



# **A STUDY OF VEHICLES FOR HIRE IN THE STATE OF VERMONT**

**MICHAEL S. PIECIAK, COMMISSIONER  
JANUARY 15, 2019**

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January 15, 2019

Vermont State Legislature

Senate Committees on Transportation, on Judiciary, and on Finance

House Committees on Transportation, on Judiciary, and on Commerce and Economic Development

115 State Street

Montpelier, VT 05633-5301

Re: Vehicles for hire

Dear Legislators:

I respectfully submit the attached report in accordance with Act No. 3 of the 2018 special session. It considers a number of issues relating to the regulation of taxis and transportation network companies in Vermont, including registration and licensing, safety standards, vehicle insurance, fares, and more, and presents findings that may inform whether and to what extent to regulate vehicles for hire, vehicle for hire companies, and vehicle for hire drivers at the State level.

Over the summer and fall, to understand and analyze issues surrounding the taxi and TNC industries, Department staff members reviewed a wealth of existing literature and consulted with Department of Motor Vehicles staff, City of Burlington and other Vermont municipal officials, Burlington International Airport staff, transportation officials in other states, and taxi and TNC company owners and drivers. The Office of Professional Regulation also provided guidance and assistance.

The report suggests that there may be benefit in regulating some aspects of vehicles for hire, vehicle for hire companies, and vehicle for hire drivers at the state level. For each topic, the report provides information relevant for making such a policy decision, which may include historical information, statistical data, statements of municipal officials, approaches taken by other states, and views of transportation experts and legal scholars.

I. Vehicles for hire: Current frameworks in Vermont and other states

Whereas taxis are regulated primarily at the municipal level in Vermont and most states across the country, TNCs are almost uniformly regulated at the state level. Section I of the report sets forth the current state of municipal, state, and federal regulation with respect to vehicles for hire in Vermont, provides a brief history of taxi and TNC regulation across the country, gives an overview of vehicle



for hire administration in Burlington, the largest vehicle for hire market in Vermont, and provides a brief summary of approaches currently taken in other states.

## II. Analysis related to potential statewide regulation of vehicles for hire

- Public and passenger safety

The report looks at safety standards such as company and driver registration and licensing requirements, background checks, minimum driver age and experience requirements, limits on maximum hours for consecutive operation of a vehicle for hire, and minimum vehicle insurance requirements. Act 3, passed in 2018, establishes statewide standards for TNCs. However, only a handful of Vermont towns and cities currently regulate any aspect of the taxi industry. The report considers how more uniform safety requirements and standards would impact consumers, municipalities, the vehicle for hire industry. It determines that there may be benefit in standardizing some requirements in Vermont.

- Fares and dynamic pricing

Outside of Burlington, most vehicles for hire in Vermont operate via telephone or electronic dispatch. Whereas strict fare regulation may be justified in markets with robust street hail markets, a different approach may be more reasonable in Vermont. The report presents a number of considerations relevant to such a policy decision.

- Necessity and convenience; nondiscrimination; and accessibility for passengers with disabilities

The report provides an overview of transportation options provided and markets served by taxis and TNCs and looks at issues of access for underserved markets, discrimination in the provision of transportation services, and accessibility for passengers with disabilities. It suggests that it may be beneficial to require all vehicle for hire companies to take steps to ensure Vermonters with disabilities are able to take advantage of vehicle for hire services.

- Data protection

As participants in the sharing economy, TNCs collect and use large amounts of consumer data. The report explains that, though Vermont could potentially benefit from information sharing agreements, few of these have been successfully implemented.

- Employment status of drivers

The report presents a brief overview of the evolving legal landscape applicable to the employment status of TNC drivers. Given the complexity of this issue, the report takes no position thereon.



### III. Findings and recommendations

To ensure consistency for both consumers and vehicle for hire companies, and to provide a uniform level of consumer protection, the report finds that there may be benefit in regulating some aspects of taxis and TNCs at the state level, such as statewide requirements for company registration, background checks, minimum driver age and experience requirements, and maximum consecutive hours driven. The Legislature may also consider allowing municipalities to regulate vehicles for hire to the extent municipal regulations are at least as protective as State standards. This approach would effectively protect the public and level the vehicle for hire playing field while preserving the ability of municipalities to craft local solutions to local problems.

This report would not have been possible without the good and diligent work of Department staff members Lisa Bergeron, Gavin Boyles, Kevin Gaffney, Nicholas Marineau, Pat Murray, Jill Rickard, Christina Rouleau, and Thomas Taylor, and Department interns Brendan Gordy (Champlain College), Sean Macdonald (Bowdoin College), Matt Phillips (Vermont Law School), and Joshua Sumner (Saint Michael's College). The Department would also like to thank: Lauren Hibbert, Director of the Office of Professional Regulation; Wanda Minoli, Commissioner of Motor Vehicles; Michael Smith, Director of Motor Vehicle Operations; Jordan Villa, Motor Vehicle Project Coordinator with the Vermont Agency of Transportation; Jessica Vintinner, Legislative Director and Principal Assistant with the Vermont Department of Labor; Mathew Barewicz, Director of the Vermont Department of Labor Economic & Labor Market Information Section; Gwynn Zakov, Municipal Policy Advocate for the Vermont League of Cities and Towns; Christine Dunbar, Administrative Assistant for the City of Burlington Clerk/Treasurer's Office; Shelby Losier, Burlington International Airport Director of Ground Transportation; and Anthea Dexter-Cooper, former Assistant Burlington City Attorney (and current member of Legislative Council) for their assistance and important contributions, and each of the municipal and State officials, taxi and TNC company owners and drivers, and other interested individuals who provide input for this study.

I look forward to discussing the report with you. Please be in touch with any questions.

Sincerely,



Michael S. Pieciak  
Commissioner



## Introduction

Section 3 of Act No. 3 of the 2018 special session directs the Commissioner (the “Commissioner”) of the Department of Financial Regulation (the “Department” or “DFR”), in consultation with the Commissioner of the Department of Motor Vehicles (“DMV”), the Director of the Office of Professional Regulation (“OPR”), and representatives from other State agencies and departments, as the Commissioner deems necessary, and with input from the Vermont League of Cities and Towns and industry and consumer stakeholders, to conduct a study of whether and to what extent vehicles for hire, vehicle for hire drivers, and vehicle for hire companies should be regulated by the State and how State regulations would affect relevant municipal regulations. The Commissioner shall consider:

- (i) issues related to public safety, necessity, and convenience;
- (ii) regulatory models adopted in other state and local jurisdictions, including in both urban and rural municipalities in Vermont, applicable to transportation network companies and other vehicle for hire companies;
- (iii) matters related to passenger safety, including driver background checks, periodic vehicle safety inspections, and signage;
- (iv) matters related to insurance coverage, including minimum liability coverage, disclosure requirements, and claims procedures, generally, and with consideration of other, similarly situated jurisdictions, other commercial automobile policy requirements, enhanced personal liability coverage for drivers, and the costs and benefits of requiring Med Pay coverage;
- (v) matters related to fares, including the provision of fare estimates to riders, restrictions on “surge pricing,” and payment methods;
- (vi) matters such as: the licensing or permitting of companies and drivers; nondiscrimination street hails; the protection of driver and rider information; taxes or fees and, if applicable, recommended amounts; the employment status of drivers; and increased access for persons with disabilities;
- (vii) the extent to which all vehicles for hire, vehicle for hire drivers, and vehicle for hire companies should be treated similarly with respect to statewide regulation; and
- (viii) any other matter deemed relevant by the Commissioner and the Director of OPR.

For the purposes of this study, Act 3 defines a “vehicle for hire” to be “a passenger vehicle transporting passengers for compensation of any kind.” Vehicles for hire include taxicabs, transportation network company vehicles, limousines, jitneys, car services, contract vehicles, shuttle vans, and other such vehicles transporting passengers for compensation of any kind except:

- (i) those that an employer uses to transport employees;
- (ii) those that are used primarily to transport elderly, special needs, and handicapped persons for whom special transportation programs are designed and funded by State, federal, or local authority otherwise exempted pursuant to 23 V.S.A. § 4(15);
- (iii) buses, trolleys, trains, or similar mass transit vehicles; and
- (iv) courtesy vehicles for which the passenger pays no direct charge, such as hotel or car dealer shuttle vans.

The Commissioner is required to submit a report of his findings by January 15, 2019 to the Chairs of the Senate Committees on Transportation, Judiciary, and Finance, and the House Committees on Transportation, Judiciary, and Commerce and Economic Development. The Commissioner has prepared this report in response to the Legislature's directive in Act 3. It consists of three parts:

- Section I explains the current state of regulation with respect to vehicles for hire in Vermont and includes a brief summary of approaches taken in other states.
- Section II analyzes issues of public and passenger safety, including: the licensing and permitting of companies and drivers; driver background checks; minimum driver age and experience; maximum hours for consecutive operation; and vehicle insurance requirements. Included with respect to each safety issue is a summary of existing municipal ordinances, a discussion of regulatory approaches adopted by other states, a look at the impact state-level regulation would have on municipalities, if applicable, and analysis of whether state regulation is warranted. Section II also analyzes potential state regulation of fares and dynamic pricing and examines the issues of necessity and convenience, nondiscrimination, accessibility for passengers with disabilities, data protection, and the employment status of drivers.
- Section III presents the Department's overall findings and recommendations.

## **I. Vehicles for hire: Current frameworks in Vermont and other states**

### **A. Existing legal and regulatory framework**

In 2017, approximately 630 taxi drivers and chauffeurs were employed in Vermont.<sup>1</sup> Unlike many other professions, taxi drivers are not licensed by the State or subject to a discrete set of State laws. Since 1953, Vermont state law has expressly authorized municipalities "to make, establish, alter, amend, or repeal regulations for the operation, parking, soliciting, delivery, or fares in the jitney<sup>2</sup> and taxi business in general within the municipality and to establish penalties

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<sup>1</sup> May 2017 State Occupational Employment and Wage Estimates: Vermont. United States Department of Labor Bureau of Labor Statistics. <https://www.bls.gov/oes/current/oes533041.htm>. The Vermont Department of Labor reports that approximately 1,897 total individuals were estimated to be either employed or self-employed in occupation code 53-3041 (Taxi Drivers and Chauffeur), which includes all individuals who "drive automobiles, vans, or limousines to transport passengers. May occasionally carry cargo. Includes hearse drivers." This code includes self-employed TNC drivers if driving for a TNC is their primary profession.

<sup>2</sup> Pursuant to 23 V.S.A. § 4, "jitney" includes "any motor vehicle, not designated for the carrying of merchandise or freight, advertised or regularly used for carrying passengers for hire, but not operating over a fixed route, including motor vehicles operated for hire in connection with a livery business, but shall not include any such vehicle which the owner thereof uses in an emergency for such purpose, nor one which an employer uses to transport his or her employees to and from their work, nor one which is used at least 75 percent of the time in the transportation of schoolchildren or under authority granted to a school board under 16 V.S.A. § 563 to transport other than schoolchildren, nor one which is used in the transfer of U.S. mail on a star route, so-called, nor one which is used to transport elders or persons who have a disability for whom special transportation programs are designed and funded by State and federal

for the breach thereof..."<sup>3</sup> State laws govern vehicle registration fees and minimum required insurance but otherwise, regulatory authority over taxis belongs to the towns and cities of Vermont.<sup>4</sup> However, despite this authority, only a handful of Vermont municipalities have chosen to license or regulate any aspect of taxi companies and/or taxi drivers.<sup>5</sup>

A significant portion of Vermont's taxis and other vehicles for hire operate in Burlington, which has a robust vehicle for hire ordinance. Outside of Burlington, only Barre, Bennington, Brattleboro, Hartford, Lyndonville, Montpelier, Rockingham, Rutland, St. Albans, and Vergennes currently have taxi ordinances in place.<sup>6</sup> The extent of regulation by these municipalities ranges from simple licensing, as in the case of Vergennes, to comprehensive regulatory frameworks, as in the case Rockingham. Most municipalities fall somewhere in the middle, requiring taxi companies and/or drivers to obtain licenses or operating permits from the municipality and for drivers to undergo background checks and comply with minimum safety requirements. In addition, to ensure compliance with ground transportation rules and Federal Aviation Administration regulations, Burlington International Airport separately permits and establishes rules for vehicle for hire operations there.

