customer rating, the make and model of the driver's vehicle, and the vehicle's license plate number.<sup>14</sup> The driver then receives a notification on their TNC-supplied smartphone and picks the customer up at the specified location.<sup>15</sup> Once the driver drops the passenger at their destination, the customer pays through the smartphone app.<sup>16</sup> Drivers do not directly receive the customer's credit card information, and tips are both uncommon and discouraged.<sup>17</sup> Unlike taxi companies, TNC drivers are typically freelance drivers who decide when and how often they wish to drive for the TNC.<sup>18</sup>

As revealed by the dispute that arose after Sofia Liu's death, a variety of legal issues plague the innovative TNC business model.<sup>19</sup> Due to the initial absence of TNC regulations, taxi companies, as well as other TNC competitors, continue to raise concerns with the safety issues and unfair competitive advantages that TNCs present in communities nationwide.<sup>20</sup> State regulation—rather than sweeping legislation at the federal level or taxi-favoring regulation at the local level—is the most effective solution for the myriad concerns and legal issues that TNCs raise in the United States.

Part II explores the background of TNC regulation, including comparisons to other for-hire services and the primary concerns associated with TNCs.<sup>21</sup> Part II also discusses existing TNC regulations at both the state and local level.<sup>22</sup> Part III examines the constitutional considerations, both the advantages and disadvantages associated with federal TNC regulation, and regulatory options at the federal level.<sup>23</sup> Next, Parts IV and V discuss important considerations in the power to regulate TNCs, as well as advantages and disadvantages of both state and local regulation.<sup>24</sup> Lastly, Part VI balances the risks and benefits associated with each level of regulation, concluding that state regulation is

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LYFT, [www.lyft.com](http://www.lyft.com); SIDECAR, <http://www.side.cr>.

12. Ryan Ermy, *Taxis Get a Run for Their Money: Private Car Services Can be Cheaper*, KIPLINGER'S PERS. FIN., Apr. 2014, at 13.

13. *Id.*

14. *Id.*

15. See generally David Fagan, *Life as an Uber Driver: It's Just Not Fare*, HUFFINGTON POST (Feb. 3, 2014, 3:47 PM), [http://www.huffingtonpost.com/david-fagin/life-as-an-uber-driver\\_b\\_4698299.html](http://www.huffingtonpost.com/david-fagin/life-as-an-uber-driver_b_4698299.html).

16. Ermy, *supra* note 12.

17. See generally *id.*; see also *Do I Have to Tip My Driver?*, UBER, <https://support.uber.com/hc/en-us/articles/202290128-Do-I-have-to-tip-my-driver>.

18. Cord Jefferson, *Car and Driver*, L.A. MAG., Feb. 2014, at 68, 70.

19. See California Decision on Regulations, *supra* note 5; see also Anna Gallegos, *The Four Biggest Legal Problems Facing Uber, Lyft and Other Ridesharing Services*, LEXBLOG NETWORK (June 4, 2014), <http://www.lxbn.com/2014/06/04/top-legal-problems-facing-uber-lyft-ridesharing-services>.

20. Taxi companies and other for-hire companies, like limousines, have filed suit against TNCs, alleging that their practices are unlawful. See generally *Boston Cab Dispatch v. Uber Tech., Inc.*, No. 13-10769-NMG, 2015 WL 314131 (D. Mass. Jan. 26, 2015); see also *Manzo v. Uber Tech., Inc.*, No. 13 C 2407, 2014 WL 3495401 (N.D. Ill. July 14, 2014); *Yellow Grp. v. Uber Tech., Inc.*, No. 12 C 7967, 2014 WL 3396055 (N.D. Ill. July 10, 2014).

21. See discussion *infra* Part II.

22. See discussion *infra* Part II.

23. See discussion *infra* Part III.

24. See discussion *infra* Part IV; see also discussion *infra* Part V.

the best option for TNC regulation.<sup>25</sup>

## II. BACKGROUND

TNCs have various competitive advantages over other vehicle for-hire services, like taxicabs or limousines.<sup>26</sup> For example, the TNC experience is often a better experience for customers, with cleaner vehicles and friendlier drivers than taxicabs, as well as an easier (and more secure) payment method.<sup>27</sup> Additionally, the first independent study comparing taxis to TNCs found that taxis have a much slower response time than TNCs.<sup>28</sup>

TNCs' competitive advantages undoubtedly affected the taxi industry during the past few years, as the average number of rides taken per taxi dramatically decreased from March 2012 to July 2014.<sup>29</sup> During that time period, the average number of rides taken per taxi per month in San Francisco fell from 1,400 rides to only 500 rides.<sup>30</sup> This is the same time period in which TNCs began launching and expanding in San Francisco.<sup>31</sup>

TNC competitors continue to protest throughout the United States, urging cities and states to either ban the companies or even the playing field.<sup>32</sup> Competitors argue that the true advantage for TNCs—and the reason behind the declining taxi industry—can be recognized through a comparison of taxi regulations to TNC regulations, or lack thereof.<sup>33</sup> Although cities and states continue to evaluate regulatory options, federal, state, and local governments face an assortment of issues in determining which regulatory path to take.<sup>34</sup>

25. See discussion *infra* Part VI.

26. See generally Jefferson, *supra* note 18. The term “vehicle for-hire,” or alternatively, “for-hire vehicle” includes “any motor vehicle, when used for transporting persons or goods for compensation.” FLA. STAT. ANN. § 320.01(15)(a) (West 2013). The term “limousine” is used to describe more than just one type of vehicle. Washington uses the term “limousine” to include stretch limousines, executive sedans, executive vans, classic cars, executive SUVs, and stretch SUVs. WASH. ADMIN. CODE § 308-83-010(12) (2012).

27. Larry Downes, *Uber's Battle in Seattle Highlights the Irony of Regulation Hurting the Consumers it was Designed to Help*, WASH. POST (Mar. 24, 2014), <http://www.washingtonpost.com/blogs/innovations/wp/2014/03/24/ubers-battle-in-seattle-highlights-the-irony-of-regulation-hurting-the-consumers-it-was-designed-to-help>.

28. Lisa Rayle et al., *App-Based, On-Demand Ride-Services: Comparing Taxi and Ridesourcing Trips and User Characteristics in San Francisco*, 12 (Aug. 2014) (unpublished dissertation, University of California).

29. Emily Badger, *This Chart Bodes Very Badly for the Taxi Industry in Its Battle Against Uber*, WASH. POST (Sept. 17, 2014), <http://www.washingtonpost.com/blogs/wonkblog/wp/2014/09/17/this-chart-bodes-very-badly-for-the-taxi-industry-in-its-battle-against-uber>.

30. *Id.*

31. See generally Charles J. Johnson, *Timeline: History of Uber*, CHI. TRIB. (Mar. 11, 2015, 10:12 AM), <http://www.chicagotribune.com/bluesky/technology/chi-timeline-ubers-controversial-rise-20150205.htmlstory.html>; see also Nicholas Carlson, *Lyft, A Year-Old Startup that Helps Strangers Share Car Rides, Just Raised \$60 Million from Andreessen Horowitz and Others*, BUS. INSIDER (May 23, 2013, 12:00 PM), <http://www.businessinsider.com/lyft-a-startup-that-helps-strangers-share-car-rides-just-raised-60-million-from-andreessen-horowitz-2013-5>.

32. See Eric Snyder, *Taxi Drivers Protest Proposed Regulations for Uber, Lyft*, NASHVILLE BUS. J. (Oct. 30, 2014, 6:59 AM), [http://www.bizjournals.com/nashville/morning\\_call/2014/10/taxi-drivers-protest-proposed-regulations-for-uber.html](http://www.bizjournals.com/nashville/morning_call/2014/10/taxi-drivers-protest-proposed-regulations-for-uber.html); see also Martine Powers, *Taxi Drivers Protest at Uber's Boston Offices*, BOS. GLOBE (May 22, 2014), <http://www.bostonglobe.com/metro/2014/05/22/taxi-drivers-protest-uber-boston-offices/0YIRN0hHAHVhcxFIQ2X5aI/story.html>.

33. Jefferson, *supra* note 18, at 70.

34. See generally Jacob Huebert, *Illinois Gov. Pat Quinn Vetoes Uber Bill*, ILL. POL'Y (Aug. 25, 2014), <http://www.illinoispolicy.org/governor-vetoes-uber-bill>; see also Bill Virgin, *Welcome to the New World of Ridesharing (or Lack Thereof)*, NEWS TRIB. (Apr. 6, 2014), <http://www.thenewtribune.com/2014/04/06/3135633/welcome-to-the-new-world-of-ridesharing.html>.

### A. Taxi Regulations

The long history of the taxicab industry provides insight into the sizeable gap between tightly regulated taxicabs and, at one point in time, scarcely regulated TNCs.<sup>35</sup> Taxicabs began appearing in the United States at the turn of the twentieth century, and taxis became increasingly more popular in the 1920s and 1930s.<sup>36</sup> TNCs, on the other hand, first appeared in 2009—less than a decade ago.<sup>37</sup> In the 1970s and 1980s, various initiatives pushed for taxi regulations in order to ensure the safety of drivers and passengers, causing taxi regulation to swell across the country.<sup>38</sup>

New York City is perhaps one of the greatest illustrations of taxi regulation.<sup>39</sup> The New York City Taxi & Limousine Commission governs the taxi regulations in the city.<sup>40</sup> Specifically, “[t]he Commission . . . issue[s] licenses and adopt[s] and enforce[s] rules regulating the business and industry of the . . . for-hire transportation services in the City.”<sup>41</sup>

Today, the stringent taxi regulations in New York City impose various requirements on taxicab drivers, including that drivers must: be at least nineteen years old; hold a chauffeur’s license; present a summary of their driving record if another state issued their driver’s license; pass a mental and physical examination; be familiar with the city and traffic laws; pass a drug test; give fingerprints; and complete various trainings.<sup>42</sup> Further, New York City taxi drivers must pay an annual fee of eighty-four dollars to maintain their license in the city.<sup>43</sup> Taxicab drivers and companies also face the expensive challenge of acquiring medallions, which are rare, government-issued taxi permits.<sup>44</sup> New York City attempts to keep the number of medallions lower than the demand for rides, resulting in NYC taxi medallions going for nearly \$1 million apiece.<sup>45</sup> Additionally, the city requires that taxicabs carry at least \$300,000 in insurance coverage per incident.<sup>46</sup> Taxi regulation stays at the municipal level in New York, even for taxi license requirements.<sup>47</sup>

San Francisco is another city in the United States with a longstanding taxicab industry.<sup>48</sup> Like New York, taxi regulations in California are left to the municipal

35. See generally *Taxi History*, PBS, [http://www.pbs.org/wnet/taxidreams/history/history\\_2.html](http://www.pbs.org/wnet/taxidreams/history/history_2.html).

36. *Id.*

37. *The Company*, UBER, <https://www.uber.com/about>.

38. *Taxi History*, *supra* note 35.

39. See *History*, N.Y.C. TAXI OF TOMORROW, [http://nyc.gov/html/media/totweb/taxioftomorrow\\_history\\_themoderntaxi.html](http://nyc.gov/html/media/totweb/taxioftomorrow_history_themoderntaxi.html) (last visited Feb. 18, 2016).

40. N.Y.C., N.Y., ch. 52, § 52-01 (2014).

41. *Id.* § 52-02.

42. N.Y.C., N.Y., ch. 54, § 54-04(a)-(e), (g)-(h), (k) (2014).

43. *Id.* § 54-07(a).

44. See generally N.Y.C., N.Y., ch. 54, § 54-22(e); see also Rohin Dhar, *The Tyranny of the Taxi Medallions*, PRICEONOMICS (Apr. 10, 2013), <http://blog.priceonomics.com/post/47636506327/the-tyranny-of-the-taxi-medallions>.

45. Antonio Antenucci, *Taxi Medallion Auctioned for Record-Setting \$965,000*, N.Y. POST (Feb. 26, 2014, 2:19 PM), <http://nypost.com/2014/02/26/taxi-medallion-auctioned-for-record-setting-965000/>; Joshua Brustein, *Uber’s Fare War on New York Taxis Puts Million-Dollar Medallions at Risk*, BLOOMBERG BUSINESSWEEK (July 7, 2014), <http://www.businessweek.com/articles/2014-07-07/ubers-fare-war-on-new-york-taxis-puts-million-dollar-medallions-at-risk>.