Transportation network companies ("TNCs"), which pair passengers with drivers via smartphone applications, recently began operating in Vermont as an alternative to taxis. TNCs are part of the increasingly popular sharing economy. TNC drivers use their private vehicles to transport passengers. They utilize a TNC platform to be paired with potential riders, paying the TNC a commission for each paired ride. TNCs are often regarded as offering lower fares and providing faster pick up times for passengers, particularly in areas not served by taxi stands.<sup>7</sup> The two largest TNCs operating in Vermont and nationwide are Uber and Lyft.<sup>8</sup> In addition to Uber and Lyft, one locally owned and operated TNC, Vermont Ride Network, operates 35 vehicles in Vermont. Vermont Ride Network was formed in 2016 and describes itself as "an integrated network of vehicles that supplies transportation and courier service for businesses,

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authority through public and private, nonprofit social service agencies; nor shall it apply to cooperative use transportation."

<sup>3</sup> 24 V.S.A. § 2031

<sup>4</sup> These provisions will be discussed in Section II of this report.

<sup>5</sup> For simplicity and consistency, except where a different term (such as limousine or shuttle van) is specifically intended, "taxi" will be used throughout this report to refer to taxis, sedans, limousines, and other for-hire vehicles that are not TNCs.

<sup>6</sup> Please refer to Appendix A for a summary of these municipal regulations.

<sup>7</sup> Other studies suggest this may not be the case, particularly for shorter trips. See: Transportation Research Board. *Between Public and Private Mobility: Examining the Rise of Technology-Enabled Transportation Services*. Washington DC. 2016. <https://www.nap.edu/read/21875/chapter/5#55> (citing Guerrini, F. "Which is Cheaper to Use in NYC: Uber or a Taxi? Big Data Will Solve the Dilemma." *Forbes*, Apr. 9, 2015. <http://www.forbes.com/sites/federicoguerrini/2015/04/09/living-in-new-york-this-app-will-tell-you-which-is-cheaper-uber-or-a-taxi>)

<sup>8</sup> Uber, the largest TNC worldwide, currently operates in over 600 cities in 65 countries and over 4 billion Uber trips have been taken to date. Lyft currently operates in over 300 U.S. cities. "Company Info." Uber Newsroom. <https://www.uber.com/newsroom/company-info/>; Korosec, Kirsten. "Watch Out Uber, Lyft Is Now In 300 U.S. Cities." *Fortune*. March 9, 2017. <http://fortune.com/2017/03/09/lyft-300-cities/>

government departments, medical facilities, and employment agencies in areas that have been without reliable options.”<sup>9</sup>

Though they provide similar for-hire transportation services to taxis, TNCs in Vermont are subject to a separate state-level regulatory regime. Act 3 relating to transportation network companies was passed during the 2018 special session and became effective July 1, 2018; by 2020, all TNCs in Vermont will be regulated by the State. Act 3 adds provisions in Title 23 relating to mandatory insurance minimums, driver requirements and background checks, records inspection, enforcement, and administrative penalties for TNCs. Burlington is the only municipality in Vermont that currently regulates TNCs, and, except for insurance and fares, generally imposes the same requirements on TNCs as it does on taxis and other vehicle for hire services.<sup>10</sup> Act 3 explicitly preempts inconsistent municipal ordinances, resolutions, and bylaws other than those “adopted by a municipality with a population of more than 35,000 residents based on the 2010 census and in effect on July 1, 2017.” This exception applies only to Burlington’s vehicle for hire ordinance and sunsets on July 1, 2020, after which time Burlington’s ordinance will be preempted “to the extent [it is] inconsistent with [Act 3].”<sup>11</sup>

## **B. Municipal vehicle for hire administration**

Forty-five taxi companies and approximately 130 drivers are currently licensed to operate in Burlington, more than any other municipality.<sup>12</sup> A vehicle for hire administration office handles the day-to-day administration of vehicles for hire in Burlington and is responsible for examining applications, granting or denying licenses, and performing background and compliance checks. The administration office is overseen by a five-member vehicle for hire licensing board appointed by the city council with the mayor presiding. The vehicle for hire licensing board can issue fines, suspend or revoke licenses, and issue out of service orders, and has authority to reverse decisions made by the administration office. The board also hears appeals regarding denials, suspensions, or revocations of licenses and hears complaints regarding vehicle for hire operations in Burlington, including at Burlington International Airport.

The City of Burlington currently employs one full-time administrative assistant in its vehicle for hire administration office and has a vacant part-time position available for a vehicle

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<sup>9</sup> "About Us." Green Cab VT. <http://greencabvt.com/about-us/>

<sup>10</sup> The city of Burlington revised Section 5.06 of its municipal code in 2016 to standardize regulations for all vehicles for hire, including taxis, TNCs, limousines, jitneys, car services, contract vehicles, shuttle vans, and other vehicles transporting passengers for compensation. Burlington’s ordinance does not apply to: (1) vehicles an employer uses to transport employees; (2) vehicles used primarily to transport elderly, special needs, and handicapped persons pursuant to applicable state, federal, or local transportation programs; (3) buses, trolleys, trains, and other mass transit vehicles; or (4) free courtesy vehicles.

<sup>11</sup> Act No. 3: An act relating to transportation network companies. 2018 Special Session

<sup>12</sup> The numbers of taxi companies currently licensed by other Vermont municipalities are as follows: Barre 4; Bennington 2; Brattleboro 0 (the Brattleboro ordinance is currently lifted because it is under review by the select board; last year the town licensed one taxi company); Hartford 1; Lyndonville 0; Montpelier 2; Rutland 6; and Vergennes 1. It is unclear how many taxi companies are currently licensed by Rockingham or St. Albans.



for hire compliance officer to support the administrative assistant by enforcing, providing education on, and responding to inquiries related to Burlington’s vehicle for hire ordinance.

Burlington International Airport’s ground transportation team currently employs 20 full or part-time employees whose job functions relate to vehicles for hire. These employees dedicate approximately 8200 hours per year to vehicle for hire-related matters at the airport, as follows:

- One director of ground transportation (approximately 200 hours/year);
- One administrative assistant (approximately 100 hours/year);
- Fourteen ambassadors responsible for enforcement of rules and customer relations (each at approximately 450 hours/year, for a total of 6,300 hours);
- Two ground transportation foremen (each at approximately 500 hours per year); and
- Two persons in accounts receivable (each at approximately 26 hours per year).

An assistant Burlington city attorney also assists both the airport and the vehicle for hire administration office with legal matters relating to vehicles for hire and dedicates approximately 40 hours per year to vehicle for hire-related matters. The Burlington police department assists in enforcement. Other municipalities do not appear to have any full-time staff dedicated to taxi administration. In Barre, for example, in addition to the police department’s time spent inspecting taxi vehicles and reviewing license applications and driver background checks, the town clerk estimates that she devotes approximately four hours annually to taxi licensing and renewals.

### **C. Approaches in other states**

As in Vermont, taxis are regulated at the municipal level in most states throughout the country, though in some states they are regulated at the county level and in a few others at the state level. Some states share regulatory authority over taxis with municipalities. This is seen most frequently in states with complex large metropolitan vehicle for hire markets such as New York City, Las Vegas, and Philadelphia. Most states cede some regulatory authority to public airports. The most commonly regulated aspects of the taxi industry are background checks and fares, though many bodies opt to control market entry and service quality as well.<sup>13</sup>

Local regulation of taxis across the country began in the early 1930s in response to economic, safety, and accessibility concerns about unregulated vehicles for hire.<sup>14</sup> Historically, some large cities had a problem of taxi oversupply, which they solved by limiting the number of licenses or medallions that may be active at any time. Many crafted regulations to ensure public and passenger safety and to prevent racial and economic discrimination. Unlike major metropolitan areas with significant traffic congestion, large numbers of taxis being hailed on the street, and notable issues of unequal access to transportation, Vermont’s market presents few reasons for a heavy regulatory touch. Outside of Burlington, taxi trips in Vermont tend to be

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<sup>13</sup> Schaller, Bruce. “Taxi, Sedan, and Limousine Industries and Regulations.” Prepared for the Committee for Review of Innovative Urban Mobility Services Transportation Research Board. 2015. <https://onlinepubs.trb.org/onlinepubs/sr/sr319AppendixB.pdf>

<sup>14</sup> Rubenstein, Dana. “Uber, Lyft, and the end of taxi history,” *Politico*. Oct. 30, 2014. <https://www.politico.com/states/new-york/city-hall/story/2014/10/uber-lyft-and-the-end-of-taxi-history-017042>

prearranged by dispatcher, which means taxis don't tend to congregate in specific areas and passengers are generally able to make a considered choice as to which company to use.

In contrast to the municipal regulation of taxis, TNCs throughout the country are regulated primarily at the state level. In 2013 the California Public Utilities Commission adopted a set of rules for TNC services statewide and in 2014, Colorado enacted the first state law authorizing and regulating TNC services.<sup>15</sup> In 2018 Vermont became the 49<sup>th</sup> state to pass statewide TNC legislation, leaving Oregon as the only state not to regulate TNCs at the state level.<sup>16</sup> Forty-two states preempt local government regulation of TNCs, but often exempt airports and municipal traffic and parking regulations.<sup>17</sup> The extent of regulation varies from state to state; some states only mandate minimum insurance requirements, while others additionally impose licensing and fee structures and mandate driver background checks, vehicle requirements, fare disclosure, data reporting, and more. The Department identified Connecticut, Colorado, Michigan, and Nevada as states that regulate both taxis and TNCs at the state level, though not necessarily uniformly. For ease of comparison, analysis of other state law approaches throughout this report will focus primarily on these four states.

## **II. Analysis related to potential statewide regulation of vehicles for hire**

26 V.S.A. chapter 57 sets policies and standards for legislative review of proposed licensing statutes. It is the policy of the State of Vermont that regulation be imposed upon a profession or occupation solely for the purpose of protecting the public. The General Assembly believes that all individuals should be permitted to enter into a profession or occupation unless there is a demonstrated need for the State to protect the interests of the public by restricting entry into the profession or occupation. If such a need is identified, the form of regulation adopted by the State shall be the least restrictive form of regulation necessary to protect the public interest. If regulation is imposed, the profession or occupation may be subject to review by the Office of Professional Regulation and the General Assembly to ensure the continuing need for and appropriateness of such regulation.<sup>18</sup>

26 V.S.A. § 3105(a) provides:

A profession or occupation shall be regulated by the State only when:

(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;

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<sup>15</sup> "Policy Implications of Transportation Network Companies." Transportation Institute, Texas A&M. Oct. 2017. <https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-17-70-F.pdf>

<sup>16</sup> "Vermont Governor Signs Insurance Protections for TNC Drivers, Passengers and the Public: PCI Successfully Changes the Legislative Landscape across the Nation." <http://www.pciaa.net/industry-issues/transportation-network-companies>

<sup>17</sup> "State TNC and MC Legislation: Preemption and Employment Status of Drivers." On Labor. Oct. 19, 2018. <https://onlabor.org/state-tnc-and-mc-legislation-preemption-and-employment-status-of-drivers/>

<sup>18</sup> 26 V.S.A. § 3101

- (2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and
- (3) the public cannot be effectively protected by other means.