46. N.Y.C. TAXI & LIMOUSINE COMM’N, VEHICLE INSURANCE REQUIREMENTS (2014).

47. See N.Y.C., N.Y., ch. 52, § 52-01.

48. See Heidi Machen & Jordanna Thigpen, *Overview of the San Francisco Taxi Industry and Proposition*

governments.<sup>49</sup> The San Francisco Municipal Transportation Agency regulates taxis in the city.<sup>50</sup> In order for a driver to become a licensed taxi driver, San Francisco requires that the driver provide fingerprints, pass a written examination, pass a physical examination, if required, and successfully complete a driver training course.<sup>51</sup> Additionally, taxi drivers must be legal residents of the United States; be at least twenty-one years old; hold a valid California driver's license; and read, write, and speak English.<sup>52</sup>

San Francisco taxicab drivers and companies pay a variety of fees in order to operate in the city.<sup>53</sup> Drivers, for example, must pay both an initial permit fee and an annual driver renewal fee.<sup>54</sup> San Francisco medallions are the bulk of taxi company expenses; the third-largest taxi company in the city, with a fleet of 204 vehicles, pays nearly \$500,000 in medallion fees monthly.<sup>55</sup> San Francisco regulations also require that taxis carry at least \$1 million in liability insurance.<sup>56</sup> Further, liability insurance must cover taxis at all times, regardless of whether the taxi has a passenger at the time of an incident.<sup>57</sup>

New York and San Francisco illustrate the various regulations taxicab drivers and companies face around the country.<sup>58</sup> Drivers must satisfy a wide range of requirements and fees in order to legally operate a taxicab and transport passengers.<sup>59</sup>

### B. *Contrasting Business and Regulatory Models*

In *Boston Cab v. Uber*, a Boston taxicab company alleged that, "Uber has gained an unfair competitive advantage over [taxicab companies] because it avoids the costs and burdens of complying with extensive regulations designed [for the benefit of Boston citizens]." <sup>60</sup> The United States District Court for the District of Massachusetts denied Uber's Motion to Dismiss in that case, noting that "common economic sense" implies that Uber's business has a "high likelihood of affecting the revenue of Boston medallioned taxis."<sup>61</sup> Business and regulatory models of TNC competitors, therefore, are an important consideration in determining a regulatory path for TNCs.<sup>62</sup>

Though similarities exist, the differences between TNCs, taxicabs, and limousine

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K, TAXI LIBRARY (Nov. 2007), <http://www.taxi-library.org/overview-of-prop-k.pdf>.

49. CAL. PUB. UTIL. COMM'N, *Basic Information for Passenger Carriers and Applicants*, TRANSP. LICENSE SECTION at 11, <http://www.cpuc.ca.gov/NR/rdonlyres/42294D2B-412E-466E-A74B-F1862BFC6924/0/PassengerCarriersBasicInfoandApplicantsRev012811.pdf> [hereinafter *California PUC Basic Information*].

50. See S.F., CAL., TRANSP. CODE § 1101 (2014).

51. *Id.* § 1103(c)(1)(A)-(D).

52. *Id.* § 1103(c)(2)(A), (D), (H).

53. *Id.* § 320.

54. *Id.*

55. S.F., CAL., TRANSP. CODE § 320; Jessica Kwong, *Death of the Taxi Medallion: SF Cab Company Ponders Major Change*, EXAMINER (July 23, 2014), <http://www.sfexaminer.com/sanfrancisco/death-of-the-taxi-medallion-sf-cab-company-ponders-major-change/Content?oid=2856068>.

56. Korengold, *supra* note 9.

57. *Id.*

58. See generally N.Y.C., N.Y., ch. 54; see also S.F., CAL., TRANSP. CODE § 1103.

59. See N.Y.C., N.Y., ch. 54; see also S.F., CAL., TRANSP. CODE § 1103; see also S.F., CAL., TRANSP. CODE § 320.

60. *Boston Cab Dispatch v. Uber Tech., Inc.*, No. 13-10769-NMG, 2015 WL 314131, at \*1 (D. Mass. Jan. 26, 2015).

61. *Id.* at \*3.

62. See generally *Boston Cab*, 2015 WL 314131 at \*3.

services illustrate that not all for-hire companies are created equal and, therefore, do not require identical regulatory models.<sup>63</sup> TNCs and taxicabs typically charge customers based on the distance and duration of one ride.<sup>64</sup> Conversely, limousine services charge customers a set hourly rate for a required number of hours.<sup>65</sup> While taxicab companies pick customers up from the sidewalk on demand, limousine services typically require advance reservations for their services.<sup>66</sup> TNCs, however, use a smartphone app for on-demand reservations.<sup>67</sup> Further, taxi companies are often owned and operated in one city or region.<sup>68</sup> Some limousine services also operate locally or regionally, while many national limousine services exist as well.<sup>69</sup> On the other hand, TNCs operate on a national and, in some cases, an international scale.<sup>70</sup> Moreover, a comparison of price differences shows that Uber is cheaper than taxicabs in most cities.<sup>71</sup>

Due to differing business models between taxicabs and limousine services, taxicab regulation differs from limousine service regulation around the country.<sup>72</sup> Like San Francisco and New York City taxicab regulation, the majority of taxi regulations has always been, and continues to be, at the local level.<sup>73</sup> The regulatory model for limousine and car services, on the other hand, varies from state to state.<sup>74</sup> Many states preempt municipal regulation of limousines.<sup>75</sup> For example, Washington state law regulates limousine licenses, insurance requirements, vehicle inspections, and training requirements.<sup>76</sup>

### C. Regulatory Concerns with TNCs

Some of the major concerns with TNCs include the minimal—or complete lack of—requirements in relation to: driver backgrounds, commercial driver’s licenses, proper

63. See *infra* notes 64-71.

64. See S.F., CAL., TRANSP. CODE § 1124(b)(1); see also *How to Uber*, UBER (last visited Mar. 6, 2015), <https://www.uber.com/features>.

65. See S.F. LIMO (last visited Mar. 6, 2015), [http://www.sanfranciscolimo.com/fleet.htm#sedans\\_stretch\\_limos](http://www.sanfranciscolimo.com/fleet.htm#sedans_stretch_limos).

66. See Angela Brown, *How to Hail a Cab in New York*, USA TODAY (last visited Mar. 6, 2015), <http://traveltips.usatoday.com/hail-cab-new-york-15073.html>; see also S.F. LIMO (last visited Mar. 6, 2015), <http://www.sanfranciscolimo.com>.

67. See *SIDECAR*, *supra* note 11.

68. See *CHECKER TAXI CHI.* (last visited Mar. 6, 2015), <http://checkertaxichicago.com/contact-us-2>; see also *LUXOR CAB* (last visited Mar. 6, 2015), <http://www.luxorcab.com/luxor-history>.

69. See *BLACK DIAMOND LIMO PARTY BUS OKC* (last visited Mar. 6, 2015), <http://www.okclimousineservice.com>; see also *ELITE CHICAGO LIMO* (last visited Mar. 6, 2015), <http://www.elitechicagolimo.com>; *EXECUCAR* (last visited Mar. 6, 2015), <http://www.execucar.com>; S.F. LIMO, *supra* note 65.

70. *Cities We’re in*, LYFT (last visited Mar. 6, 2015), <https://www.lyft.com/cities>; *Our Cities*, UBER (last visited Mar. 6, 2015), <https://www.uber.com/cities>.

71. Business Insider compared Uber rates to taxicab rates in cities throughout the country, finding that Uber is 1.5 times cheaper in Chicago, 1.4 times cheaper in San Francisco, and 1.1 times cheaper in Dallas; this excludes “surge pricing,” when TNC rates are exceptionally high. *We Did the Math: Is Uber Really Better Than A Taxi?*, BUS. INSIDER (last visited Mar. 6, 2015), <http://www.businessinsider.com/uber-versus-taxi-best-deal-cheaper-2014-10>.

72. See *infra* notes 73-76.

73. See N.Y.C., N.Y., ch. 52, § 52-01; see also *California PUC Basic Information*, *supra* note 56 at 11.

74. See COLO. PUB. UTIL. COMM’N R. 723-6-6200, at 3 (2014); see also WASH. ADMIN. CODE § 308-83-100.

75. *Id.*

76. See WASH. ADMIN. CODE § 308-83.

vehicle permits, vehicle inspections, and liability insurance.<sup>77</sup> Notably, TNCs have developed internal regulations that cover some of these areas.<sup>78</sup>

As with many jobs, TNCs have requirements that individuals must satisfy before becoming a driver for that TNC.<sup>79</sup> Lyft, for example, requires that drivers be at least twenty-one years of age, pass a criminal background check, and have no greater than three moving traffic violations in the three years prior to their application.<sup>80</sup> Further, Lyft inspects any potential vehicle a driver plans to drive under the Lyft name.<sup>81</sup>

Uber states that its drivers must pass a criminal background check and notes that its drivers are subject to constant passenger reviews.<sup>82</sup> As for vehicle safety, Uber asserts that it only allows “safe, high-quality vehicles that are in exceptional condition.”<sup>83</sup> Uber does not allow models older than 2000, and the average model year for in-service vehicles is 2008.<sup>84</sup> Like its peers, Sidecar also subjects potential drivers to criminal background checks and relies on passenger reviews as indicators of dangerous drivers.<sup>85</sup>

Insurance continues to be a popular topic in the discussion surrounding TNC regulations.<sup>86</sup> As governments implement more insurance regulations for TNCs, TNCs implement more insurance coverage internally.<sup>87</sup> Uber, for example, offers \$1 million in commercial insurance coverage for both driver liability and underinsured or uninsured third parties.<sup>88</sup> Following the tragic New Year’s Eve accident that took Sofia Liu’s life, Uber attempted to improve the so-called “insurance gap” by adding contingent coverage in excess of the driver’s personal insurance coverage when the driver’s app is on and there is no passenger in the vehicle.<sup>89</sup> This contingent coverage includes \$50,000 for individual injury, \$100,000 for total injury, and \$25,000 in property damage.<sup>90</sup> Uber acknowledges

77. See Anna Gallegos, *The Four Biggest Legal Problems Facing Uber, Lyft and Other Ridesharing Services*, LEXBLOG NETWORK (June 4, 2014), <http://www.lxbn.com/2014/06/04/top-legal-problems-facing-uber-lyft-ridesharing-services>.

78. See *infra* notes 79-85.

79. See *Safety*, LYFT (last visited Mar. 6, 2015), <https://www.lyft.com/safety>; see also *Safety*, SIDECAR (last visited Mar. 6, 2015), <http://www.side.cr/safety>; see also *Safety*, UBER (last visited Jan. 6, 2016), <https://www.uber.com/safety>.

80. *Safety*, LYFT, *supra* note 79.

81. *Id.*

82. Following a TNC ride, passengers complete a review of their experience and the driver’s performance via the app; each driver’s rating is visible to other passengers. *Safety*, UBER, *supra* note 79.

83. *Id.*

84. *Id.* Uber recently lowered its standards for vehicles. The company previously used a rolling ten-year window to determine which vehicles could and could not qualify as Uber vehicles. Under the old requirement, for example, vehicles made in 2005 or before could not be used as Uber vehicles in 2016. Conversely, the new standard significantly lowers the requirement to allow any vehicle made in 2000 or later to operate as an Uber vehicle—completely eliminating the rolling standard. Some believe Uber made this change in order attract more drivers, thereby lowering rates for customers. *Uber Lowers Car Requirement to 2000 or Lower*, RIDESHARE DASHBOARD (Feb. 25, 2015), [http://ridesharedashboard.com/2015/02/25/uber-lowers-car-requirement-2000-newer/#disqus\\_thread](http://ridesharedashboard.com/2015/02/25/uber-lowers-car-requirement-2000-newer/#disqus_thread).

85. *Safety*, SIDECAR, *supra* note 79.

86. Justin Sullivan, *Proposed Insurance Rules Bad for Ridesharing Companies’ Bottom Line*, S. CAL. PUB. RADIO (July 9, 2014), <http://www.scp.org/blogs/economy/2014/07/09/16986/proposed-insurance-rules-bad-for-ridesharing-compa>.

87. See *supra* note 79.

88. *Eliminating Ridesharing Insurance Ambiguity*, UBER (Mar. 14, 2014), <https://blog.uber.com/uberXridesharinginsurance>.