If and only if regulation of the profession is found necessary by the Legislature based upon the criteria above “and considering governmental and societal costs and benefits,” then “the least restrictive method of regulation shall be imposed, consistent with the public interest”<sup>19</sup> and in accordance with the following policies, which shall be used to identify the least restrictive regulatory response:

- (1) if existing common law and statutory civil remedies and criminal sanctions are insufficient to reduce or eliminate existing harm, regulation should occur through enactment of stronger civil remedies and criminal sanctions;
- (2) if a professional or occupational service involves a threat to the public and the service is performed primarily through business entities or facilities that are not regulated, the business entity or the facility should be regulated rather than its employee practitioners;
- (3) if the threat to the public health, safety, or welfare, including economic welfare, is relatively small, regulation should be through a system of registration;
- (4) if the consumer may have a substantial interest in relying on the qualifications of the practitioner, regulation should be through a system of certification; or
- (5) if it is apparent that the public cannot be adequately protected by any other means, a system of licensure should be imposed.<sup>20</sup>

This report does not comprise a sunrise assessment. However, parts of its analysis consider the standards set forth in Title 26, chapter 57.

#### **A. Public and passenger safety**

As stated in Title 26, chapter 57, public safety is the primary reason to regulate any profession. Vehicle for hire drivers may be required to undergo background checks, register or obtain operating licenses, and adhere to standards designed to promote passenger and public safety such as minimum age and driving experience requirements and maximum hours for consecutive vehicle operation. Although some Vermont municipalities have adopted vehicle for hire ordinances requiring drivers and companies to adhere to one or more of these standards, most have no regulation in place. This section will set forth existing Vermont safety-related laws and regulations for vehicles for hire, outline approaches in four states that regulate both taxis and TNCs at the state level, summarize the potential impact on municipalities of statewide vehicle or hire safety regulation, and present analysis related thereto.

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<sup>19</sup> 26 V.S.A. § 3105(a)

<sup>20</sup> 26 V.S.A. § 3105(b)

## **1. Licensing and registration of companies and drivers**

### Existing licensing and registration requirements

Each of the 10 identified Vermont municipalities with vehicle for hire ordinances requires taxi companies and/or drivers to obtain one or more business and/or drivers' licenses and pay one or more fees prior to operating within such municipality. Fees vary widely among municipalities, from Lyndonville's one-time \$10 taxi license fee to Burlington's \$0.25 fee for each pick up or drop off within city limits, in addition to its annual fees for a vehicle for hire business license (\$125), background check (\$45), and driver's license (\$5).<sup>21</sup> Burlington International Airport also requires taxi drivers to pay a \$500 annual fee for a permit to utilize the airport pick-up queue.

The Federal Motor Carrier Safety Administration ("FMCSA") regulates for-hire vehicles transporting nine to 15 passengers in interstate commerce. Taxi cabs with seating capacities of fewer than seven passengers that do not operate on a regular route are explicitly excluded from federal regulation. Federally covered entities are companies that operate vehicles, such as shuttle vans, to transport more than eight passengers (including the driver) for compensation across state lines or an international border. These carriers must pay a \$300 filing fee to register with the FMCSA, comply with minimum insurance requirements and safety procedures, and obtain a U.S. Department of Transportation registration number.<sup>22</sup> To avoid charging municipal fees on top of this federal fee, Brattleboro is considering exempting from municipal licensing fees those companies that pay the FMCSA filing fee.

### Other state approaches to licensing and registration

Connecticut, Colorado, and Nevada require potential taxi operators to obtain a "certificate of public convenience and necessity."<sup>23</sup> Applicants must demonstrate at a public hearing that "public convenience and necessity require the operation of a taxicab or taxicabs for transportation of passengers, the acceptance or solicitation of which originates within the territory specified in such certificate."<sup>24</sup> If a certificate is granted, it authorizes an individual or company to provide taxi services in a specifically identified territory. The certificate process can be expensive and time-consuming. In Nevada, applicants are responsible for all costs of the process, including transportation, food, and lodging for investigators, and a \$25 hourly charge for investigative time expended. They must also pay a deposit of half of all estimated costs before the process can begin. It typically lasts between six months and one year.<sup>25</sup>

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<sup>21</sup> Burlington's ordinance states that TNC drivers and drivers who do not own their own vehicle for hire business are not required to obtain a business license. Please refer to Exhibit 1 for a table of each municipality's current requirements.

<sup>22</sup> 49 CFR Parts 300-399; *See also* "Get Authority to Operate (MC Number)." Federal Motor Carrier Safety Administration. <https://www.fmcsa.dot.gov/registration/get-mc-number-authority-operate>

<sup>23</sup> CGS § 13b-96; § 40-10.1-201, C.R.S.; NRS § 706.421

<sup>24</sup> "Guide to App and Hearing Process." State of Connecticut. [www.ct.gov/dot/.../pamphlet-guide-to-app-and-hearing-process.pdf](http://www.ct.gov/dot/.../pamphlet-guide-to-app-and-hearing-process.pdf)

<sup>25</sup> "Certificate Application Process." Nevada Taxicab Authority. [http://taxi.nv.gov/Resources/Certificate\\_Application\\_Process/](http://taxi.nv.gov/Resources/Certificate_Application_Process/)

In addition to company licensing or registration, states may also require taxi drivers to obtain a special driving license, permit, or endorsement. Connecticut requires taxi drivers to obtain a public passenger endorsement and Nevada requires them to obtain a taxicab driver permit, which is issued after a driver meets certain requirements, including having completed driver's awareness training. Colorado and Michigan do not require separate driver licensing.

Connecticut, Colorado, and Nevada do not require TNCs to obtain certificates of public convenience and necessity, as taxis must, but those states do require TNCs to obtain a permit or license from the state and pay an annual fee. Connecticut requires TNCs to be licensed and pay a \$5,000 annual fee.<sup>26</sup> Colorado requires TNCs to pay \$111,250 annually for a TNC permit.<sup>27</sup> Nevada charges an initial license fee between \$6,000 and \$500,000, based on the number of TNC drivers authorized, and an annual regulatory assessment between \$10,000 and \$1.2 million based on annual gross operating revenue of the TNC derived from Nevada intrastate operations.<sup>28</sup> None of Connecticut, Colorado, or Nevada requires individual TNC drivers to obtain a special TNC driver's license or vehicle license.

Michigan recently adopted uniform state registration requirements for all vehicles for hire, including limousines, taxis, and TNCs. All vehicle for hire carriers (companies and independent operators) must register with the Michigan Department of Licensing and Regulatory Affairs and pay a small fee (between \$25 and \$100 upon initial registration plus annual renewals), which is used to defray the costs of administering and enforcing the vehicle for hire law. Drivers must register through the companies rather than individually with the state. Municipalities are prohibited from adopting or enforcing additional license or fee requirements on vehicle for hire companies or drivers. However, airports may enact ordinances or regulations that adopt "reasonable procedures or fees for operations conducted by [vehicles for hire] on airport property."<sup>29</sup>

Please refer to Exhibit 2 for a table identifying and comparing the required licenses and permits, applicable agencies, and fees for taxi and TNC operators and drivers in Connecticut, Colorado, Michigan, and Nevada.

#### Impact of state-level licensing and regulation on municipalities

License fees are not a significant source of revenue for Vermont's municipalities. Burlington's application fees and background check fees are tethered to the actual costs to the city of performing these services, and revenues to the city from the \$0.25 fee for each trip starting or ending in Burlington are approximately equal to the costs of regulation. Barre licensed four taxi companies and 25 drivers in fiscal year 2018, for a total of \$2,040 in fees. Furthermore, some towns and cities lack resources to adequately administer or enforce their ordinances. Representatives of two municipalities told the Department their staffs do not have the capacity to regulate vehicles

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<sup>26</sup> Conn. Public Act No. 17-203

<sup>27</sup> Colorado Public Utilities Commission. Application to Operate as a Transportation Network Company. <https://www.colorado.gov/pacific/dora/TNC>

<sup>28</sup> NRS § 706A.140

<sup>29</sup> MCL § 257.2116

for hire and would like to see this function moved to the state level. Hartford is one such example. Hartford's ordinance requires taxi operators and vehicles to be licensed with the town and comply with other requirements relating to vehicle condition, fares, and insurance. However, only one small taxi company operates in Hartford (Uber and Lyft also operate there). A representative of Hartford told the Department that they plan to suggest that the select board repeal its taxi ordinance.

One town clerk told the Department that they support statewide regulation because most taxi companies drive throughout the State and must be licensed in multiple communities and with the airport. A statewide license or registration requirement would make the process more efficient, reduce costs for many drivers, and standardize requirements related to public safety. However, they noted that this function would truly need to be served by the State, with no administrative burden placed upon local government. They gave the example of liquor licensing, which is done at the state level, but requires towns and cities to pay costs associated with printing and mailing license renewals and "chas[ing] down people who don't submit their renewals."

### Analysis

There appears to be little economic justification for limiting entry into Vermont's taxi market by requiring an assessment of public convenience and necessity. However, given the inconsistent nature of existing municipal licensing, it may be beneficial to require all vehicle for hire companies and operators, including both taxis and TNCs, to register with the State on a periodic basis.

Taxi companies and drivers wishing to operate throughout Vermont must currently navigate a patchwork of municipal regulations to ensure they obtain the proper licenses and permits to operate in each city or town. Though license fees tend to be manageable in each town or city, many operators must be licensed in multiple jurisdictions and the fees add up. In addition, taxis may be operating in municipalities without ordinances that are not regulated at all beyond the State's inspection and minimum insurance requirements.<sup>30</sup> The Department and OPR held a public forum at Burlington International Airport on October 25 to obtain feedback from vehicle for hire companies and drivers. Many taxi drivers at the forum stated that they considered municipal licenses to be burdensome and voiced a desire for a universal, statewide vehicle for hire license and a "level playing field" for all vehicles for hire.

Title 26, chapter 57 states that "if a professional or occupational service involves a threat to the public and the service is performed primarily through business entities..., the business entity... should be regulated rather than its employee practitioners."<sup>31</sup> State-level registration requirements for vehicle for hire companies would provide an avenue for members of the public to confirm a company's compliance with applicable statutes and regulations, verify the identity of drivers, and, if wronged, serve civil or criminal process. State-level company registration may

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<sup>30</sup> Safety regulations outside registration and licensure will be discussed separately in subsections 3 and 4 of Section II.

<sup>31</sup> 26 V.S.A. § 3105(b)(2).



provide an efficient means of tracking vehicle for hire companies operating in Vermont, as well as enhanced consumer disclosure and public safety, at potentially lower costs to drivers.

## **2. Background checks; disqualifying convictions and violations**

### Overview of background checks

There are two primary types of criminal background checks: commercial background checks; and biometric state and FBI criminal background checks. Commercial background checks are conducted by private companies that use personal identifiers such as name and Social Security number to aggregate publicly available criminal records from a variety of databases, including courthouses, state repositories, federal courts, and international courts.<sup>32</sup> Non-public records, however, are not available to commercial background check companies. Commercial background checks thus may carry a greater risk of false positives (incorrectly associating a record with a person of the same name) and false negatives (missing a record because of a false or mistaken personal identifier).<sup>33</sup>

In contrast, biometric state and federal criminal background checks are conducted by government agencies. These checks search records using fingerprinting in addition to personal identifiers (which is believed to reduce the risk of false positives and false negatives) and utilize FBI databases that are more comprehensive than those available to commercial background check companies.<sup>34</sup> TNCs argue that their commercial background check procedures produce results that are at least as accurate as biometric background checks. They point to reports that FBI databases may be missing “[u]p to half of all final outcome criminal records... because some states are not required to submit them” and may be out of date at any time “because of an irregular update schedule.”<sup>35</sup> In addition, FBI databases may include records for arrests that did not result in a conviction or lack a final court disposition, prompting objections from the Equal Employment Opportunity Commission. Both Uber and Lyft argue that biometric background check requirements would limit their ability to do business and have suspended service in cities that have imposed such requirements.<sup>36</sup>

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<sup>32</sup> “The Facts about Background Screening.” National Association of Professional Background Screeners. <https://pubs.napbs.com/pub.cfm?id=0822433E-CAEA-32D3-A1F2-C4970C002321>.

<sup>33</sup> In 1998 the U.S. Attorney General conducted a study comparing personal identifier checks and fingerprint checks on approximately 93,000 applicants for public housing in Florida. The study found that, based on personal identifier checks alone, “5.5 percent of the checks produced false positives and 11.7 percent resulted in false negatives.” (United States Department of Justice. Attorney General. The Attorney General’s Report on Criminal History Background Checks. June 2006. [https://www.bjs.gov/content/pub/pdf/ag\\_bgchecks\\_report.pdf](https://www.bjs.gov/content/pub/pdf/ag_bgchecks_report.pdf))

<sup>34</sup> “Policy Implications of Transportation Network Companies.” Transportation Institute, Texas A&M. Oct. 2017. <https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-17-70-F.pdf>

<sup>35</sup> Maurer, Roy. “Relying on FBI Fingerprint Background Checks Is Flawed, Risky for Employers.” May 24, 2016. <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/fbi-fingerprint-background-checks-flawed.aspx>

<sup>36</sup> For example, in 2016 both Uber and Lyft suspended service in Austin, Texas when residents of the city upheld an initiative requiring biometric background checks for TNC drivers. Uber and Lyft resumed operating in Austin only after Texas passed HB 100, which regulates TNCs exclusively at the state level, preempts Austin’s ordinance, and imposes a commercial background check requirement.

## Existing background check requirements

Most Vermont municipal vehicle for hire ordinances authorize the municipality to investigate a potential taxi driver, at minimum, before granting them an operating license. Burlington's ordinance requires commercial background checks to be conducted annually for all taxi and TNC drivers; a company can choose to have the city conduct the background checks or to conduct the checks itself through a third party. In 2018 all vehicle for hire companies licensed in Burlington chose to have the city conduct their background checks, with the exceptions of Uber, Lyft, and Green Cab VT, LLC (which operates Vermont Ride Network). Act 3 similarly requires annual commercial background checks for TNC drivers and specifies that TNCs must contract with an entity accredited by the National Association of Professional Background Screeners to conduct a local, State, and national background check of each driver. To ensure compliance, the Commissioner of Motor Vehicles is permitted to annually inspect a random sample of up to 25 Vermont drivers' records from each TNC and to inspect additional random samples if there is a reasonable basis to suspect noncompliance.

Act 3 specifies the types of convictions and violations that disqualify an individual from operating a TNC. Certain municipal ordinances do the same for taxi drivers, though approaches vary. Some municipalities automatically bar applicants with certain convictions or violations from obtaining licenses. Others list the convictions and violations that give rise to a presumption that an applicant is "unsuitable to operate a taxicab" (Brattleboro, Rockingham) or that constitute grounds for denial of an application (Hartford). Still others make no mention of specific types of disqualifying convictions or violations, but nonetheless retain broad discretion over the issuance of licenses (Bennington, Rutland). Please refer to Exhibit 3 for a table setting forth background check requirements and disqualifying convictions in existing Vermont municipal ordinances.

Some municipalities also require drivers to make additional self-certifications. Rutland requires an applicant to submit in writing "verified under oath" a list of any misdemeanor or felony convictions and the amounts of all unpaid judgments. The Rutland chief of police then uses this information to make their recommendation to a licensing board. Burlington requires each vehicle for hire driver to certify that he or she:

is physically and mentally fit; (2) is not under supervision of the Department of Corrections for certain offenses; (3) is not subject to an active abuse prevention order; (4) has not had a vehicle for hire license revoked for safety-related reason within the past three years; and (5) is current with all taxes, fees, and liabilities with the city.

## Other state approaches to background checks

Connecticut, Colorado, and Nevada have established separate background check requirements for taxi drivers and TNC drivers. Each of these states requires taxi drivers to submit to fingerprint-based background checks, but requires TNCs to conduct, or have a third-party conduct, commercial background checks on their driver applicants.



Michigan’s uniform approach requires both taxi companies and TNCs to annually conduct commercial background checks of their drivers and retain the results of those checks, which are subject to state audit at any time.

### Impact of state-level regulation on municipalities

Municipalities often have limited resources to handle investigations into drivers’ backgrounds, and representatives who communicated with the Department noted they would welcome a state-level approach to reduce their burden. In addition, by conducting background checks, municipalities receive sensitive personal information from applicants and are therefore obligated to keep that data secure. One city clerk noted that they would support statewide regulation of vehicles for hire for several reasons, including data privacy—the State is in a better position to handle and secure the sensitive personal data of vehicle for hire drivers.

### Analysis

Of the small portion of Vermont municipalities that currently regulate vehicles for hire, some do not require background checks, and some taxi drivers may operate solely in towns or cities without taxi regulation. This may present a public safety issue, as consumers do not have the resources to independently assess risk. If they cannot rely on the State or its municipalities to ensure each driver’s background has been investigated, they cannot know whether a taxi driver has a criminal background that might inform their choice to ride with that driver.

Requiring background checks of vehicle for hire drivers appear to be justified under 26 V.S.A. § 3105(a) because a lack of regulation in this area may clearly harm or endanger public safety, and municipal requirements are inconsistent or lacking. Act 3 requires TNCs to conduct background checks of their drivers, the records of which are subject to periodic State audit. Burlington provides taxi and TNC companies with the option to conduct their own background checks or have the city conduct checks on their behalf. Because taxi and TNC drivers provide similar services to passengers, subject to the same basic safety considerations, adopting an approach like Burlington’s at the State level may be beneficial.

### **3. Minimum driver age and experience**

It is known that young and inexperienced drivers are at higher risk of being involved in motor vehicle accidents. “In the United States, the fatal crash rate per mile driven for 16-19-year-olds is nearly three times the rate for drivers ages 20 and over. Risk is highest at ages 16-17. In fact, the fatal crash rate per mile driven is nearly twice as high for 16-17-year-olds as it is for 18-19-year-olds.”<sup>37</sup> Therefore, minimum age and driving experience requirements are often imposed to prohibit such higher-risk individuals from operating vehicles for hire.

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<sup>37</sup> “Teenagers: Driving Carries Extra Risk for Them.” Insurance Institute for Highway Safety Highway Loss Data Institute. December 2017. <https://www.iihs.org/iihs/topics/t/teenagers/fatalityfacts/teenagers>

### Existing minimum driver age and experience requirements

Act 3 requires TNC drivers to be at least 18 years old and imposes a driving experience requirement if the driver is 18 years old and does not have a commercial driver's license. Three Vermont municipalities currently also impose minimum driver age and/or experience requirements: Burlington requires all vehicle for hire drivers to be at least 21 years old with at least one year of driving experience; Rockingham requires taxi drivers to be at least 18 years old; and Rutland requires taxi drivers to be at least 18 years old with at least two years of driving experience.

### Other state approaches to minimum driver age and experience

Connecticut requires taxi drivers to be at least 18 years old to obtain a public passenger endorsement on their driver's license and TNC drivers to be at least 19 years old. Michigan requires all vehicle for hire drivers to be at least 19 years old. The Department was unable to determine whether Colorado or Nevada has minimum age or driving experience requirements for vehicle for hire drivers.

### Analysis

Since drivers under the age of 18 are disproportionately more likely to be involved in auto accidents (and passengers often do not have the ability to specify the age of their driver), the public may be harmed if such drivers are allowed to operate vehicles for hire. According to policies stated on their websites, both Uber and Lyft require drivers to be at least 21 years old with at least one year of driving experience and Uber additionally requires three years of driving experience for drivers under age 23.<sup>38</sup> Taxi companies may also have internal minimum age and driving experience policies. However, it may be beneficial to adopt uniform minimum age and driving experience requirements for all vehicle for hire drivers.

Since Act 3 imposes a minimum age and driving experience standard on TNC drivers, it may be appropriate to expand such standard to apply to all vehicle for hire drivers. While this would lower existing requirements in Burlington and Rutland, which could impact safety in these municipalities to the extent that it allows riskier drivers to operate vehicles for hire, it would increase safety in the majority of municipalities, which do not currently impose minimum age and driving experience requirements.

#### **4. Maximum hours for consecutive operation**

Age and inexperience are not the only factors that affect a driver's ability to operate a vehicle safely. Fatigue is also widely acknowledged to increase a driver's risk of accident.<sup>39</sup> This risk may be mitigated by placing limits on the number of hours drivers may consecutively operate a vehicle for hire.

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<sup>38</sup> "Driver Requirements: How to Drive with Uber." Uber. <https://www.uber.com/drive/requirements/>;  
"Driver Requirements." Lyft. <https://help.lyft.com/hc/en-us/articles/115012925687>

<sup>39</sup> "Drowsy Driving Is Impaired Driving." National Safety Council. <https://www.nsc.org/road-safety/safety-topics/fatigued-driving>

### Existing limits on maximum hours for consecutive operation

Burlington, which currently limits to 12 the number of hours a vehicle for hire driver may drive in a consecutive 24-hour period, is the only Vermont municipality to impose such a limit. Act 3 does not impose a cap on the number of consecutive hours TNC drivers may operate in Vermont. However, both leading TNCs currently have policies in place that address this issue. Lyft drivers must take a six-hour break for every 14 hours they are logged in to the app in driver mode.<sup>40</sup> Similarly, Uber announced in February that it plans to update its app to lock drivers out for six hours after they've driven for 12 hours straight.<sup>41</sup> However, it may be possible for drivers to circumvent these rules by driving for multiple TNCs, and companies are free to change such policies at any time under current Vermont law.

### Other state approaches to maximum hours for consecutive operation

Both Connecticut and Nevada prohibit taxi drivers from working a shift longer than 12 consecutive hours (or more than 16 hours in any 24-hour period) and prohibit TNC drivers from using a digital network or providing prearranged rides for more than 14 consecutive hours (or more than 16 hours in any 24-hour period). Nevada additionally prohibits TNC drivers from "provid[ing] transportation services for more than 12 cumulative hours within a period of 24 consecutive hours."<sup>42</sup> Colorado law makes reference to "on-duty hours of service maximums" for taxis, but these maximums are not apparent in the law. Colorado also prohibits TNC drivers from driving for a TNC or other carrier for eight hours after being logged in to a TNC app for 12 hours, and prohibits TNC drivers from logging in for eight consecutive hours after having been logged in for 80 hours in any eight consecutive days. Michigan does not appear to limit consecutive hours driven.

### Analysis

Similar to a minimum driver age requirement, a cap on maximum consecutive hours driven may increase passenger safety. Since the Burlington vehicle for hire ordinance currently sets such a cap, and Uber and Lyft have similar internal policies, it may be appropriate to codify such requirements for all vehicles for hire.