89. *Id.*

90. *Id.*



the ambiguities in relation to personal insurance coverage in these types of situations, such as whether a driver's personal insurance will cover an accident that takes place when a driver is logged into the Uber app.<sup>91</sup>

Lyft provides \$1 million in coverage from the time a driver accepts a ride to the time the driver drops the passenger off at their destination and provides "insurance gap" coverage similar to that of Uber.<sup>92</sup> Sidecar, conversely, only provides \$1 million in coverage for rides from start to end, with the exception of jurisdictions with an "insurance-gap" requirement.<sup>93</sup>

Though many of these internal regulations mirror or exceed city taxi regulations, critics worry that the lack of laws regulating TNCs grant TNCs too much flexibility to adapt their internal regulations as they see fit—an option not available to taxi companies.<sup>94</sup> Despite internal regulations, TNC competitors and critics argue that TNC regulations must exist at a municipal or state level in order to ensure public safety and sound business practices.<sup>95</sup>

Conversely, TNCs counter that some regulations may encourage fraud.<sup>96</sup> The General Counsel for Sidecar, for example, argues that regulations for the "insurance gap" could result in drivers claiming that their app was active at the time of the accident even if it was not.<sup>97</sup> Lyft argues that a driver could potentially forget to log out of the Lyft app, yet still be covered under Lyft's insurance in the case of an accident.<sup>98</sup>

Although cities and states attempt to regulate this area of transportation, governments struggle with finding the best way to balance public safety with the business interests of TNCs and other for-hire services.<sup>99</sup> Moreover, legislators struggle with the best level at which to regulate TNCs: the federal level, the state level, or the local level.<sup>100</sup>

#### D. Existing State TNC Regulation: California and Colorado

Although various states have considered state regulation, only a handful of states have enacted TNC regulation at the state level.<sup>101</sup> California became the first state to regulate TNCs at the state level in 2013 through the California Public Utilities Commission (the California PUC).<sup>102</sup>

91. *Id.*

92. *Safety*, LYFT, *supra* 79.

93. *Safety*, SIDECAR, *supra* note 79.

94. See Michelle Ye He Lee, *Ride-Share Debate Continues in, Beyond Arizona*, ARIZ. CENT. (May 27, 2014, 9:57 AM), <http://www.azcentral.com/story/news/local/phoenix/2014/05/23/arizona-ride-share-debate-continues/9527433>.

95. *Id.*

96. Jon Brooks, *Once Friendly Territory, California Looks to Toughen Rules for Uber, Lyft*, KQED NEWS (June 17, 2014), <http://ww2.kqed.org/news/06/17/2014/Uber-Lyft-Insurance-crack-down>.

97. Don Jergler, *TNCs, Insurers Square Off at California Hearing*, INS. J. (Mar. 21, 2014), <http://www.insurancejournal.com/news/west/2014/03/21/324004.htm>.

98. Brooks, *supra* note 96.

99. Jeffrey Brewer, *Legislation Superhighway*, NAT'L UNDERWRITER, Oct. 2014, at 62.

100. Ye He Lee, *supra* note 93; compare California Decision on Regulations, *supra* note 5, and S.B. 14-125, 69th Gen. Assemb., 2d Reg. Sess. (Colo. 2014) (regulating TNCs at the state level) with AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016), and CHI., ILL., MUN. CODE § 9-115 (2014) (regulating TNCs at the local level).

101. See California Decision on Regulations, *supra* note 5; Colo. S.B. 14-125; H.B. 237, 131st Gen. Assemb., Reg. Sess. (Ohio 2015); H.B. 1614, Reg. Sess. (Okla. 2015).

102. Jeffrey Brewer, *supra* note 99, at 63.

### 1. California Regulations

As the home state of many TNCs, California struggled with balancing taxi and TNC interests.<sup>103</sup> In 2012, California sent cease and desist letters to TNCs, arguing that TNCs were in violation of the law because they operated without licenses.<sup>104</sup> The state eventually agreed to interim TNC operations pending state regulations.<sup>105</sup>

When attempting to resolve the various issues facing the state and its municipalities, both TNCs and TNC competitors engaged in the conversation.<sup>106</sup> The state's regulations for TNCs passed unanimously in 2013.<sup>107</sup> TNCs generally welcomed the regulations, particularly as an alternative to cease and desist letters.<sup>108</sup>

During the rulemaking process, Uber argued that, based on existing rules and definitions under the California Public Utility Code, the California PUC did not have jurisdiction to implement statewide regulations for TNCs.<sup>109</sup> The California PUC rebutted Uber's argument, explaining that just because TNCs "[do] not fit neatly into the conventional understandings of either taxis or limousines . . . does not mean that [the] Commission's responsibility to public safety in the transportation industry should be ignored."<sup>110</sup> After the California PUC created the new TNC category, it determined that TNCs qualify as charter-party carrier services.<sup>111</sup> The California PUC further reasoned that TNCs do not fit the statutory exemption for ridesharing in California.<sup>112</sup> It went on to explain that the California PUC adopts rules that allow flexibility for innovation in a particular category.<sup>113</sup>

California's TNC regulations themselves do not vary significantly from many of the internal regulations previously discussed.<sup>114</sup> The California regulations place emphasis on driver and passenger safety, requiring that TNC drivers satisfy various requirements before a TNC can accept them as a driver.<sup>115</sup> First, TNC drivers must be at least twenty-one years

103. California Decision on Regulations, *supra* note 5.

104. See Notice to Cease and Desist from the Cal. Pub. Util. Comm'n to Sidecar (Aug. 15, 2012), <http://www.cpuc.ca.gov/NR/rdonlyres/03851232-DD84-47C1-B134-D90C8D15D3B7/0/CeaseandDesistLetters.pdf>.

105. *Carrier Investigations*, CAL. PUB. UTIL. COMM'N (last visited Mar. 7, 2015), <http://www.cpuc.ca.gov/PUC/transportation/Passengers/CarrierInvestigations>.

106. See California Decision on Regulations, *supra* note 5, at 8-11.

107. Sudhin Thanawala, *California's New Car Sharing Regulations Create a New Category for Businesses Like Lyft, Uber*, HUFFINGTON POST (Sept. 19, 2013, 7:39 PM), [http://www.huffingtonpost.com/2013/09/19/california-car-sharing-regulations\\_n\\_3957177.html](http://www.huffingtonpost.com/2013/09/19/california-car-sharing-regulations_n_3957177.html).

108. *Id.*

109. See California Decision on Regulations, *supra* note 5, at 9.

110. *Id.* at 12.

111. *Id.* at 51. The California Public Utilities Code defines a charter-party service as "every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or in contract carriage, over any public highway in this state." CAL. PUB. UTIL. CODE § 5360 (West 1961).

112. California Decision on Regulations, *supra* note 5, at 40. Section 5353(h) of the California Public Utilities Code exempts ridesharing from Commission regulation "when the ridesharing is incidental to another purpose of the driver." CAL. PUB. UTIL. CODE § 5353(h) (emphasis added).

113. California Decision on Regulations, *supra* note 5, at 62.

114. Compare California Decision on Regulations, *supra* note 5, with *Safety*, LYFT, *supra* note 79 and *Safety*, SIDECAR, *supra* note 79, and *Safety*, UBER, *supra* note 79.

115. See California Decision on Regulations, *supra* note 5.

old.<sup>116</sup> TNCs must conduct criminal background checks on drivers as well.<sup>117</sup> If a criminal background check reveals that the driver has convictions of the specific crimes listed in the regulations—including driving under the influence, sexual offenses, and theft—within seven years of the driver’s application, the TNC cannot hire the individual.<sup>118</sup> A driver must provide their driving record to the TNC as well, and the TNC cannot hire the individual if they have any of the specific offenses in the regulations on their record.<sup>119</sup> Once an individual becomes a TNC driver, the TNC must have a “zero-tolerance policy” against driving under the influence of alcohol or drugs.<sup>120</sup> Although California does not require that a TNC hold a commercial license, the driver must hold a valid California driver’s license and complete a specified driving program.<sup>121</sup> Further, the California PUC places restrictions on the vehicles themselves, including the requirement that vehicles be “street-legal.”<sup>122</sup> Vehicles must pass initial and annual inspections with a facility licensed by the California Bureau of Automotive Repair as well.<sup>123</sup>

The companies themselves also face safety requirements and regulations.<sup>124</sup> TNCs, for example, must receive a permit from the California PUC in order to legally operate in the state.<sup>125</sup> Moreover, companies must equip all vehicles with “dress,” or something that shows passengers and city or state officials that the vehicle operates as a TNC vehicle.<sup>126</sup> California also regulates the TNC apps themselves, requiring that apps provide passengers with a photo of the driver, a photo of the driver’s vehicle, and the vehicle’s license plate number.<sup>127</sup> As for insurance, TNCs must have “commercial liability insurance policies providing not less than [\$1 million] per incident coverage for incidents involving vehicles and drivers while they are providing TNC services.”<sup>128</sup> Beginning July 1, 2015, TNCs must also comply with certain insurance requirements during the “insurance gap.”<sup>129</sup>

## 2. Colorado Regulations

Colorado became the first state to legislate statewide TNC regulation in 2014.<sup>130</sup> Although taxi companies argued for TNC regulations similar to those for taxi companies,

116. *Id.* at 27.

117. *Id.* at 26.

118. *Id.*

119. *Id.* at 27.

120. *See* California Decision on Regulations, *supra* note 5, at 26.

121. *Id.* at 27.

122. *Id.* at 28.

123. *Id.* at 40.

124. *Id.* at 26-29.

125. *See* California Decision on Regulations, *supra* note 5, at 3.

126. *Id.* at 31.

127. *Id.* at 28.

128. *Id.* at 26.

129. In Decision 14-11-043, the California PUC delineated the insurance requirements for three different time periods: (1) when the driver has the app open and is waiting to accept a passenger; (2) when the driver accepts a passenger, but has not yet picked the individual up; and (3) when the driver has the passenger in the vehicle. For the first time period, California requires that a TNC provide insurance coverage of: \$50,000 for death and personal injury per person, \$100,000 for death and personal injury per accident, and \$30,000 for property damage. TNCs may satisfy this requirement through the TNC’s own insurance coverage, through a driver’s verified insurance coverage, or through a combination of both. Moreover, TNCs must also provide excess insurance coverage of at least \$200,000 per occurrence. CAL. PUB. UTIL. COMM’N R. 14-11-043 (2014).

130. Colo. S.B. 14-125.

Colorado Governor John Hickenlooper stated that, “rules designed to protect consumers should not burden businesses with unnecessary red tape or stifle competition by creating barriers to entry.”<sup>131</sup> Governor Hickenlooper signed Senate Bill 14-125 on June 5, 2014, authorizing the operation of TNCs through the Colorado Public Utilities Commission (Colorado PUC).<sup>132</sup>

Colorado places less stringent requirements on TNCs than many local TNC regulations across the United States.<sup>133</sup> The bill requires that TNCs obtain a valid driver’s license, insurance verification, vehicle registration, and some form of criminal history for each potential driver.<sup>134</sup> Further, unlike California, drivers do not have to complete a training program.<sup>135</sup> Colorado TNC vehicles, however, must pass a yearly inspection conducted by a certified mechanic.<sup>136</sup> Although some criticize Colorado’s less burdensome regulations for TNCs compared to taxi regulations, Colorado Governor John Hickenlooper took pride in the state’s ability to simultaneously promote both public safety and innovation.<sup>137</sup>

Each TNC operating in Colorado must obtain a permit from the state in order to lawfully operate in the city, and pay an annual \$11,250 fee to maintain the permit.<sup>138</sup> Colorado requires that TNCs obtain coverage of at least \$1 million for incidents occurring when a passenger is inside the vehicle.<sup>139</sup> Notably, Colorado requires contingent coverage during the “insurance gap.”<sup>140</sup> Beginning January 15, 2015, Colorado doubled the contingent coverage requirements for TNCs.<sup>141</sup>

The Colorado PUC adopted permanent TNC rules in 2015.<sup>142</sup> These rules require that

[a] TNC shall not permit a person to act as a driver unless the person is at least twenty-one years of age; has a valid driver’s license; is medically qualified to drive as required by [Colorado law]; and is not disqualified to drive based on . . . driving history . . . or criminal history.<sup>143</sup>

131. Andy Vuong, *Colorado First to Authorize Lyft and Uber’s Ridesharing Services*, DENVER POST (June 5, 2014, 5:06 PM), [http://www.denverpost.com/business/ci\\_25907057/colorado-first-authorize-lyft-and-ubers-ridesharing-services?source=infinite](http://www.denverpost.com/business/ci_25907057/colorado-first-authorize-lyft-and-ubers-ridesharing-services?source=infinite).

132. *Id.*

133. *Compare* Colo. S.B. 14-125 and Transportation Network Company Rules, 4 COLO. CODE REGS. § 723-6 (2015), with AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016), and CHI., ILL., MUN. CODE § 9-115 (2014).

134. Colo. S.B. 14-125 § 40-10.1-605(1)(d), (3)(a)(I).

135. *Compare* California Decision on Regulations, *supra* note 5, at 27, with Colo. S.B. 14-125, and 4 COLO. CODE REGS. § 723-6 (2015).