## **5. Vehicle insurance requirements**

One of the most significant differences between existing standards for TNCs and taxis, both in Vermont and in other states throughout the country, is with respect to minimum required insurance coverage. Jurisdictions, even those states that regulate both taxis and TNCs at the state level, tend to impose significantly higher liability insurance minimums for taxis and other jitneys than for TNCs.

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<sup>40</sup> "Taking Breaks and Time Limits in Driver Mode." Lyft. <https://help.lyft.com/hc/en-us/articles/115012926787-Taking-breaks-and-time-limits-in-driver-mode>

<sup>41</sup> Kansal, Sachin. "Another Step to Prevent Drowsy Driving." Uber Newsroom. <https://www.uber.com/newsroom/drowsydriving/>.

<sup>42</sup> NAC § 706A.340

### Existing vehicle insurance requirements

Vermont state laws address insurance requirements for taxis and other jitneys. The owner of a jitney is required to carry liability insurance (or post a surety bond) for bodily injury or death in the following minimum amounts: for jitneys with a seating capacity of seven passengers or fewer, \$50,000 per person and \$100,000 per accident (double State minimums for private passenger autos); and for jitneys with a seating capacity of eight to 12 passengers, \$250,000 per accident. Additional minimum aggregate limits are set for jitneys with larger seating capacities. At least \$50,000 coverage for property damage is also required (the State minimum for private passenger autos is \$10,000).<sup>43</sup>

In contrast, Burlington requires taxis and other non-TNC vehicles for hire to maintain a minimum of \$500,000 in commercial liability insurance coverage. Three other Vermont municipalities set minimum coverage limits for taxis: Hartford requires the same coverage as Burlington; Rutland requires minimum bodily injury coverage of \$100,000 per person and \$300,000 per accident, along with \$20,000 coverage for property damage; and Rockingham matches State limits of \$50,000 bodily injury coverage per person and \$100,000 per accident.

Vermont law also requires every policy of insurance issued or renewed in the State to include coverage for accidents caused by uninsured, underinsured, or unknown motorists in the following amounts: \$50,000 for death or injury of one person; \$100,000 for death or injury of two or more persons; and \$10,000 for property damage.<sup>44</sup>

Although they provide similar for-hire transportation services, TNC drivers use their own private vehicles. For this reason, TNC insurance considerations are unique and coverage requirements are based on a two-period system. In period 1, when a driver is logged in to the TNC app but has not yet accepted a ride request, both Act 3 and the Burlington ordinance require them to be covered by minimum liability insurance for death and bodily injury in the same amounts the State requires for taxis: \$50,000 per person and \$100,000 per accident (plus the required uninsured and underinsured motorist coverage). In period 1, TNC drivers must also be covered by at least \$25,000 in property damage coverage. In period 2, when a driver is engaged in a prearranged ride, both Act 3 and the Burlington ordinance require significantly higher minimum combined coverage of \$1 million for death, bodily injury, and property damage, along with \$1 million in uninsured and underinsured motorist coverage. Act 3 also requires \$5,000 in medical payments (“Med Pay”) coverage in period 2. These requirements may be satisfied with coverage that is maintained either by the driver or the TNC. Both Uber and Lyft currently provide insurance coverage for their drivers that satisfies Vermont’s requirements.

### Other state approaches to vehicle insurance

Minimum insurance requirements for taxis in other states are remarkably varied. Connecticut requires taxis and livery vehicles with a capacity of fewer than seven passengers to carry liability coverage for death or bodily injury of at least \$50,000 per person and \$100,000 per

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<sup>43</sup> 23 V.S.A. §§ 841-843

<sup>44</sup> 23 V.S.A. § 941

accident (the same as Vermont), and at least \$10,000 in property damage coverage or, in the alternative, \$100,000 in single limit liability coverage.<sup>45</sup> There are higher minimums for taxi and van services with higher passenger capacities. Colorado requires taxis with seating capacities of seven or fewer passengers to carry at least \$500,00 in combined single limit coverage. As in Connecticut, higher minimum coverage requirements are imposed for taxi and van services with higher passenger capacities.<sup>46</sup> Michigan requires taxis to carry at least \$300,000 in combined single limit liability coverage and limousines to carry at least \$1 million in combined single limit liability coverage.<sup>47</sup> The Department was unable to determine Nevada's minimum insurance requirements for taxis.

Each of these states has minimum insurance requirements for TNCs that are similar to Vermont's. Connecticut, Michigan, and Nevada impose minimum liability insurance requirements for TNCs in period 1 that mirror those contained in Act 3, except Med Pay insurance is not required. Colorado also imposes the same requirements in period 1, except the minimum required property damage coverage is \$30,000. In period 2, Connecticut, Colorado, and Michigan require \$1 million in combined single limit liability coverage, while Nevada requires coverage of at least \$1.5 million.<sup>48</sup>

### An overview of insurance mechanics

Standard personal auto insurance policies have traditionally excluded a vehicle being used as a public or livery conveyance. However, in recent years DFR has received and approved forms filed by personal auto insurance carriers that not only exclude liability coverage while a vehicle is being used as a public or livery conveyance, but also during any period in which a vehicle is being used by an insured who is logged into a TNC platform as a driver. These forms are intended to clarify that the personal auto policy does not cover insureds logged into a TNC platform even if they have no passenger occupying the vehicle. Endorsements are available through some personal auto carriers, allowing an insured to purchase coverage for the period they are logged in to a TNC network but do not yet have a passenger, and there are few personal auto carriers that will provide coverage while the insured is driving for a TNC and has a passenger. There are also commercial auto policies available to individuals using their own cars while driving for TNCs. However, these policies are typically much more expensive than personal auto policies. The marketplace solution thus far has been for TNCs to purchase insurance for their drivers.

Carriers may provide commercial auto insurance coverage on either a "specifically described auto" or "any auto" basis. With the "specifically described auto" method, each vehicle must be listed on the policy declaration page in order to be covered by the policy. With the "any auto" method, vehicles do not have to be listed individually, but are covered for bodily injury and property damage for which the insured is legally liable. Taxis are typically covered on a

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<sup>45</sup> CGS § 14-29 (2012)

<sup>46</sup> § 723-31-12.4, C.R.S.

<sup>47</sup> MCL §§ 257.2119, 2121

<sup>48</sup> Conn. Public Act No. 17-140; § 40-10.1-604(2), C.R.S.; MCL § 257.2123; NRS § 690B.470

“specifically described auto” basis. However, DFR was unable to determine the exact method of coverage used by major TNCs such as Uber and Lyft, as they are not domiciled in Vermont.

Med Pay insurance pays for the medical and funeral services of the driver and all passengers in a vehicle following a car accident that results in injury or death, regardless of who is at fault. It has no deductible or co-pay and can help accident victims pay immediately for medical care, such as hospital stays. Med Pay coverage is used to complement liability coverage and is optional under Vermont law. It is difficult to estimate the cost of this coverage without knowing which method (“any auto” or “specifically described auto”) carriers use to provide it and whether the premium is based on number of drivers, hours driven, payroll, or some other basis. However, DFR has seen recent commercial auto filings for \$5,000 Med Pay coverage levels with additional annual premiums of \$67 per vehicle.

### Analysis

Many taxi drivers at the Department’s October 25 forum mentioned the high cost of insurance as a barrier to entry and/or success in the taxi industry. One Burlington-based taxi operator told the Department that carrying Burlington’s required \$500,000 commercial liability insurance coverage on two vehicles costs them approximately \$14,000 per year. The Department is unable to confirm the accuracy of this statement or the average premium for taxi drivers in Burlington or other municipalities, as premiums reflect drivers’ individual risk characteristics and drivers may utilize different insurance carriers. Of 6,792 total inquiries and 915 total complaints received by DFR’s insurance consumer services division in 2017 and 2018 (approximately 43 percent of which related to auto insurance), only two were complaints from taxi owners regarding the availability and cost of auto insurance, and none were from TNCs or TNC drivers. This is not to say other drivers have no complaints, only that the Department has not been made aware of them.

A 2013 survey by the Taxicab, Limousine & Paratransit Association showed that median local combined single limit liability minimums for taxis through the country were between \$300,000 and \$1 million, with average company premium per car of \$5,632 for fleets with fewer than 25 vehicles (excluding companies that were self-insured).<sup>49</sup> It is difficult to determine the reasonableness of existing taxi liability insurance minimums without access to specific claims data. However, data for private passenger non-fleet automotive liability claims may provide some limited insight. In 2017, approximately 781 bodily injury claims were paid in Vermont, totaling \$18,115,201 in paid losses, with an average loss of \$23,195. This average loss amount is less than the State’s minimum required per-person bodily injury coverage for private passenger automobiles (\$25,000) and for taxis (\$50,000). For property damage claims paid, the average loss was \$3,115.<sup>50</sup> Whereas taxis may report more frequent claims than private autos, the Department

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<sup>49</sup> Kortum, Katherine. “Between Public and Private Mobility: Examining the Rise of Technology-Enabled Transportation Services.” *TR News*. 302. Mar.-Apr. 2016.  
<https://onlinepubs.trb.org/onlinepubs/trnews/trnews302sr319.pdf>

<sup>50</sup> “Private Passenger Non-Fleet Automobile Liability.” 1Q2018. Independent Statistical Service, Inc., Insurance Services Offices, Inc., and National Independent Statistical Service. Fast Track Monitoring System.



would not expect average losses for bodily injury or property damage claims to be significantly higher.

In a recent issue brief, the National Association of Insurance Commissioners noted that “the risks associated with participating in [TNC] services are not yet completely understood and do not fit neatly into insurers’ current risk-pooling models, raising numerous insurance related questions.”<sup>51</sup> However, in 2016, market researcher Aite Group published an impact note comparing the driving behaviors of TNC drivers to average U.S. drivers. The report used data collected by a technology platform that uses smartphone sensors to measure and analyze driving behavior. Based on factors such as number of trips involving speeding, duration of time spent using a phone, and number of hard brakes, the report concluded that, on average, TNC drivers tend to be less risky than average drivers. The authors suspect that TNC drivers have vested economic interests in driving safely, motivated both by a desire to protect their cars as income sources and obtain high star ratings.<sup>52</sup> The Department was unable to find similar data related to the driving habits of taxi operators. The Department has access to a small amount of period 1 claims data from Uber and Lyft, which shows a very low number of Vermont claims in general, and even fewer reaching bodily injury or property damage coverage limits.

Based on the limited data available to the Department, it appears that existing State insurance requirements for taxis and TNCs are reasonable.

## **B. Fares and dynamic pricing**

The problem of asymmetric information is commonly cited as the reason taxi fares have historically been strictly regulated. As one scholar has explained:

The standard justification for regulating the level of taxi fares for street-hailed taxis is imperfect information. When passengers hail taxis on the street, they are poorly positioned to assess whether a fare that a taxi is proposing is reasonable because riders lack essential information. The passenger will not know when the next taxi

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<sup>51</sup> “Commercial Ride-Sharing.” National Association of Insurance Commissioners. Last updated Jan. 8, 2019. [https://www.naic.org/cipr\\_topics/topic\\_commercial\\_ride\\_sharing.htm](https://www.naic.org/cipr_topics/topic_commercial_ride_sharing.htm)

<sup>52</sup> Bezar, Gwenn. “Driving Analytics: Ridesharing Drivers are Safer than Average American Drivers.” Aite Group, LLC. 2016. <https://d1x6dm64pjo2h2.cloudfront.net/casestudies/Zendrive+and+Aite+Study.pdf>. “High star ratings” is a reference to a unique two-way rating system utilized by many TNCs. After each completed ride, riders and drivers rate each other’s performance. This system allows people to make more informed decisions by obtaining data in advance on a TNC driver’s (or passenger’s) behavior. For drivers, ratings and feedback indicate areas for improvement, and consistently low ratings may result in deactivation by the TNC. Uber and Lyft use five-star rating systems. A Lyft driver’s rating is an average of their most recent 100 rides while an Uber driver’s rating is an average of their last 500 rides. TNC drivers also have the opportunity to rate their passengers. If a Lyft driver rates a passenger 3 or lower (out of 5), then they won’t be matched again for any future rides. See, e.g.: “Star Ratings. What to Know as a Driver-Partner.” Uber. <https://www.uber.com/drive/resources/how-ratings-work/>; and “Driver and Passenger Ratings.” Lyft. <https://help.lyft.com/hc/en-us/articles/115013079948-Driver-and-passenger-ratings>

will come by and what it will charge, and searching for additional taxis to compare the prices that they would charge will be costly.<sup>53</sup>

The Burlington vehicle for hire administration office receives and responds to vehicle for hire passenger complaints, including with respect to taxi fares. A representative told the Department that they receive and respond to complaints that “vary in their nature from correct fares being charged to taxi drivers operating in a safe [and] professional manner.” An issue is “verified and severe enough to require the vehicle for hire board’s attention... once every few months.”<sup>54</sup> As noted in Section I, outside of Burlington, Vermont’s taxi market operates largely by dispatch. For that reason, there may not be a compelling reason for statewide regulation of taxi fares. However, regulation of fares by municipalities (like Burlington) with taxi flag markets may be justified.

#### Existing laws and regulations relating to fares and dynamic pricing

Burlington requires taxis that engage in street hails to use a meter to determine fares. The Burlington vehicle for hire licensing board sets maximum allowable meter rates. Taxis are required to have their meters calibrated by an approved third party and are prohibited from tampering with them. To prevent fraud, taximeters are subject to periodic inspection by city officials. Burlington requires TNCs to disclose either the fare or fare calculation method on their website or app and provide riders with the option to receive an estimated fare prior to entering the vehicle.

Burlington allows vehicles for hire to utilize dynamic market pricing (i.e., by adjusting rates according to supply and demand). However, if they choose to utilize dynamic market pricing, vehicles for hire must provide “clear and visible indication that such pricing is in effect before a passenger requests a ride and include a feature that requires riders to confirm that they understand such pricing will be applied in order for the ride request to be completed.”<sup>55</sup> Burlington’s ordinance also caps dynamic pricing during times of disaster or emergency. Although all vehicles for hire are permitted to utilize dynamic market or “surge” pricing, this method appears to be used exclusively by TNCs. A taxi driver at the October 25 public forum noted that it is easier for TNCs to successfully institute surge pricing because TNC fares are automatically calculated and paid via smartphone app. In contrast, taxi drivers would have to verbally communicate their intention to charge surge pricing to customers in advance of a ride, which makes it more likely a customer would reject the pricing (and the ride).

Other than Burlington, only three Vermont municipalities regulate any aspect of fares: Hartford and Rockingham require rates to be filed in advance with the town; and Bennington, Hartford, and Rockingham require rates to be displayed on a placard visible to passengers inside the taxi. Act 3 does not contain any provisions relating to TNC fares or dynamic market pricing.

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<sup>53</sup> Wyman, Katrina M. “Taxi Regulation in the Age of Uber.” 20 N.Y.U. J. Legis. & Pub. Policy 1 (2017). [www.nyujlpp.org/wp.../Wyman-Taxi-Regulation-in-the-Age-of-Uber-20nyujlpp1.pdf](http://www.nyujlpp.org/wp.../Wyman-Taxi-Regulation-in-the-Age-of-Uber-20nyujlpp1.pdf)

<sup>54</sup> Four such issues were presented to the vehicle for hire licensing board in 2018, one of which partially related to fares.

<sup>55</sup> Burlington, Vermont. Code of ordinances. § 30-24.



## Other state approaches to fares and dynamic pricing

State approaches vary with respect to fare regulation. Connecticut, Colorado and Nevada regulate taxi fares but Michigan does not. With respect to TNCs, Connecticut, Colorado, Michigan, and Nevada require upfront disclosure of fares and fare calculation methods and passengers to be given the option to receive estimated fares in advance. Only Nevada requires TNCs to file rates with the state. Connecticut allows TNCs to implement dynamic market pricing, but this must be disclosed to potential riders in advance, who must affirmatively accept such pricing. Colorado and Michigan are silent on dynamic market pricing. Connecticut and Nevada cap rates that may be charged by TNCs in an emergency; Connecticut to two and a half times the usual rates charged; and Nevada to two times the rates on file.

### Analysis

Some experts suggest vehicle for hire fares should be regulated to protect consumers against unfair price fluctuation. "Fare regulation is designed to ensure predictability in the amount customers will be charged, to eliminate price gouging, and to ensure a reasonable return for owners and drivers."<sup>56</sup> However, proponents of deregulation argue that, if left to market, fares will naturally stabilize:

In the long run, price changes help keep industries competitive. If, for example, a market has only a few firms and prices rise, this will motivate new producers to enter the industry and to increase supply through more efficient production and innovation. As more firms enter, greater competition between companies leads to higher-quality products or lower prices. The dynamism of prices is therefore a powerful balancing force in a market economy. When price fluctuations are restricted, as in the case of mandated taxi and limousine fares, the result can be surpluses or shortages of service that lead to wasteful production or insufficient business investment.<sup>57</sup>

Transportation consultant and former city planning official Bruce Schaller argues that there is little need to regulate fares in taxi markets like Vermont that predominantly consist of dispatch services, because consumers are able to choose which service to utilize based on their own experience and the experiences of others. "[T]he dynamics of competition and consumer choice act powerfully as a force for attractive service, competitive prices, innovation, and new services targeted to different market segments." The same argument may apply to TNC markets with multiple participants.<sup>58</sup> Likewise, in a 1984 study on taxi regulation, economists at the Federal Trade Commission concluded that "no persuasive economic rationale is available for

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<sup>56</sup> Transportation Research Board. "Between Public and Private Mobility: Examining the Rise of Technology-Enabled Transportation Services." Washington DC. 2016.

<https://www.nap.edu/read/21875/chapter/5#55>

<sup>57</sup> Farren, Michael, Christopher Koopman, and Michael D. Mitchell. "Ridesharing vs. Taxis: Rethinking Regulations to Allow for Innovation." Mercatus Center, George Mason University. May 25, 2017.

<https://www.mercatus.org/publications/ridesharing-vs-taxis-rethinking-regulations-allow-innovation>

<sup>58</sup> Schaller, Bruce. "Unfinished Business: A Blueprint for Uber, Lyft and Taxi Regulation." Schaller Consulting. September 20, 2016. [www.schallerconsult.com/rideservices/blueprint.pdf](http://www.schallerconsult.com/rideservices/blueprint.pdf)

some of the most important regulations. Restrictions on the total number of firms and vehicles and on minimum fares waste resources and impose a disproportionate burden on low income people.”<sup>59</sup> In markets where taxis are mostly street hailed, on the other hand, Schaller says regulation is a necessary response to market failure; in those markets, consumers have little choice or ability to provide feedback or comparison shop.<sup>60</sup>

Though it may serve to protect the public, strict taxi fare regulation may also prevent taxis from effectively competing with TNCs. While many taxi drivers at the October 25 public forum told the Department the meter rates set by Burlington are too low, if fares were increased, taxis may lose more customers to TNCs. On the other hand, because rates are set by the city, metered taxis may also not adjust rates downward to better compete with TNCs. “In markets where the lower cost of TNCs allows them to under-price taxis, particularly for travel to airports, taxi fare regulations do not allow taxis to adjust their fares downward to compete with TNCs. Such constraints on the pricing of taxi services contribute to a shift in demand from taxis to TNCs.”<sup>61</sup>

Fare disclosure requirements are an effective and straightforward means to ensure passengers get the information they need to make informed decisions. TNCs such as Uber and Lyft include up-front fare estimates to passengers through their apps. However, if such disclosure were not provided, passengers would face the same issue of asymmetric information that is a primary justification for regulation of taxi fares. Dynamic market pricing disclosure requirements also serve to protect riders from undesirable price fluctuations and predatory pricing by allowing passengers to make an informed choice whether to utilize a vehicle for hire service when rates are increased. It may be beneficial for the State to require such disclosure from all vehicles for hire. However, with respect to the regulation of taxi meter rates and requirements, municipalities are more capable of evaluating local needs.

### **C. Necessity and convenience**

In analyzing the appropriate extent of vehicle for hire regulation, an important consideration is the impact such regulation would have on access to affordable, reliable, and safe transportation. States have been especially attentive to the question of access for underserved populations, such as the elderly and low-income individuals.

TNCs undoubtedly provide a convenient transportation option for some consumers and may fill gaps in transportation needs. Surveys of Uber customers show that they tend to choose TNCs instead of taxis because of “shorter wait times and greater reliability and consistency.”<sup>62</sup>

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<sup>59</sup> Staley, Samuel R., Catherine Annis, and Matthew Kelly. "Regulatory Overdrive." Institute for Justice. October 2018. <https://ij.org/report/overdrive/>

<sup>60</sup> Schaller, Bruce. "Unfinished Business: A Blueprint for Uber, Lyft and Taxi Regulation." Schaller Consulting. September 20, 2016. [www.schallerconsult.com/rideservices/blueprint.pdf](http://www.schallerconsult.com/rideservices/blueprint.pdf)

<sup>61</sup> Transportation Research Board. "Between Public and Private Mobility: Examining the Rise of Technology-Enabled Transportation Services." Washington DC. 2016. <https://www.nap.edu/read/21875/chapter/5#57>

<sup>62</sup> Staley, Samuel R., Catherine Annis, and Matthew Kelly. "Regulatory Overdrive: Taxi Regulations, Market Concentration and Service Availability." Institute for Justice. October 2018. <https://ij.org/report/overdrive/>

However, not everyone benefits equally. According to a 2016 Pew Research Center report, although 28 percent of 18-29-year-olds have used a ride hailing service, only 4 percent of those aged 65 or older have used such a service.<sup>63</sup> In addition, those with higher incomes and those who lived in urban areas were significantly more likely to have used a TNC than their lower-income and rural counterparts.

This disparity is likely due in part to the way in which consumers access TNC services. Unlike traditional vehicle for hire services, TNCs do not engage in street hails and generally do not accept cash payments for fares. Instead, TNCs coordinate rides through a digital application via a consumer's smartphone. A consumer who does not own a smartphone (or who does not have access to a bank account or credit card) therefore will have trouble accessing TNC services. Although 77 percent of U.S. adults own a smartphone, smartphone ownership is not distributed equally across ages, incomes, or locations. Younger Americans are most likely to own a smartphone (94 percent of 18-29-year-olds versus 46 percent of those aged 65 or older), as are Americans with higher incomes (93 percent of those with incomes of \$75,000 or more versus 67 percent of those with incomes less than \$30,000) and urban Americans (83 percent of Americans living in urban areas versus 65 percent of those living in rural areas).<sup>64</sup> In addition, the Federal Deposit Insurance Corporation reports that approximately 9 million U.S. households are unbanked, with no bank account and no credit card to pay for services.<sup>65</sup>

Despite somewhat unequal access to TNC services, TNCs do increase transportation availability by providing a convenient transportation option for some consumers. However, the presence of a TNC competing in the market could theoretically lead to the exit of another vehicle for hire that formerly provided transportation to underserved populations. If the TNC does not make up for this loss of access, certain individuals could be negatively impacted. For example, individuals without smartphones or credit cards could lose access to reliable transportation if cash-based, telephone-dispatched or street-hailed taxi services are replaced with TNCs in their geographic area.