136. Colo. S.B. 14-125 § 40-10.1-605(1)(g)(I).

137. Vuong, *supra* note 131.

138. Colo. S.B. 14-125 § 40-10.1-606(2); 4 COLO. CODE REGS. § 723-6-6701(a) (2015).

139. Colo. S.B. 14-125 § 40-10.1-604(2); 4 COLO. CODE REGS. § 723-6-6702(a) (2015).

140. Senate Bill 14-125, Section 40-10.1-604(3)(a) allowed for a transition period in which TNCs could hold contingent coverage in compliance with C.R.S. § 10-4-620, requiring only \$25,000 for one person per accident, \$50,000 for all persons in one accident, and \$15,000 for property damage. Colo. S.B. 14-125 § 40-10.1-604(3)(a); C.R.S.A. 10-4-620 (West 2003).

141. After January 15, 2015, TNCs must comply with section 40-10.1-604(3)(b) of Senate Bill 14-125, requiring \$50,000 for one person per one accident, \$100,00 for all persons per one accident, and \$50,000 for property damage per accident. Colo. S.B. 14-125 § 40-10.1-604(3)(b)(II).

142. 4 COLO. CODE REGS. § 723-6 (2015).

143. *Id.* § 6708(a).

Similar to California's laws, the Colorado PUC rules also mandate that all TNC vehicles have "vehicle markings," or trade dress.<sup>144</sup> Moreover, Colorado limits the number of consecutive hours a driver may offer or provide rides for a TNC.<sup>145</sup>

Though no state agencies other than Public Utilities Commissions regulate TNCs in other states, another state agency did attempt to regulate TNCs in California.<sup>146</sup> In early 2015, the California Department of Motor Vehicles (DMV) issued a memorandum explaining that TNCs, as vehicles for-hire, must register cars as commercial vehicles.<sup>147</sup> Prior to the DMV's retraction of the memorandum just weeks later, many criticized the memorandum as overreaching and unnecessary.<sup>148</sup> The backlash originated from the implications arising from the memo; not only would a TNC driver have to register the vehicle as a commercial vehicle, but the driver would also have to pay for commercial insurance.<sup>149</sup> The DMV, in fact, later apologized for "jump[ing] the gun" without reviewing the issue.<sup>150</sup>

#### E. Existing Local TNC Regulation: Chicago and Austin

Numerous cities across the United States recently enacted local TNC regulations.<sup>151</sup> Though cities typically enact these regulations with the same underlying purposes of safety and fairness, cities use different regulatory models to accomplish these purposes.<sup>152</sup> Chicago and Austin—each using different regulatory models—are among the numerous cities to draft solutions to the TNC regulatory issues.<sup>153</sup>

##### 1. Chicago Regulations

Chicago's resolution involves two classes of TNC licenses.<sup>154</sup> Each TNC falls into a class, and each TNC must satisfy the regulations imposed on that class.<sup>155</sup> The first class, Class A, includes TNCs averaging twenty or less hours behind the wheel per driver per week.<sup>156</sup> Class A TNCs must have the city's approval on background checks, drug testing,

144. *Id.* § 6719.

145. *Id.* § 6722.

146. Jeremy B. White, *Regulation of Uber, Lyft Thrown into Question by California DMV*, SACRAMENTO BEE (Jan. 23, 2015, 11:02 AM), <http://www.sacbee.com/news/politics-government/capitol-alert/article8004855.html>.

147. *Id.*

148. Aaron Mamiit, *Cold Feet? California DMV Retracts Decision that Uber and Lyft Need Commercial Plates*, TECH TIMES (Jan. 26, 2015, 10:28 AM), <http://www.techtimes.com/articles/28608/20150126/cold-feet-california-dmv-retracts-decision-that-uber-and-lyft-need-commercial-plates.htm>.

149. *Id.*

150. *Id.*

151. *See, e.g.*, CHI., ILL., MUN. CODE § 9-115 (2014); *see also* AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016); *see also* Tom Benning, *Dallas Adopts Rules Governing Uber and Other Car-For-Hire Apps*, DALLAS MORNING NEWS (Dec. 10, 2014, 11:29 PM), <http://www.dallasnews.com/news/transportation/20141210-dallas-adopts-rules-governing-uber-and-other-car-for-hire-apps.ece>; Taylor Nachtigal, *Minneapolis Gives Ride-Sharing the Green Light*, MINN. DAILY (July 23, 2014), <http://www.mndaily.com/news/metro-state/2014/07/22/minneapolis-gives-ride-sharing-green-light>.

152. *Id.*

153. CHI., ILL., MUN. CODE § 9-115 (2014); AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016).

154. *Id.* ch. 9-115-030.

155. *Id.*

156. *Id.* ch. 9-115-030(a)(1).

vehicle inspection, and driver training procedures.<sup>157</sup> Class A TNCs must also pay \$10,000 to obtain and maintain a company license to operate as a TNC in Chicago.<sup>158</sup>

The other class, Class B, places more stringent requirements on TNCs averaging more than twenty hours behind the wheel per driver per week.<sup>159</sup> For example, every single driver for a Class B TNC must obtain a chauffeur's license, similar to the chauffeur's license required for taxicab drivers.<sup>160</sup> A chauffeur's license requires that drivers either hold a valid state driver's license for at least three years prior to application or obtain certified training from the city.<sup>161</sup> Unlike a Class A TNC's ability to procure and carry out its own licensing standards and procedures, a Class B TNC must comply with the city's requirements for background checks, drug testing, and vehicle inspections.<sup>162</sup> The initial license fee for a Class B TNC is \$25,000—\$15,000 more than the fee for a Class A TNC.<sup>163</sup>

## 2. Austin Regulations

The Austin City Council approved TNC regulations in December 2015.<sup>164</sup> Like other regulations, Austin's regulations require that TNCs acquire an "operating authority," or permit, from the city and pay certain fees in order to operate in Austin.<sup>165</sup> Also similar to other regulations, Austin mandates certain driver and vehicle identifications in apps, as well as vehicle inspections and compliance with state statutory insurance requirements.<sup>166</sup> Additionally, TNC drivers in Austin must be at least twenty-one years of age, have a valid driver's license, and hold current liability insurance.<sup>167</sup> TNCs must train their drivers through driver-training programs, and drivers cannot work as a TNC driver for more than twelve hours in any twenty-four hour period.<sup>168</sup>

Austin's regulations also impose stringent requirements on TNCs that are uncommon in other localities.<sup>169</sup> For example, Austin imposes certain reporting requirements on TNCs.<sup>170</sup> On a monthly basis, TNCs must report "data, recorded in four-hour blocks," regarding: the number of trips requested, including the number of rides requested but not served; the total vehicles logged into the TNC app; the number of passenger pick-ups and passenger drop-offs per zip code; and the total time surge pricing is in effect.<sup>171</sup> On a daily basis, TNCs must also record the total number of hours logged by drivers and all accident reports.<sup>172</sup> Additionally, recorded on a monthly basis, TNCs

157. *Id.* ch. 9-115-150(b).

158. CHI., ILL., MUN. CODE § 9-115-140(a)(i) (2014).

159. *Id.* ch. 9-115-130(a)(2); *see* sources cited *infra* notes 160-63.

160. CHI., ILL., MUN. CODE § 9-115-150(a) (2014); *see also* CHI., ILL., MUN. CODE § 9-104-020 (1990).

161. CHI., ILL., MUN. CODE § 9-104-030(2)(b) (2008).

162. *Id.* ch. 9-115-150.

163. *Id.* ch. 9-115-040(a)(ii).

164. AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016).

165. *Id.* §§ 13-2-511, -532.

166. *Id.* §§ 13-2-515, -521, -524.

167. *Id.* § 13-2-526.

168. *Id.* §§ 13-2-528(A), -529.

169. *Compare* AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016), *with* CHI., ILL., MUN. CODE § 9-115 (2014).

170. AUSTIN, TEX., CODE ch. 13-2, art. 4, § 13-2-516 (2016).

171. *Id.* § 13-2-516(B).

172. *Id.* § 13-2-516(C), (E).

must report information regarding the total number of receipts generated by the TNC that month, the total number of trips that month, and the “total hours and miles driven by compliant drivers and for all drivers.”<sup>173</sup> Should a TNC fail to report this information at any point, the city automatically suspends the TNC’s operating permit.<sup>174</sup> Austin also has unique regulations regarding “geo-fencing,” requiring that TNCs work with the city and event sponsors “during large special events . . . to identify and use geo-fence pick-up and drop-off locations, as determined by the director to promote a safe and transportation efficient event.”<sup>175</sup>

Of great concern to TNCs, Austin requires that, before allowing any individual to drive, TNCs ensure drivers pass both a driving history check and a *fingerprint* background check.<sup>176</sup> Although driving history and criminal background checks are common, few jurisdictions require fingerprint background checks for TNCs.<sup>177</sup> TNCs adamantly oppose fingerprint background check requirements, with some even threatening to halt operations in Austin due to the new, burdensome regulation.<sup>178</sup>

There are various differences between TNC regulations adopted by jurisdictions throughout the United States.<sup>179</sup> Further examination into federal, state, and local regulation of TNCs aids in evaluating the efficiency and effectiveness of possible TNC regulatory options.<sup>180</sup>

### III. FEDERAL REGULATION

One potential solution to TNC regulatory concerns is the imposition of regulation at the federal level.<sup>181</sup> Though action has yet to be taken through the Federal Trade

173. *Id.* § 13-2-516(D).

174. *Id.* § 13-2-516(F).

175. AUSTIN, TEX., CODE ch. 13-2, art. 4, § 13-2-518 (2016). A geo-fence is a virtual barrier that would most likely track and restrict TNC vehicle movement in certain areas. This is not the first TNC regulation to involve geo-fencing. In an effort to exercise similar control over vehicles operating at Los Angeles International Airport, Los Angeles recently adopted a geo-fence regulation for TNCs operating at the airport. Jordan England-Nelson, *Uber Taxi Car Service Corrals Drivers at LAX with “Geofence” Algorithm*, DAILY BREEZE (July 5, 2014, 3:05 PM), <http://www.dailybreeze.com/technology/20140705/uber-taxi-car-service-corrals-drivers-at-lax-with-geofence-algorithm>.

176. AUSTIN, TEX., CODE ch. 13-2, art. 4, § 13-2-527 (2016).

177. *Compare id.*, with Colo. S.B. 14-125 and 4 COLO. CODE REGS. § 723-6 (2015), and CHI., ILL., MUN. CODE § 9-115 (2014).

178. Uber and Lyft both seized operations in San Antonio in 2015 when the city’s new regulations required fingerprint background checks. After the Austin City Council approved new fingerprint regulations, a Lyft spokesperson stated that Lyft does not operate in cities with fingerprint requirements and will operate in Austin only until such requirements go into effect. Ben Wear, *What’s Next for Uber, Lyft and Austin’s Fingerprint Check Ordinance?*, AUSTIN AM. STATESMAN (Dec. 18, 2015, 2:24 PM), <http://www.mystatesman.com/news/news/local/whats-next-for-uber-lyft-and-austins-fingerprint-c/npnLg>.

179. *Compare* Colo. S.B. 14-125, with 4 COLO. CODE REGS. § 723-6 (2015), and AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016), and CHI., ILL., MUN. CODE § 9-115 (2014).

180. *See* discussion *infra* Parts III, IV, V.