However, this risk may be mitigated or eliminated if TNCs introduce alternative methods of accessing and paying for TNC services that do not require the consumer to own a smartphone. This risk may also not materialize if cash-based vehicle for hire services continue to compete effectively in the market. The viability of more traditional cash-based vehicle for hire models might in turn depend on whether these services can adapt to an evolving market and the extent to which the regulatory environment encourages fair competition by imposing uniform requirements on all vehicles for hire.

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<sup>63</sup> Smith, Aaron. "Shared, Collaborative and on Demand: The New Digital Economy." Pew Research Center. May 19, 2016. [http://assets.pewresearch.org/wp-content/uploads/sites/14/2016/05/PI\\_2016.05.19\\_Sharing-Economy\\_FINAL.pdf](http://assets.pewresearch.org/wp-content/uploads/sites/14/2016/05/PI_2016.05.19_Sharing-Economy_FINAL.pdf)

<sup>64</sup> "Mobile Fact Sheet." Pew Research Center. February 5, 2018. <http://www.pewinternet.org/fact-sheet/mobile/>

<sup>65</sup> "Policy Implications of Transportation Network Companies." Transportation Institute, Texas A&M. Oct. 2017. (citing FDIC Survey of Unbanked and Underbanked Households). <https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-17-70-F.pdf>

## D. Nondiscrimination

There is much research available on discrimination in the provision of transportation services. Many studies focus on a heightened proclivity of taxi drivers, particularly in cities with large flag markets, to refuse service to non-white passengers. Others address discrimination in the taxi dispatch market. A recent study vehicle for hire services in Los Angeles notes that “[b]lack riders were 73 percent more likely than white riders to have a taxi trip cancelled and waited between six and 15 minutes longer than white riders, all else equal.” By contrast, black TNC users were four percent more likely than white riders to have their trip cancelled-- better, but still problematic. In the study author’s opinion, the reasons for the lower instance of discrimination in TNC service compared to taxi service are likely related to TNCs’ technological service model, including its guaranteed cashless payments and two-way driver and passenger star rating system, which gives rise to “greater (perceived or actual) driver accountability.”<sup>66</sup> Others have found higher instances of discrimination in TNC services. One study reported that “UberX drivers are nearly three times as likely to cancel a ride on a male passenger upon seeing that he has a ‘black-sounding’ name. This effect is robust across numerous model specifications and seems to be driven primarily by behavior in areas with low population densities. In these extreme cases drivers are more than four times as likely to cancel on [an] African American male passenger than on a white male passenger.”<sup>67</sup>

At least three Vermont municipal ordinances have provisions explicitly prohibiting vehicle for hire drivers from discriminating against passengers. Barre imposes a duty on drivers “to accept any person who seeks to use a taxicab service, provided the person is not intoxicated and conducts himself in an orderly manner.”<sup>68</sup> Montpelier similarly provides that “[n]o taxicab operator shall refuse service based on customers’ race, creed (religion), color, national origin, marital status, sex, sexual orientation, disability, or gender identity.”<sup>69</sup> Finally, Burlington requires all licensed vehicles for hire to adopt written policies prohibiting unlawful harassment or discrimination.

While it is unclear whether they impose similar requirements on taxis, Connecticut, Michigan, and Nevada require each TNC to adopt and require its drivers to comply with a policy prohibiting discrimination. Colorado does not require a written policy, but does specify that TNC drivers must comply with existing laws regarding discrimination. In fact, at least 24 states including Washington, DC, require TNCs to adopt anti-discrimination policies and many states also require TNCs to comply with all existing nondiscrimination laws. Both Uber and Lyft have adopted anti-discrimination policies, violation of which will result in a driver’s removal from the platform. It is unclear whether any Vermont taxi companies have such policies in place.

Given the potential for discrimination in the for-hire transportation industry, it may be beneficial to require all vehicle for hire companies to adopt written anti-discrimination policies

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<sup>66</sup> Brown, Anne Elizabeth. “Ridehail Revolution: Ridehail Travel and Equity in Los Angeles.” Thesis. UCLA. 2018. <https://escholarship.org/uc/item/4r22m57k>

<sup>67</sup> Ge, Yanbo, et. al. “Racial and Gender Discrimination in Transportation Network Companies.” National Bureau of Economic Research. Oct. 2016. <https://www.nber.org/papers/w22776.pdf>

<sup>68</sup> Barre, Vermont. Municipal ordinances. § 16-5(b).

<sup>69</sup> Montpelier, Vermont. Code of ordinances. § 9-1917.

and comply with all existing laws prohibiting discrimination of any kind. This would ensure consistent application of laws and regulations that are protective of both consumers and drivers.

### **E. Accessibility for passengers with disabilities**

Taxi companies are subject to Title III of the Americans with Disabilities Act of 1990 (the “ADA”), which states that “[n]o individual shall be discriminated against on the basis of disability in the full and equal enjoyment of specified public transportation services provided by a private entity that is primarily engaged in the business of transporting people and whose operations affect commerce.”<sup>70</sup> The ADA and corresponding federal regulations prohibit taxi companies from refusing service to persons with disabilities who can use a taxi, refusing to assist with mobility devices, or charging them higher fares because of their disabilities or mobility needs. In addition, taxi companies that add new vans to their fleets are required to make those vans wheelchair accessible or provide equivalent service. TNCs, on the other hand, hold themselves out as technology companies providing platforms to connect riders and drivers rather than transportation companies and have argued that, as such, they are not subject to the ADA.<sup>71</sup> Since 2014, Uber and Lyft have faced at least ten lawsuits from disability advocates for failing to provide adequate service for people in wheelchairs.<sup>72</sup> Federal courts have not yet resolved the issue of whether TNCs are “primarily engaged in the business of transporting people” or required to comply with the Title III of the ADA.

Uber and Lyft’s nondiscrimination policies apply to persons with disabilities, but neither guarantees wheelchair-accessible vehicle access in any market. Lyft states on its website that it has a policy “that passengers who use wheelchairs that can safely and securely fit in the car’s trunk or backseat without obstructing the driver’s view should be reasonably accommodated by drivers on the Lyft platform.”<sup>73</sup> It is unclear whether Uber has a similar policy, though both TNCs are testing accessible vehicle dispatch options in limited markets that do not include Vermont.

Consistent with Title III of the ADA, Act 3 prohibits TNC drivers from charging additional fees for providing prearranged rides to a person with physical disabilities because of the person’s disabilities or related accommodations. It also requires TNC drivers to comply with all applicable laws related to transporting service animals and accommodate them at no extra charge. Though Burlington’s ordinance does not require any vehicle for hire company to offer wheelchair-accessible vehicles, it does require such companies to provide on their website or mobile application the contact information of wheelchair-accessible service providers. Burlington also prohibits vehicles for hire from imposing “additional charges for providing services to persons with disabilities because of those disabilities,” requires companies and drivers to comply with

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<sup>70</sup> 42 U.S.C. § 12184.

<sup>71</sup> Reed, Rachel. “Disability Rights in the Age of Uber: Applying the Americans With Disabilities Act Of 1990 to Transportation Network Companies.” *Georgia State University Law Review*. Vol. 33 (Winter 2016-2017). <https://readingroom.law.gsu.edu/cgi/viewcontent.cgi?article=2887&context=gsulr>

<sup>72</sup> Taft, Molly. “Why Can't Uber and Lyft Be More Wheelchair-Friendly?” Dec. 11, 2018. <https://www.citylab.com/transportation/2018/12/ride-hailing-users-disabilities-wheelchair-access-uber/577855/>

<sup>73</sup> “Wheelchair Policy.” Lyft. <https://help.lyft.com/hc/en-us/articles/115012926827-Wheelchair-Policy>



applicable laws relating to the accommodation of service animals, and prohibits additional fares or fees from being charged for carrying a service animal.<sup>74</sup>

Connecticut, Colorado, Michigan, and Nevada laws provide similar nondiscrimination protections as Act 3 and Burlington’s ordinance for TNC riders with disabilities and prohibitions on charging increased fares because of such disabilities. In addition, Colorado requires TNC drivers to store a rider’s mobility equipment if their vehicle is reasonably capable of doing so and, if not, refer the rider to another driver or service provider that is able to accommodate such equipment. Connecticut requires TNCs to provide potential riders with “an opportunity to indicate that they need a wheelchair-accessible TNC vehicle. If the company cannot arrange such a ride, it must direct the potential rider to an alternative provider of wheelchair-accessible transportation, if available.”<sup>75</sup>

TNCs have the potential to increase transportation options for Vermonters whose access is limited because of physical disabilities. However, given the lack of clarity around whether the ADA applies to TNCs, it may be beneficial to take steps to ensure Vermonters with disabilities are able to take advantage of TNC services, particularly in the event existing options become less available as a result of TNCs’ impact on the market.

## **F. Data protection**

Uber and Lyft are participants in the sharing economy, “an economic model often defined as a peer-to-peer (P2P) based activity of acquiring, providing or sharing access to goods and services that are facilitated by a community based on-line platform.”<sup>76</sup> As such, TNCs collect and analyze large amounts of data on consumer demographics and behavior to develop and optimize their platforms and products.

Both drivers and riders wishing to establish an Uber user account must submit their name, email address, phone number, mailing address, payment information, date of birth, and government identification number (such as Social Security number, driver’s license number, or passport number) “if required by law.”<sup>77</sup> Uber maintains a continuous information gathering connection to their drivers whenever they are actively driving for Uber. However, Uber collects such data from passengers only if certain permissions are granted and only when the application is open on a user’s phone. Uber always collects data regarding the pick-up and delivery times for each passenger, the amount charged for each ride, and the distance traveled. Uber also collects information on hardware identification numbers, operating systems, and IP addresses of phones used by drivers and passengers. According to Uber, user information is used to assist in developing new services and products and to better ensure the drivers’ and passengers’ safety and ride quality. Uber also uses tracking cookies in browsers and their application to aid in

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<sup>74</sup> See 49 C.F.R. § 37.5; 28 C.F.R. § 36.302.

<sup>75</sup> Conn. Public Act No. 17-140.