181. *See* E. Glen Weyl & Alexander White, *Let the Best ‘One’ Win: Lessons from the New Economics of Platforms* 22 (Univ. of Chi. Coase-Sandor Inst. for Law & Econ., Working Paper No. 709); *see also* Marvin Ammori, *Can the FTC Save Uber?*, SLATE (Mar. 12, 2013, 12:15 PM), [http://www.slate.com/articles/technology/future\\_tense/2013/03/uber\\_lyft\\_sidecar\\_can\\_the\\_ftc\\_fight\\_local\\_taxi\\_commissions.html](http://www.slate.com/articles/technology/future_tense/2013/03/uber_lyft_sidecar_can_the_ftc_fight_local_taxi_commissions.html); Brian Heaton, *Cities Grapple with Regulatory Status of Ride-Sharing Companies*, GOV’T TECH. (July 23, 2014), <http://www.govtech.com/transportation/Cities-Grapple-with-Regulatory-Status-of-Ride-Sharing-Companies.html>; Eric Posner, *Why Uber Will-and Should-Be Regulated*, SLATE (Jan. 5, 2015, 2:49 PM), <http://www.slate.com/>

Commission or through Congress, there are arguments both for and against federal involvement in the regulation of TNCs.<sup>182</sup>

#### A. *Constitutional Considerations*

The Commerce Clause of the United States Constitution gives Congress the power “to regulate commerce . . . among the several states.”<sup>183</sup> The Supreme Court has held that Congress acts within its Commerce Clause power when regulating a channel of interstate commerce, an instrumentality of interstate commerce, or an economic activity having a substantial effect on interstate commerce.<sup>184</sup>

One could argue that TNCs constitute a channel of interstate commerce because TNCs take customers to the airport, thereby “serv[ing] interstate travelers.”<sup>185</sup> Alternatively, TNCs may be considered an economic activity having a substantial effect on interstate commerce because the nature of TNC regulation involves protecting the public’s safety and improving transportation markets for consumers.<sup>186</sup> One could even present a successful argument that TNCs—the first major competition for taxicabs in decades—have a substantial effect on interstate commerce because TNCs operate throughout the country and completely transform for-hire transportation markets.<sup>187</sup>

Even if Congress acts under its Commerce Clause power, the Tenth Amendment serves as an additional limitation on Congress’ power to regulate certain activities.<sup>188</sup> As held in *New York v. United States*, it is unconstitutional for the federal government to mandate that states enact a regulatory program for TNCs.<sup>189</sup> Rather, the government must preempt the field.<sup>190</sup>

Therefore, the major constitutional question facing federal TNC regulation is whether TNCs constitute interstate commerce.<sup>191</sup> TNCs may qualify as interstate commerce, either because TNCs serve interstate travelers or because TNCs have a substantial economic effect on transportation markets.<sup>192</sup> As long as the federal government preempts the field, the Tenth Amendment does not present a barrier for federal TNC regulation.<sup>193</sup>

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articles/news\_and\_politics/view\_from\_chicago/2015/01/uber\_surge\_pricing\_federal\_regulation\_over\_taxis\_and\_car\_ride\_services.html.

182. *Id.*

183. U.S. CONST. art. I, § 8, cl. 3.

184. *United States v. Morrison*, 529 U.S. 598, 608-09 (2000); *United States v. Lopez*, 115 S. Ct. 1624, 1629-30 (1995).

185. *See Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964) (holding that Congress acted within its commerce power when regulating private accommodations because a motel serves interstate travelers).

186. A court would likely find that this is more economic than gender motivated crime, as it directly involves transportation markets. *See Morrison*, 529 U.S. 598 (holding that the safety of individuals from gender motivated crime is not an economic activity).

187. *Id.*

188. *New York v. United States*, 505 U.S. 144 (1992).

189. *Id.*

190. *Id.* at 167.

191. *See supra* notes 183-86.

192. *See United States v. Morrison*, 529 U.S. 598 (2000); *see also Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964).

193. *See New York v. United States*, 505 U.S. at 167.



### B. Advantages of Federal TNC Regulation

Federal regulation may benefit TNCs and for-hire customers.<sup>194</sup> The longstanding relationship between taxi companies and local governments potentially threatens the success of innovative business models like TNCs.<sup>195</sup> The Federal Trade Commission (FTC) released a report in 1984 concerning taxicab regulation.<sup>196</sup> The report examines the economics of taxicab regulation, including the reason behind the high fares for taxicab customers.<sup>197</sup> The FTC blames local government regulations for the lack of competition, and therefore, lack of lower fares.<sup>198</sup> Thus, keeping TNC regulation at the same level as taxi regulation could create much bigger issues than an uneven playing field; it could harm innovation while simultaneously subjecting the public to high fares.<sup>199</sup> E. Glen Weyl, an economics researcher at Microsoft, and Alexander White, an economics professor and researcher in China, believe that “[r]egulation from a higher level, . . . charged with ensuring that the platform competition and conduct maximizes social welfare seems more appropriate.”<sup>200</sup>

There are also economic reasons for federal regulation, which can be demonstrated by examining the effects of the 1996 Telecommunications Act on the wireless phone industry and its customers.<sup>201</sup> Thomas W. Hazlett, a former Chief Economist of the Federal Communications Commission, currently serves as a professor of law and economics at George Mason University School of Law.<sup>202</sup> Hazlett believes that the federal preemption of wireless phone regulations greatly increased the efficiency of the industry.<sup>203</sup> Increased efficiency created benefits for both wireless phone customers and wireless phone companies.<sup>204</sup>

Hazlett notes that, “conflicting rules and regulations can clog the wheels of commerce, introducing inefficiencies that lower consumer welfare.”<sup>205</sup> He believes that federal preemption kept the rates of the wireless phone industry from rising.<sup>206</sup> Before preemption, the states with regulations for wireless phone companies had higher rates than the states without regulation.<sup>207</sup> The rates in regulated states, as well as unregulated states, did not “shoot up” following federal regulation—something that Hazlett believes would

194. See Thomas W. Hazlett, *Federal Preemption in Cellular Phone Regulation*, in FEDERAL PREEMPTION 113 (Richard A. Epstein & Michael S. Greve, eds., 2007) [hereinafter *Federal Preemption*].

195. See BUREAU OF ECON. STAFF REP., AN ECON. ANALYSIS OF TAXICAB REGULATION (1984) [hereinafter ECON. ANALYSIS OF TAXICAB REGULATION] (exemplifying the close relationships between taxi companies and local governments), available at <https://www.ftc.gov/sites/default/files/documents/reports/economic-analysis-taxicab-regulation/233832.pdf>; see also Ammori, *supra* note 181.

196. ECON. ANALYSIS OF TAXICAB REGULATION, *supra* note 195.

197. *Id.*

198. *Id.*

199. Weyl, *supra* note 181, at 22.

200. *Id.* at 23 (emphasis omitted); E. GLEN WEYL (last visited Mar. 8, 2015), <http://glenweyl.com/biography>; ALEXANDER WHITE (last visited Mar. 8, 2015), <http://alex-white.net>.

201. *Federal Preemption*, *supra* note 194, at 133-34.

202. Thomas W. Hazlett, GEORGE MASON UNIV. (last visited Mar. 10, 2015), <http://mason.gmu.edu/~thazlett>.

203. *Federal Preemption*, *supra* note 194, at 133.

204. *Id.* at 133-34.

205. *Id.* at 116.

206. *Id.* at 133.

207. *Id.*

have happened had states continued regulating the industry.<sup>208</sup>

Federal regulation benefited wireless phone companies in many ways, including increased benefits of national advertising.<sup>209</sup> Differing advertising regulations across state lines discourage companies from participating in nationwide advertising and, therefore, constrain the efficiency of partaking in a national advertising campaign rather than multiple, local advertising campaigns.<sup>210</sup>

Hazlett blames differing regulations among state and local governments, much like the regulations currently in effect for TNCs, for the inefficiency of decentralized markets.<sup>211</sup> The similarities between the wireless phone industry in the mid-1990s and the TNC industry today suggest that federal regulation may create more benefits for customers and TNCs than the decentralized regulation that currently exists.<sup>212</sup>

### C. Disadvantages of Federal TNC Regulation

Although TNCs vary enough from taxi companies to warrant a different regulatory model, the federal government may not be the best regulatory option for TNCs.<sup>213</sup> Dave Sutton is a spokesperson for the Taxicab, Limousine, and Paratransit Association.<sup>214</sup> Sutton believes that the reason local governments regulate taxicabs is because the transportation industry is very different from one city to the next.<sup>215</sup> Factors including the size of a city, the number of households without cars, and the number of airport taxi trips determine the nature of the local taxi industry.<sup>216</sup> As these factors differ from city to city, taxi regulations also differ from city to city in order to accommodate the local transportation industry.<sup>217</sup> TNC regulations may need to differ from city to city as well.<sup>218</sup>

Thus, federal regulations may be too removed from local issues to adequately solve those issues.<sup>219</sup> Eric Posner, a University of Chicago law professor, challenges Weyl and White on the effectiveness of federal regulation, noting that “[t]he federal government is not always good at regulating local activities.”<sup>220</sup> Additionally, Posner suggests that TNCs, as national companies, could be in a position to have the same “cozy” relationship with the federal government that taxi companies have with local governments.<sup>221</sup>

### D. Method of Federal Regulation

Arguments concerning federal TNC regulation include the consideration of federal

208. *Federal Preemption*, *supra* note 194, at 133.

209. *Id.* at 133-34.

210. *Id.*

211. *Id.* at 116, 133-34.

212. *See Federal Preemption*, *supra* note 194; Ammori, *supra* note 181.

213. Heaton, *supra* note 181; *see also* Posner, *supra* note 181.

214. Heaton, *supra* note 181; *see also* Posner, *supra* note 181.

215. Heaton, *supra* note 181; *see also* Posner, *supra* note 181.

216. *See* Bruce Schaller, *A Regression Model of the Number of Taxicabs in U.S. Cities* (Jan. 2005) (examining the differences among local taxi industries in order to suggest more effective regulation).

217. *Compare* N.Y.C., N.Y., ch. 54 with S.F., CAL., TRANSP. CODE § 1103; *see also* Heaton, *supra* note 181.

218. Heaton, *supra* note 181.

219. *Id.*

220. Posner, *supra* note 181; Posner, UNIV. OF CHI. (last visited Mar. 8, 2015), <http://www.law.uchicago.edu/faculty/posner-e>.

221. Posner, *supra* note 181.

involvement in taxi regulation.<sup>222</sup> Some use this as an argument against federal regulation of TNCs, insisting the importance of an even playing field for taxi companies.<sup>223</sup> Others use the federal government's lack of involvement in taxi regulation to support the argument that TNC regulation should take place at a higher level of government than state or local levels.<sup>224</sup> If federal regulation could, in fact, protect TNCs from taxi-favoring local governments, the question turns to the type of regulation that should exist at the federal level.<sup>225</sup>

### 1. The Federal Trade Commission

Scholar and lawyer Marvin Ammori believes that the FTC is a plausible solution to TNC regulatory issues.<sup>226</sup> After the 1984 FTC report's conclusions on local taxi regulation practices, the FTC filed suit against two local governments for "colluding with private taxi companies."<sup>227</sup> Though that report and the subsequent lawsuits took place thirty years ago, the FTC's comments in the years since hint at support of the innovation and competition introduced through TNCs.<sup>228</sup> Not only has the FTC explained that taxi companies still face little competition, but the FTC noted that technological advances could promote necessary competition for taxi companies.<sup>229</sup> Further, the FTC sent a letter to the D.C. Taxicab Commission in 2013, suggesting changes to proposed rules that would affect TNCs.<sup>230</sup> In the letter, the FTC advocated for TNCs, stating that "[TNC] technologies and methods may be more responsive to consumer demand, may promote a more efficient allocation of resources to consumers, may expand demand for passenger vehicle transportation services, and may reduce consumers' transaction costs in paying for such services."<sup>231</sup>

The FTC's support of TNCs' innovative competition with the long-uncompetitive taxi industry suggests that the FTC may be willing to protect TNCs through federal regulation.<sup>232</sup> Ammori notes that the FTC has both the authority to regulate TNCs and the necessary "expertise in taxi markets and antitrust doctrines."<sup>233</sup> As Ammori sees it, the ultimate issue rests with whether individual states choose to regulate taxicab competition.<sup>234</sup> Antitrust law allows a state to preempt the FTC if the state "clearly articulated and affirmatively expressed" a policy to maintain an anticompetitive market to

222. See Weyl, *supra* note 181; see also Ammori, *supra* note 181; Heaton, *supra* note 181; Posner, *supra* note 181.

223. Heaton, *supra* note 181; Posner, *supra* note 181.

224. Weyl, *supra* note 181, at 22-23; Ammori, *supra* note 181.

225. Ammori, *supra* note 181.

226. *Id.*

227. *Id.*

228. Stephanie Francis Ward, *App Me a Ride*, 100 A.B.A. J. 13 (2014); Letter from F.T.C. to Jacque P. Lerner, General Counsel of the District of Columbia Taxicab Commission (June 7, 2013) [hereinafter Letter from F.T.C. to D.C. Taxi Commission], <http://www.taxi-library.org/ftc-letter-to-dctc-june-2013.pdf>; Ammori, *supra* note 181.

229. "In 2007, two decades after those cases settled, the FTC noted that the taxi industry remained largely uncompetitive . . . [but] 'telecommunications advances' might help to disrupt [the] uncompetitive markets." Ammori, *supra* note 181.

230. Letter from F.T.C. to D.C. Taxi Commission, *supra* note 228.

231. *Id.* at 3.

232. See Letter from F.T.C. to D.C. Taxi Commission, *supra* note 228; see also Ammori, *supra* note 181.

233. Ammori, *supra* note 181.

234. *Id.*

protect state business.<sup>235</sup> Therefore, states could protect taxi companies from increased and regulated competition if they chose to favor their business and limit innovative competition.<sup>236</sup>

## 2. Congressional Legislation

Marvin Ammori also notes the viability of congressional legislation as a solution to this issue.<sup>237</sup> Congressional legislation regulating TNCs would preempt any state or local regulation.<sup>238</sup> Although some may be critical of “one sentence” legislation preventing the state and local governments from regulating TNCs, Ammori notes that Congress passed such a law with the Telecommunications Act of 1996.<sup>239</sup> Ammori also believes that such legislation is “politically feasible,” as both political parties “can agree that more choices and lower prices in transportation would benefit customers.”<sup>240</sup>

## IV. STATE REGULATION

State regulation represents another solution to TNC regulatory concerns.<sup>241</sup> Unlike federal regulation, state TNC regulation currently exists, and additional states continue to consider statewide TNC regulation as well.<sup>242</sup>

### A. Constitutional Considerations

The Dormant Commerce Clause derives from Congress’ Commerce Clause power, and acts as a limitation to state and local regulatory power when conflicting federal regulation does not exist.<sup>243</sup> The primary consideration in any Dormant Commerce Clause analysis is whether the regulation discriminates against out-of-staters on its face, in its purpose, or in its effect.<sup>244</sup> The majority of state TNC regulations do not discriminate against out-of-state TNCs in any way, as the regulations apply the same licensing, inspection, and operation requirements to all TNCs, regardless of the company’s state of incorporation or primary place of business.<sup>245</sup>

If a regulation does not discriminate against out-of-staters, the regulation is presumed constitutional unless it imposes a burden on interstate commerce that is “clearly excessive in relation to putative local benefits.”<sup>246</sup> A court would likely hold that state TNC regulations do not burden interstate commerce because the benefit of improved, efficient TNC relations and public safety throughout the United States outweighs any

235. *City of Lafayette v. La. Power & Light, Co.*, 435 U.S. 389, 410 (1985); *see also* Ammori, *supra* note 181.

236. Ammori, *supra* note 181.

237. *Id.*

238. U.S. CONST. art. VI, cl. 2.

239. Ammori, *supra* note 181.

240. *Id.*

241. *See* California Decision on Regulations, *supra* note 5; Colo. S.B. 14-125; Ohio H.B. 237; Okla. H.B. 1614.

242. *See* California Decision on Regulations, *supra* note 5; Colo. S.B. 14-125; Ohio H.B. 237; Okla. H.B. 1614; Brewer, *supra* note 99, at 63.

243. *See* H.P. Hood & Sons v. Du Mond, 336 U.S. 525 (1949).

244. *Id.*

245. *See* California Decision on Regulations, *supra* note 5; Colo. S.B. 14-125.

246. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

burdens.<sup>247</sup>

However, there may be a Dormant Commerce Clause issue with California's requirement that TNC drivers hold a valid California driver's license because such a regulation discriminates against those individuals holding out-of-state driver's licenses.<sup>248</sup> While there are two exceptions to the Dormant Commerce Clause, neither exception applies to this regulation.<sup>249</sup> Therefore, to prevent constitutional challenges, states should consider excluding the requirement that TNC drivers hold in-state driver's licenses.<sup>250</sup>

The Privileges and Immunities Clause of the Constitution acts as another limitation to state regulation.<sup>251</sup> It entitles individuals "to all Privileges and Immunities of Citizens of the several States."<sup>252</sup> The majority of state TNC regulations, like license and fee requirements, do not present a Privileges and Immunities Clause issue because those regulations treat in-state and out-of-state TNCs identically.<sup>253</sup>

However, like the Dormant Commerce Clause, there is a Privileges and Immunities Clause issue with California's requirement that TNC drivers hold a valid California driver's license.<sup>254</sup> The first question in a Privileges and Immunities Clause analysis is whether the regulation discriminates against out-of-staters.<sup>255</sup> This regulation does discriminate against out-of-state individuals because only citizens of California benefit from the regulation.<sup>256</sup> The second consideration in this analysis is whether the regulation burdens a fundamental right.<sup>257</sup> In *United Building Construction v. Camden*, the Supreme Court held a local regulation, requiring that construction workers be residents of the city, unconstitutional because it burdened the fundamental right of pursuing an occupation; a court may hold that California's in-state driver's license requirement burdens that same fundamental right.<sup>258</sup> Lastly, a Privileges and Immunities Clause analysis asks whether the state has a substantial reason for the differing treatment.<sup>259</sup> Similar to the argument made in the case of *Supreme Court of New Hampshire v. Piper*, California would likely argue that it wants drivers to be familiar with the state and its laws for safety reasons.<sup>260</sup>

247. See *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981) (holding a nondiscriminatory statute requiring paper milk cartons constitutional because the benefits of improving the environment and proper disposal outweighed the few burdens that it created).

248. See California Decision on Regulations, *supra* note 5. See *Dean Milk v. City of Madison*, 340 U.S. 349 (1951) (holding that a discriminatory statute requiring milk sold in the city of Madison be inspected within a certain radius of the city was unconstitutional).

249. The first exception to the Dormant Commerce Clause is congressional approval, or if congress acted and made the action legal. *W.S. Life Ins. Co. v. St. Bd. Cal.*, 451 U.S. 648 (1981). Another exception to the Dormant Commerce Clause is the Market Participant Exception, where the state acts as a participant in the market. *Reeves v. Stake*, 447 U.S. 429 (1980).

250. See generally *Dean Milk*, 340 U.S. 349.

251. U.S. CONST. art. IV, § 2, cl. 1.

252. *Id.*

253. See California Decision on Regulations, *supra* note 5.

254. See *infra* notes 255-61.

255. See *United Bldg. & Constr. Trades Council of Camden v. Camden*, 465 U.S. 208, 214-22 (1984).

256. *Id.*; California Decision on Regulations, *supra* note 5.

257. *United Bldg. & Constr.*, 465 U.S. at 218.

258. *Id.* at 208.

259. *Id.* at 222.

260. In *Piper*, a resident of Vermont brought suit against the New Hampshire Supreme Court, challenging the state's residency requirement for admission to the New Hampshire bar. *Supreme Court of N.H. v. Piper*, 470 U.S. 274, 285 (1985).

However, similar to the Supreme Court's holding in *Piper*, a court may hold that out-of-state drivers would commit themselves to safety in the state and, additionally, that in-state drivers prevent similar safety risks to the public.<sup>261</sup>

Although there do not seem to be any Dormant Commerce Clause or Privileges and Immunities Clause issues with state TNC regulations in general, the specific California requirement pertaining to licenses presents issues as to both clauses.<sup>262</sup> Therefore, in order to be constitutional, states should consider enacting regulations without such discriminatory requirements.<sup>263</sup>

### B. Advantages of State TNC Regulation

Diverse TNC regulations throughout the United States can benefit the industry over time.<sup>264</sup> This is also known as the "laboratories" argument; regulation in fifty states means experimentation in regulating TNCs throughout the country.<sup>265</sup> Experimentation allows for creativity in finding effective regulations.<sup>266</sup> Additionally, state regulation, unlike federal regulation, often leads to feedback regarding the effectiveness of different regulations implemented in states throughout the country.<sup>267</sup>

Similar to federal regulation, allowing states to self-regulate circumvents the anticompetitive practices of municipal governments.<sup>268</sup> State regulation, therefore, protects both TNCs and consumers.<sup>269</sup> It enacts regulations that address TNC concerns, rather than forcing TNCs to comply with regulations for the taxi industry's outdated and overregulated business model or regulations aimed at protecting taxicab companies.<sup>270</sup> Such regulation also protects consumers from an anticompetitive, overpriced taxi industry by promoting innovation and allowing consumers options in getting from one place to the next.<sup>271</sup> Moreover, state regulation encourages safe TNC operations in smaller cities or towns, thereby widening transportation options for consumers in places without any for-hire service options.<sup>272</sup>

### Disadvantages of State TNC Regulation

Perhaps the greatest disadvantage of state TNC regulation is the effect of varying

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261. The Supreme Court in *Piper* ruled that New Hampshire's residency requirement for admission to the bar violated the Privileges and Immunities Clause of the United States Constitution, explaining that there was no merit to the arguments that an out-of-state resident would be less likely to be knowledgeable of local rules and procedures, practice honestly, and complete their share of pro bono work. *Id.* at 284-88.

262. See the discussion *supra* notes 243-61 regarding the Dormant Commerce Clause and the Privileges and Immunities Clause.

263. *Id.*

264. *Federal Preemption*, *supra* note 194, at 116.

265. See Gabrielle Cuskelly, *Factors to Consider in Applying a Presumption Against Preemption to State Environmental Regulations*, 39 *ECOLOGY L.Q.* 283, 306 (2012).

266. *Id.*

267. *Federal Preemption*, *supra* note 194, at 116; Cuskelly, *supra* note 265, at 306.

268. *Cf. Ammori*, *supra* note 181.

269. *Id.*

270. See sources cited *supra* notes 264-68.

271. *Id.*

272. Uber briefly asserted this position in a petition for legislatures to adopt statewide TNC regulation in Oklahoma. *Vote Yes on HB 1614!*, UBER (last visited Mar. 8, 2015), [https://action.uber.org/ok/?utm\\_source=facebook](https://action.uber.org/ok/?utm_source=facebook).

state laws across the country.<sup>273</sup> Although California and Colorado impose similar requirements on TNCs, there are differences between the two states' regulations in specific areas.<sup>274</sup>

For example, California regulates the contents of TNC smartphone apps, requiring a photo of the driver, a photo of the driver's approved vehicle, and the vehicle's license plate number.<sup>275</sup> Colorado does not regulate the apps.<sup>276</sup> If a TNC's app does not comply with the requirements set forth by the California PUC, the TNC would likely need to change its entire app nationwide to comply with California's regulations—even though such changes are not necessary for business operations in Colorado.<sup>277</sup> TNCs may face even more issues should states impose different regulations on the same subject.<sup>278</sup> In situations where adherence to differing regulations is possible, TNCs face high costs to comply with the conflicting requirements.<sup>279</sup> The nature of TNC companies, as compared to taxis, emphasizes this disadvantage because TNCs operate throughout the United States and in accordance with internal, nationwide guidelines.<sup>280</sup>

Rather than having a set of internal guidelines that provides for flexibility and innovation, varying requirements among states present the risk that TNCs will adopt requirements from the strictest state.<sup>281</sup> This can, in effect, limit the viability of any other state's promulgated rules.<sup>282</sup> Rules among states could differ in order to adapt to localized issues.<sup>283</sup> However, the purpose of regulation at a more local level evaporates when a company uniformly adopts another state's stricter regulation.<sup>284</sup>

Similar to federal regulation, state TNC regulation could be too removed from community needs.<sup>285</sup> Former Illinois Governor Pat Quinn believes that state TNC regulation threatens local communities.<sup>286</sup> Quinn vetoed House Bill 4075—a statewide TNC regulation—in 2014, emphasizing the importance of the Home Rule.<sup>287</sup> The Governor released a statement explaining that he vetoed the bill “because it would have mandated a one-size-fits-all approach to a service that is best regulated at the local

273. See *Federal Preemption*, *supra* note 194, at 116.

274. Compare California Decision on Regulations, *supra* note 5, at 27 with Colo. S.B. 14-125 and 4 COLO. CODE REGS. § 723-6 (2015).

275. California Decision on Regulations, *supra* note 5, at 28.

276. See Colo. S.B. 14-125; see also 4 COLO. CODE REGS. § 723-6 (2015).

277. California Decision on Regulations, *supra* note 5, at 28; see also Colo. S.B. 14-125; see also 4 COLO. CODE REGS. § 723-6 (2015); UBER (last visited Mar. 8, 2015), <https://www.uber.com>.

278. *Federal Preemption*, *supra* note 194, at 116.

279. See *id.*

280. See generally LYFT (last visited Mar. 8, 2015), <https://www.lyft.com>; see also SIDECAR (last visited Mar. 8, 2015), <https://www.uber.com>.

281. In order to avoid inefficiencies from decentralized regulations implanting varying rules across the United States, adopting the strictest regulation to comply with all regulations may be a TNC's best option. See generally *Federal Preemption*, *supra* note 194, at 116.

282. *Id.*

283. Compare California Decision on Regulations, *supra* note 5, with Colo. S.B. 14-125, and 4 COLO. CODE REGS. § 723-6 (2015).

284. *Federal Preemption*, *supra* note 194, at 116.

285. Cf. Heaton, *supra* note 181; Stephanie K. Jones, *Illinois Rideshare Bills Vetoed*, INS. J. (Aug. 27, 2014), <http://www.insurancejournal.com/news/midwest/2014/08/27/338672.htm>.

286. Jones, *supra* note 285.

287. *Id.*

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level.”<sup>288</sup>

## V. LOCAL REGULATION

Municipal regulation remains the most common form of regulation for taxi companies throughout the United States.<sup>289</sup> Therefore, it is no surprise that regulation at the local level is the most widely adopted solution to regulating TNCs thus far.<sup>290</sup> Chicago and Austin are among the names on the growing list of cities to enact local TNC regulations.<sup>291</sup>

### A. Preemption Considerations

Local governments are subject to the Dormant Commerce Clause and Privileges and Immunities Clause, and should be cognizant of potential challenges under those clauses.<sup>292</sup> It is possible that states regulate major issues, while local entities address smaller, localized concerns.<sup>293</sup> When federal law does not preempt state or local law, local governments receive the power to regulate from the state government.<sup>294</sup> There are two prevailing theories regarding the relationship between state and local regulation: Dillon’s Rule and the Home Rule.<sup>295</sup>

In 1868, the Iowa Supreme Court codified state supremacy in the case *City of Clinton v. Cedar Rapids & Missouri River Railroad Company*.<sup>296</sup> Courts across the United States still recognize Dillon’s Rule, as evidenced by *Marcus Cable Associates v. City of Bristol*, decided in 2002.<sup>297</sup> In *Marcus Cable*, a cable television company sought an injunction prohibiting the city from operating competing cable television systems.<sup>298</sup> The United States District Court for the Western District of West Virginia explained that, in states following Dillon’s Rule, cities may only exercise authority “expressly granted by state law or necessarily implied from express powers.”<sup>299</sup> The court held that the city did not have the legal authority to operate any kind of cable television system because the state had not expressly or impliedly granted such legal authority.<sup>300</sup>

*Quilici v. Village of Morton Grove* is one of the many cases depicting the Home

288. *Id.*

289. See N.Y.C., N.Y., ch. 54; see also S.F., CAL., TRANSP. CODE § 1103; Heaton, *supra* note 181.

290. See CHI., ILL., MUN. CODE § 9-115 (2014); see also AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016).

291. See CHI., ILL., MUN. CODE § 9-115 (2014); see also AUSTIN, TEX., CODE ch. 13-2, art. 4 (2016).

292. See United Bldg. & Constr. Trades Council of Camden v. Camden, 465 U.S. 208, 215 (1984) (explaining that “a municipality is merely a political subdivision of the state from which its authority derives” and is, therefore, still subject to the Privileges and Immunities Clause).

293. See *Marcus Cable Assoc. v. City of Bristol*, 237 F. Supp. 2d 675 (W.D. Va. 2002); see also *Quilici v. Vill. of Morton Grove*, 695 F.2d 261(7th Cir. 1982).

294. See *Marcus Cable Assoc. v. City of Bristol*, 237 F. Supp. 2d 675 (W.D. Va. 2002); see also *Quilici v. Vill. of Morton Grove*, 695 F.2d 261(7th Cir. 1982).

295. See *Marcus Cable Assoc. v. City of Bristol*, 237 F. Supp. 2d 675 (W.D. Va. 2002); see also *Quilici v. Vill. of Morton Grove*, 695 F.2d 261(7th Cir. 1982).

296. Creating Dillon’s Rule, Judge Dillon held that a municipal government can only exercise powers which the state expressly or impliedly grants to the municipality. *City of Clinton v. Cedar Rapids and Mo. River R.R. Co.*, 24 Iowa 455 (Iowa 1868).

297. *Marcus Cable Assoc.*, 237 F. Supp. 2d at 676.

298. *Id.* at 677-78.

299. *Id.* at 678.

300. *Id.* at 675.



Rule.<sup>301</sup> In *Quilici*, handgun owners sued a city based on a local gun control ordinance.<sup>302</sup> The United States Court of Appeals upheld the ordinance as constitutional under the Home Rule.<sup>303</sup> The court explained that the Illinois Constitution allows for local governments to “exercise any power and perform any function pertaining to its government and affairs.”<sup>304</sup> The idea behind this rule, as the court noted, is that local governments are in the best position to solve community needs.<sup>305</sup>

States either adopt Dillon’s Rule, the Home Rule, or both.<sup>306</sup> Colorado and California recognize Dillon’s Rule for all cities except charter cities, in which the Home Rule applies.<sup>307</sup> Texas strictly follows Dillon’s Rule.<sup>308</sup> Alternatively, the Home Rule is the prevailing rule in Illinois.<sup>309</sup>

### B. Advantages of Local TNC Regulation

Subsidiarity, a principle of social organization, provides that regulation should be “at the lowest appropriate governance level.”<sup>310</sup> Subsidiarity seeks to increase efficiency and decrease centralized governance through local, decentralized regulation.<sup>311</sup> Considering the localized differences in transportation markets, some argue that subsidiarity calls for TNC regulation through municipalities.<sup>312</sup>

TNCs often attempt to categorize themselves as technology companies rather than companies providing taxi services.<sup>313</sup> Although TNCs argue that their categorization as technology companies should separate TNC regulations from taxi regulations, others disagree.<sup>314</sup> Dave Sutton disagrees with TNCs’ self-categorization as technology companies.<sup>315</sup> As previously discussed, Sutton believes that TNCs should face the same regulations as taxi companies because TNCs, he argues, provide transportation services similar to those provided by taxi services.<sup>316</sup> Due to the fact that the taxi industry is “dramatically different’ from city to city,” Sutton believes that the regulations for TNCs should stay at the municipal level.<sup>317</sup>

Daniel Weinstock, a law professor at McGill University, argues that regulating at the local level, through subsidiarity, also promotes “democratic engagement.”<sup>318</sup> He notes

301. *Quilici v. Vill. of Morton Grove*, 695 F.2d 261 (7th Cir. 1982).

302. *Id.* at 263.

303. *Id.* at 261.

304. *Quilici*, 695 F.2d 267 (citing ILL. CONST. art. VII, § 6(a)).

305. *Id.* at 268.

306. *Dillon’s Rule or Not?*, NAT’L ASS’N OF CNTY., <http://www.celdf.org/downloads/Home%20Rule%20State%20or%20Dillons%20Rule%20State.pdf>.

307. *Id.*

308. *Id.*

309. *Id.*

310. Ryan Stoa, *Subsidiarity in Principle: Decentralization of Water Resources Management*, 10 UTRICHT L. REV. 31 (2014).

311. *Id.* at 31.

312. See Heaton, *supra* note 181.

313. *Id.*

314. *Id.*

315. *Id.*

316. *Id.*

317. Heaton, *supra* note 181.

318. Daniel Weinstock, *Cities and Federalism*, in FEDERALISM AND SUBSIDIARITY 259, 270 (James E.

that “[b]ringing decision-making authority over issues of local concern closer to the people who are directly affected by [those issues] would better realize the ‘all-affected principle’ [of subsidiarity] than would more centralized decision making.”<sup>319</sup> Therefore, regulating at the local level could promote TNC customer involvement in the regulation process, perhaps increasing the effectiveness and appropriateness of the regulations themselves.<sup>320</sup>

### C. Disadvantages of Local TNC Regulation

Perhaps the greatest disadvantage of municipal regulation is the risk that municipalities enact regulations that discourage competition and foster anti-innovation.<sup>321</sup> Taxi companies historically enjoyed little competition and close relationships with the local governments that enacted taxi regulations.<sup>322</sup> The highly innovative TNC business model, therefore, completely changed local transportation environments.<sup>323</sup> Many cities, inexperienced with innovative entrants into the local transportation markets, initially reacted to TNCs through strict regulations or—in many instances—complete prohibitions on TNC operations.<sup>324</sup>

In 2014, Seattle became the first city to place a cap on the number of vehicles that TNCs could operate.<sup>325</sup> A Seattle councilwoman explained her reasoning in voting for the ordinance, stating that she did not “want to ‘temporarily’ kill innovation, but [did] want to buy a year for the taxi world to adapt.”<sup>326</sup> In October 2013, New Orleans issued cease and desist letters to TNCs, asserting that TNCs failed to comply with outdated, pre-TNC regulations.<sup>327</sup> Additionally, in 2013, Portland’s Private For-Hire Transportation Board of Review declined to amend city ordinances to include a category for TNCs, despite Uber’s pleas for updated regulations.<sup>328</sup>

Though many municipalities eventually modified regulations for TNCs, TNCs continue to face issues stemming from taxi-favoring municipalities.<sup>329</sup> In December 2014,

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Fleming & Jacob T. Levy, eds., 2014); *Daniel Weinstock*, MCGILL UNIV. (last visited Mar. 9, 2015), <http://www.mcgill.ca/law/about/profs/weinstock-daniel>.

319. *Cities and Federalism*, *supra* note 318, at 270.

320. *See id.*

321. *See sources cited supra* notes 195-200.

322. *See* ECON. ANALYSIS OF TAXICAB REGULATION, *supra* note 195; *see also* Ammori, *supra* note 181.

323. Letter from F.T.C. to D.C. Taxi Commission, *supra* note 228, at 2.

324. Letter from the City of New Orleans to Travis Kalanick, CEO of Uber Technologies, Inc. (Oct. 10, 2013) (on file with author) [hereinafter Letter from New Orleans to Uber]; Larry Downes, *Uber’s Battle in Seattle Highlights the Irony of Regulation Hurting the Consumers it was Designed to Help*, WASH. POST (Mar. 24, 2014), <http://www.washingtonpost.com/blogs/innovations/wp/2014/03/24/ubers-battle-in-seattle-highlights-the-irony-of-regulation-hurting-the-consumers-it-was-designed-to-help/>; Reid, *Seattle Becomes First City to Cap Uber, Lyft Vehicles*, WASH. POST (Mar. 18, 2014), <http://www.washingtonpost.com/blogs/govbeat/wp/2014/03/18/seattle-becomes-first-city-to-cap-uber-lyft-vehicles/>.

325. Wilson, *supra* note 324.

326. Downes, *supra* note 324.

327. *See* Letter from New Orleans to Uber, *supra* note 324.

328. Taylor Soper, *Why Portland is Keeping Uber out of the Rose City*, GEEK WIRE (Jan. 2, 2014, 9:51 AM), <http://www.geekwire.com/2014/portland-ridesharing/>.

329. In December 2014, Portland filed suit against Uber, alleging that Uber operated illegally due to a failure to follow taxicab regulations. Complaint, *City of Portland v. Uber Tech., Inc.* (D. Or. Dec. 8, 2014). The District Attorneys for both Los Angeles and San Francisco also filed suit against Uber in December 2014, alleging that Uber calculates fares in a manner unapproved by the state and misled the public on the effectiveness of background checks. Complaint, *California v. Uber Tech., Inc.*, No. CGC-14-543120 (Cal. Super. Ct. Dec. 9, 2014).

for example, the City of Portland filed suit against Uber just days after Uber began operations in the city, alleging that Uber failed to comply with taxicab regulations.<sup>330</sup>

Although cities may genuinely fear for the public's safety when regulating or prohibiting TNCs, the public may not be the primary concern for some city leaders.<sup>331</sup> Due to the history of local politicians favoring taxi companies, some believe that cities regulate TNCs with the local taxi industry's best interest in mind.<sup>332</sup>

From July 2014 to December 31, 2014, a San Antonio Councilwoman allegedly accepted thousands of dollars in campaign contributions from taxi and other for-hire industry leaders, accounting for nearly 20 percent of her total campaign contributions.<sup>333</sup> Although individuals associated with TNCs did contribute money to city leaders, the contributions were incomparable to those from taxi companies.<sup>334</sup> The taxi industry contributed at least \$16,000 to San Antonio officials in 2014, while those associated with TNCs contributed a mere \$1,400 in the same year.<sup>335</sup> Further, the taxi industry reportedly contributed over \$35,000 to city leaders and candidates, including a mayoral candidate, over the past few years.<sup>336</sup> These contributions coincided with San Antonio's preparations to enact TNC regulations.<sup>337</sup>

Following Chicago's approval of TNC regulations, Chicago announced a plan to sponsor an app for the taxi industry.<sup>338</sup> Although the city also planned to release certain fee restrictions on taxi companies, the city's plan to sponsor an industry-wide app provides evidence of the city's direct involvement in advancing the taxi industry's competitiveness.<sup>339</sup>

Regulation at the local level also presents the risk of economic burdens on TNCs.<sup>340</sup> The risk may be even higher for local regulation because TNCs, as national companies, must follow the regulations of thousands of cities across the country rather than the regulations of only fifty states.<sup>341</sup>

## VI. STATE REGULATION: THE BEST REGULATORY OPTION FOR TNCs

Although all three major regulatory options have advantages and disadvantages,

330. Complaint, *City of Portland v. Uber Tech., Inc.*, *supra* note 329.

331. See sources cited *supra* notes 195-200.

332. Mike Masnick, *Corruption Index Indicator: Cities that Ban Ride-Sharing to Protect Taxi Incumbents*, TECH DIRT (Mar. 20, 2014, 1:59 PM), <https://www.techdirt.com/articles/20140319/12252726628/corruption-index-indicator-cities-that-ban-ride-sharing-to-protect-taxi-incumbents.shtml>.

333. Josh Baugh, *Taxis Give Big Cash to Councilwoman*, EXPRESS NEWS (Jan. 19, 2015, 4:10 PM), <http://www.expressnews.com/news/local/article/Taxis-give-big-cash-to-councilwoman-6021353.php>.

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*

338. Mark Guarino, *Chicago Plans App So Uber Can Compete with Uber, Ridesharing Services*, REUTERS (Dec. 10, 2014, 9:51 PM), <http://www.reuters.com/article/2014/12/11/us-uber-chicago-idUSKBN0JP07Z20141211>.

339. *Id.*

340. Cf. *Federal Preemption*, *supra* note 194, at 116.

341. The 2012 Census counted a total of 38,910 general-purpose local governments. Although the number of local governments regulating TNCs would be far less than that, the statistic illustrates the vast difference between the number of states and the number of cities in the United States. Carma Hogue, *Government Organization Summary Report*, U.S. CENSUS BUREAU, Sept. 26, 2013.

state regulation represents a balance of the various risks and benefits associated with federal and local TNC regulation.<sup>342</sup>

A. *State TNC Regulation Fosters Development and Efficiency*

Both state and local regulation presents the risk that TNCs uniformly adopt the strictest requirement throughout the country, despite the absence of that requirement in other places.<sup>343</sup> However, a TNC's adoption of the strictest regulation may not always be a disadvantage.<sup>344</sup> Colorado, for example, requires contingent coverage for the "insurance gap" and California does not.<sup>345</sup> Interestingly, Uber's internal guidelines mirror Colorado's requirements, thereby protecting customers in California through Colorado's stricter regulation.<sup>346</sup>

Differing regulations across the country may, however, promote the development of effective TNC regulations over time.<sup>347</sup> When regulation takes place at more regionalized levels, states and cities can look to other state or city regulations in order to determine which regulations are most effective in both maintaining safety and promoting innovation.<sup>348</sup>

Federal regulations, though uniform, do not present the same opportunity for growth and development.<sup>349</sup> Whereas states can learn from other states' regulations and the impact those regulations have on transportation markets, the federal government has few options in comparable regulations.<sup>350</sup>

Although local regulation may promote development, thousands of regulatory "laboratories" could create more issues than benefits, as complying with thousands of regulations from thousands of municipalities fosters inefficiency.<sup>351</sup> Rather than TNCs facing great economic burdens under local regulation in examining thousands of regulations, ensuring compliance with each regulation, and staying up to date on regulatory changes for each municipality, state regulation prevents economic burdens by simplifying the number of TNC regulations.<sup>352</sup>

B. *State TNC Regulation Balances Interests*

Transportation markets, and the need for for-hire car services, differ from one city to the next.<sup>353</sup> Thus, a city's needs in TNC regulations may differ from one city to the next as well.<sup>354</sup> Rulemaking at the local level may, therefore, incorporate individuals in the rulemaking process who are familiar with a city's particular needs in regulating TNCs,

342. See discussion *infra* Parts V.A and V.B.

343. See *Federal Preemption*, *supra* note 194, at 116.

344. See *infra* text accompanying notes 345-46.

345. Colo. S.B. 14-125 § 40-10.1-604(3)(a).

346. *Eliminating Ridesharing Insurance Ambiguity*, *supra* note 88.

347. See sources cited *supra* notes 264-67.

348. Cuskelly, *supra* note 265, at 306.

349. Cf. *Federal Preemption*, *supra* note 194, at 116.

350. See *id.*; see also Cuskelly, *supra* note 265, at 306.

351. See *Federal Preemption*, *supra* note 194, at 116; see also Hogue, *supra* note 341.

352. See *Federal Preemption*, *supra* note 194, at 116; see also Hogue, *supra* note 341.

353. See Heaton, *supra* note 181.

354. *Id.*

ensuring that regulations address those local issues.<sup>355</sup>

However, a history of corruption and lack of competition illustrates cities' frequent unwillingness to adopt regulations that encourage competition for taxi companies and encourage a better market for citizens.<sup>356</sup> State and federal regulation evades the potential harms of taxi-favoring local governments by regulating at a more removed level of government and preserving the innovative TNC business model.<sup>357</sup> Such regulations also protect citizens from expensive, monopolistic local transportation markets by protecting new market entrants.<sup>358</sup> Moreover, state regulation expands safe for-hire service operations throughout states—increasing transportation options outside of major cities.<sup>359</sup>

Although states are not as close as municipalities to local transportation market concerns and issues, states are better suited to solve localized transportation issues than the federal government—an entity even further removed from local concerns.<sup>360</sup> The differences between the regulations in California and Colorado, and the attention given to each state's individual concerns during the rulemaking processes, illustrate this advantage to state regulation.<sup>361</sup> The California PUC, for example, acknowledged and discussed the specified issues TNCs presented across the state, rather than the generalized issues facing all states and municipalities throughout the country.<sup>362</sup>

### C. Plausibility of State TNC Regulation

Although limousines differ from TNCs, state limousine regulation exemplifies the plausibility of regulating for-hire transportation at the state level.<sup>363</sup> Further, unlike federal TNC regulation, state regulation continues to grow in popularity throughout the United States.<sup>364</sup>

Not only is state regulation entirely plausible, but TNCs support the state regulations enacted thus far.<sup>365</sup> John Zimmer, co-founder and President of Lyft, stated that California's regulatory framework "sets the stage and creates a responsible process and common sense regulations."<sup>366</sup> Sunil Paul, co-founder and CEO of Sidecar, stated that

355. *Cities and Federalism*, *supra* note 318, at 270.

356. *See* sources cited *supra* notes 325-37.

357. *See* sources cited *supra* notes 264-68.

358. *Id.*

359. *See Vote Yes on HB 1614*, *supra* note 272.

360. State regulation may be the "lowest appropriate governance level" for TNC regulation. *See supra* notes 310-11.

361. *Compare* California Decision on Regulations, *supra* note 5, with Colo. S.B. 14-125, and 4 COLO. CODE REGS. § 723-6 (2015).

362. California Decision on Regulations, *supra* note 5.

363. *See* COLO. PUB. UTIL. COMM'N R. 723-6-6200 at 3 (2014); *see also* WASH. ADMIN. CODE § 308-83-100.

364. *See* California Decision on Regulations, *supra* note 5; *see also* Colo. S.B. 14-125; Ohio H.B. 237; Okla. H.B. 1614; Brewer, *supra* note 99, at 63.

365. *See* 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/#27ceb4f567fe>; *see also* Ken Schroeppel, *Colorado Leads the Nation in Embracing, Regulating Ride-Sharing Service*, DENVERURBANISM (June 11, 2014), <http://denverurbanism.com/2014/06/colorado-leads-the-nation-in-embracing-regulating-ride-sharing-services.html>.

366. Geron, *supra* note 365.

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California's set of rules "sets a good precedent."<sup>367</sup> Further, a Lyft spokesperson praised Colorado's regulations, stating that "[b]y creating a common-sense regulatory framework for [TNCs] that prioritizes public safety and consumer choice, Colorado has stepped up as a leader in welcoming innovative, community-powered transportation options."<sup>368</sup> The spokesperson further noted that Colorado's regulations "forg[e] a path for other jurisdictions to follow."<sup>369</sup>

#### D. Considerations in State TNC Regulation

Like California and Colorado, a state agency like the Public Utilities Commission could hold the responsibility for regulating TNCs.<sup>370</sup> State agencies are in the best position to be knowledgeable about transportation issues and needs.<sup>371</sup> However, it may be best for state lawmakers to enact legislation delegating rulemaking responsibility to a specified agency.<sup>372</sup> Unlike the Colorado PUC, the California PUC initiated its rulemaking without express delegation from the legislature.<sup>373</sup> This resulted in a recent debacle when the DMV, another state agency, attempted to place additional restraints on TNCs through its own, independent ruling.<sup>374</sup>

## VII. CONCLUSION

Although TNCs like Uber, Lyft, and Sidecar enjoy various competitive advantages over taxicabs and other for-hire services, various legal issues plague TNCs.<sup>375</sup> Taxicab companies across the United States, facing stringent regulations, complain that governments should regulate TNCs in a manner comparable to taxicab regulation.<sup>376</sup>

Governments throughout the United States struggle with regulating TNCs in a manner that balances safety concerns with the public's best interest in having a competitive transportation market.<sup>377</sup> California was the first state to adopt statewide TNC regulations through the California PUC, and Colorado was the first state to adopt statewide legislation to regulate TNCs.<sup>378</sup> Various cities have adopted TNC regulation at the local level, including Chicago and Austin.<sup>379</sup>

A consideration of the advantages and disadvantages of regulation at the federal, state, and local levels demonstrates that other states should follow the regulatory path taken by California and Colorado.<sup>380</sup> Although federal regulation represents centralized rules

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367. *Id.*

368. Schroepfel, *supra* note 365.

369. *Id.*

370. California Decision on Regulations, *supra* note 5; Colo. S.B. 14-125; 4 COLO. CODE REGS. § 723-6 (2015).

371. *See* sources cited *supra* notes 310-11.

372. *See supra* text accompanying notes 146-48.

373. *See* California Decision on Regulations, *supra* note 5.

374. Mamiit, *supra* note 148; White, *supra* note 146.

375. *See* discussion *supra* Part II.

376. *See* discussion *supra* Part II.A; *see also* sources cited *supra* notes 31-32.

377. *See* discussion *supra* Part II.

378. *See* discussion *supra* Part II.D.

379. *See* discussion *supra* Part II.E.

380. *See* discussion *supra* Part VI.

removed from local corruption, federal regulation may be too far removed from local transportation markets to adequately solve local issues and concerns.<sup>381</sup> Local regulation, on the other hand, allows those individuals who are familiar with local markets to address localized concerns.<sup>382</sup> However, a history of cozy relationships between local governments and taxicab companies, as well as the recent barriers TNCs have faced when attempting to enter local transportation markets, illustrate the high risk that local TNC regulation will burden TNCs' innovative business model and citizens' transportation options.<sup>383</sup>

State regulation presents the best balance between these conflicting concerns.<sup>384</sup> Differing regulations among fifty states may lead to TNCs uniformly adopting the strictest standards or some economic burdens.<sup>385</sup> Contrasted against a potentially stagnant federal regulation, however, state regulations can develop over time as each of the fifty state "laboratories" experience the effects of regulations.<sup>386</sup> Although local regulations may also lead to more effective rules over time, the sheer number of local "laboratories" presents a high risk of inefficiency.<sup>387</sup>

Additionally, state regulation removes TNC regulation from local governments.<sup>388</sup> Thus, state regulation promotes innovation potentially hindered by anti-competitive local governments and protects customers from municipalities attempting to shield existing taxicab companies from competition.<sup>389</sup> Unlike federal regulation, however, state regulation may be close enough to local for-hire markets to adequately address local concerns.<sup>390</sup> State limousine regulations, as well as California's and Colorado's statewide TNC regulations, demonstrate that this kind of regulation is not unprecedented.<sup>391</sup> Additionally, TNCs have praised California's and Colorado's regulatory models as "innovative" and "a good precedent."<sup>392</sup> All states should consider statewide regulation of TNCs in order to promote innovation, protect citizens, and adequately address the numerous concerns regarding TNC operations.<sup>393</sup>

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381. See discussion *supra* Part III.  
 382. See discussion *supra* Part V.B.  
 383. See discussion *supra* Part V.C.  
 384. See discussion *supra* Part VI.  
 385. See discussion *supra* Part IV.C.  
 386. See discussion *supra* Part IV.B.  
 387. See discussion *supra* Part V.C.  
 388. See discussion *supra* Part IV.B.  
 389. See discussion *supra* Part IV.B.  
 390. See discussion *supra* Part VI.B.  
 391. See COLO. PUB. UTIL. COMM'N R. 723-6-6200, at 3 (2014); WASH. ADMIN. CODE § 308-83-100; see discussion *supra* Part VI.C.  
 392. See discussion *supra* Part VI.C.  
 393. See discussion *supra* Part VI.