<sup>76</sup> “Sharing Economy.” Investopedia. <https://www.investopedia.com/terms/s/sharing-economy.asp>

<sup>77</sup> “Privacy Policy.” Uber. <https://privacy.uber.com/policy>

marketing efforts. Uber’s policy is not to “sell or share [users’] personal information to third parties for third party direct marketing purposes.”<sup>78</sup>

Lyft has similar policies. However, Lyft also has an integrated but optional social network built into its application that collects and shares the information a user provides specifically to the social network component of the application. The Lyft website states that Lyft does not intentionally collect information on people under 13 years of age.<sup>79</sup>

States and municipalities can potentially benefit from anonymized information shared with them by TNCs. The National League of Cities advocates for data sharing arrangements between TNCs and local governments<sup>80</sup> and the National Association of City Transportation Officials (“NACTO”) suggests that real-time GPS information from ride-sharing companies can provide unique insights that assist municipalities with transportation planning. NACTO says that TNCs should be encouraged or required to collect and share trip routes, speeds traveled by the drivers, length of time from pick-up to delivery of passengers, and any denials or cancellations of services by drivers and passengers. With ride information, cities might more efficiently direct resources to fixing streets and lessening traffic congestion, better allocate curb space, and aid in finding and preventing potentially discriminatory practices to improve equity and accessibility of transportation services.<sup>81</sup> TNCs, however, have an interest in keeping such data private for reasons of competition. Although at least 34 states currently require TNCs to retain driver and trip records, only six have passed legislation requiring the sharing of such data with state regulatory agencies.<sup>82</sup>

## **G. Employment status of drivers**

The question of whether TNC drivers are employees or independent contractors is complex and subject to an evolving legal landscape. If TNC drivers were classified as employees, they would be subject to and covered by laws related to federal and state tax withholding, workplace protections, health care, worker’s compensation, and unemployment insurance requirements. However, TNC economic models are based on classification of drivers as independent contractors.<sup>83</sup>

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<sup>78</sup> “City Data Sharing Principles: Integrating New Technologies into City Streets.” Pew Research Center. January 2017. <https://nacto.org/wp-content/uploads/2017/01/NACTO-Policy-Data-Sharing-Principles.pdf>

<sup>79</sup> “Lyft Privacy Policy.” Lyft. <https://www.lyft.com/privacy>

<sup>80</sup> See “Cities, the Sharing Economy and What’s Next.” National League of Cities. 2015. <https://www.nlc.org/sites/default/files/2017-01/Report%20-%20the%20Sharing%20Economy%20and%20Whats%20Next%20final.pdf>

<sup>81</sup> “City Data Sharing Principles: Integrating New Technologies into City Streets.” Pew Research Center. January 2017. <https://nacto.org/wp-content/uploads/2017/01/NACTO-Policy-Data-Sharing-Principles.pdf>

<sup>82</sup> *Policy Implications of Transportation Network Companies*. Transportation Institute, Texas A&M. Oct. 2017. <https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-17-70-F.pdf>

<sup>83</sup> Though worker’s compensation and unemployment insurance may not be available to TNC drivers classified as independent contractors, Uber does offer drivers an optional “Driver Injury Protection” insurance product through Aon P.L.C. and OneBeacon Insurance Group in some states, which includes the following benefits: disability payments (earnings replacement to a maximum of \$500/week); medical expenses (to a maximum of \$1 million with no deductible or co-pay); and survivor benefits (to a maximum of \$150,000). Premium for this product is calculated at \$0.0375 per mile driven on covered

Thirty-two states have addressed the employment status of TNC drivers, either in TNC legislation or “marketplace contractor” laws reinforcing TNC drivers’ statuses as independent contractors. The most common approach by states is to presume that, so long as a set of conditions is met, drivers are independent contractors. Conditions may include that the TNC does not prescribe specific working hours, prohibit the driver from utilizing other TNC networks, assign the driver a specific territory, or prohibit the driver from engaging in other occupations, and that the TNC agrees in writing to the driver’s independent contractor status.

The Vermont Department of Labor (“VDL”) has issued guidance titled “Who is an Employee vs. Independent Contractor?” It states that VDL will presume unemployment insurance is required unless an employer can prove an employment relationship does not exist by satisfying the requirements of the “ABC Test,” as follows:

- A. Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact;
- B. Such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.<sup>84</sup>

In Vermont, as in other states, litigation over the distinction between employees and independent contractors tends to be highly fact-bound and not susceptible to easy summary or speculation about unknown future factual scenarios. As a new business model, TNCs face uncertainty in light of this. TNCs and other businesses in similar positions largely attempt to resolve this uncertainty via contract.

### **III. Findings and recommendations**

Though business models are different, taxis and TNCs serve the same primary purpose: safe, convenient, reliable transportation. While taxis have been providing transportation services for almost a century, TNCs are newcomers to the market, both innovative and disruptive. Many states struggle to determine the most appropriate way to encourage a variety of affordable, accessible transportation options, while protecting consumers and providing a level playing field for traditional taxi services in this new era of ride-hailing services.

This report discusses the approaches of four states with state-level vehicle for hire laws and/or regulations. Michigan is one such state. In 2016, Michigan revised its laws to create

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trips. This product has not been filed in Vermont. <https://help.uber.com/partners/article/driver-injury-protection?nodeId=ba03b1db-46f9-4350-9a39-8a98b83f813e>

<sup>84</sup> “Who is an Employee vs. Independent Contractor?” Vermont Department of Labor. <http://labor.vermont.gov/unemployment-insurance/employers/who-is-an-employee-vs-independent-contractor/>



uniform statewide standards for taxis and TNCs. Prior to this time, TNCs were unregulated in Michigan, taxis were regulated at the municipal level, and limousines were regulated by the Michigan Department of Transportation. Michigan’s Act 345 provides uniform regulation of all small vehicle passenger for-hire carriers “to provide for a level playing field and to include regulations that would provide for public safety and sound business practices.”<sup>85</sup> Michigan’s law also gives limited regulatory authority to airports to enact ordinances governing procedures and fees for vehicle for hire operations conducted on airport property.

Municipal regulation of taxis in Vermont is spotty, creating an environment that is difficult for companies and drivers to navigate and offers limited protection for consumers. State regulation of all vehicles for hire would impact Vermont municipalities to the extent that it alters existing regulatory frameworks by preempting all or a portion of municipal regulation. While this may relieve overburdened town clerks of the responsibility for administering vehicle for hire ordinances, loss of local control and imposition of a “one-size-fits-all” approach may not be appropriate for certain municipalities with unique needs. As the most populous municipality in Vermont with the most robust vehicle for hire market, and the only municipality that currently regulates TNCs, Burlington would be uniquely impacted by the preemptive statewide regulation of vehicles for hire.

Because they provide different approaches to transportation services, taxis and TNCs may warrant different treatment in some respects. However, this report identifies some areas where uniform vehicle for hire regulation may be beneficial, such as company registration, background checks, and certain minimum safety standards.<sup>86</sup> If the Legislature opts to enact such uniform vehicle for hire legislation, it may wish to consider allowing municipalities to retain or adopt regulations that are at least as protective as State standards (and also allowing Burlington International Airport to continue its airport-specific regulation).<sup>87</sup> This approach would implement a minimally burdensome level of state regulation that effectively protects the public and levels the vehicle for hire playing field, while preserving the ability of municipalities to craft local solutions to local problems.

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<sup>85</sup> Mich. Limousine, Taxicab, and Transportation Network Company Act. Act 345 of 2016.

[www.legislature.mi.gov/\(S\(0i1hgepifj04piyinyi1lswx\)\)/.../mcl-Act-345-of-2016.pdf](http://www.legislature.mi.gov/(S(0i1hgepifj04piyinyi1lswx))/.../mcl-Act-345-of-2016.pdf)

<sup>86</sup> The Legislature may also consider safety standards beyond the primary ones analyzed in Section II, such as health and physical fitness standards to prevent physically impaired drivers from operating a vehicle for hire (*see* Brattleboro, Rockingham, and Rutland ordinances) or a requirement like Burlington’s that drivers self-identify before passengers enter the vehicle. Regular vehicle inspections, vehicle age requirements, and signage and color requirements may also be considered.

<sup>87</sup> The Department makes no recommendation as to which State agency or department would be best suited to administer vehicle for hire regulation. Approaches in other states vary: Administration of Connecticut’s vehicle for hire laws is shared between the Department of Transportation and the Department of Motor Vehicles, with municipal police departments responsible for enforcement; in Colorado the Public Utilities Commission administers the vehicle for hire laws and rules; Michigan’s ordinance is administered by the Department of Licensing and Regulatory Affairs; and Nevada’s has both a Taxicab Authority (administering taxi regulations) and a Transportation Authority (administering TNC regulations) under the Department of Business and Industry.



**DEPARTMENT OF FINANCIAL REGULATION**

**A Study of Vehicles for Hire in the State of Vermont**

January 15, 2019

Michael S. Pieciak, Commissioner

**EXHIBIT 1**

Vermont municipal taxi licensing and fees										
Barre	Bennington	Brattleboro	Burlington	Hartford	Lyndonville	Montpelier	Rockingham	Rutland	St. Albans	Vergennes
Business license \$60 annually	Business license \$10 initial/\$5 annual renewal	Business license \$100 initial/\$50 annual renewal	Business license \$125 plus \$45 for background check annually	Business license \$50 annually	Business license \$10	Business license \$35 annually	Business license	Business license \$65 initial/\$40 annual renewal (plus \$25 per add'l vehicle)	Business license \$10	Business license \$25 annually
			\$0.25 per pick up or drop off in Burlington							
Driver license \$60 annually		Driver permit \$25 plus background check fees annually	Driver license \$5 annually	Driver certificate \$50 annually			Driver permit plus background check fees annually	Driver license \$50 annually	Driver license \$2 - \$5	

## EXHIBIT 2

Other state licensing and fees				
	Connecticut	Colorado	Michigan	Nevada
<b>Taxi company licensing</b>	<p>Obtain certificate of public convenience and necessity through Department of Transportation<sup>1</sup></p> <p>Fee: \$2,000</p>	<p>Obtain certificate of public convenience and necessity through Public Utilities Commission<sup>2</sup></p> <p>Fee: \$35 or \$800 if authority is requested within or between certain specified counties</p>	<p>Register annually with Department of Licensing and Affairs<sup>3</sup></p> <p>Fee: \$25 - \$100 upon initial registration plus annual renewal of \$100 for first vehicle, \$50 for second through ninth vehicles, and sliding scale for additional vehicles registered</p>	<p>Obtain certificate of public convenience and necessity through Taxicab Authority, a division of the Department of Business and Industry<sup>4</sup></p> <p>Fee: \$200</p> <p>Plus pay annual fee of \$75 per taxicab operated<sup>5</sup></p>
<b>TNC company licensing</b>	<p>Register annually with Department of Transportation<sup>6</sup></p> <p>Initial fee: \$50,000; annual renewal fee: \$5,000</p>	<p>Obtain and annually renew TNC permit from the Public Utilities Commission<sup>7</sup></p> <p>Fee: \$111,250</p>	<p>Same as above</p>	<p>Obtain permit and annually pay regulatory assessment based on gross operating revenue derived from Nevada intrastate operations<sup>8</sup></p> <p>Initial fee between \$6,000 (&lt; 100 drivers) and \$500,000 (&gt; 7,000 drivers)</p> <p>Annual regulatory assessment between \$10,000 (annual gross operating revenue ≤ \$250,000)</p>

<sup>1</sup> CGS § 13b-96

<sup>2</sup> CRS § 40-10.1-201

<sup>3</sup> MCL § 257.2104

<sup>4</sup> NRS § 706.421

<sup>5</sup> NRS § 706.471

<sup>6</sup> Conn. Public Act No. 17-140

<sup>7</sup> CCR § 723-6-6702

<sup>8</sup> NRS § 706A.140

Other state licensing and fees				
	Connecticut	Colorado	Michigan	Nevada
				and \$1.2 million (annual gross operating revenue > \$16 million)
<b>Taxi driver licensing</b>	Obtain public passenger endorsement from Commissioner of Motor Vehicles <sup>9</sup>  Fee: \$88.25	N/A	N/A	Obtain and annually renew taxi driver permit with Nevada Taxicab Authority <sup>10</sup>  Fee: \$91.25 initially (\$40 application fee plus \$51.25 fingerprint fee) and \$10 for renewal
<b>TNC driver licensing</b>	N/A	N/A	N/A	N/A

<sup>9</sup> Public Passenger Endorsements. Conn. Dept. of Motor Vehicles. <https://www.ct.gov/dmv/cwp/view.asp?a=805&q=244782>

<sup>10</sup> Driver Permit Requirements. Nev. Taxicab Auth. [http://taxi.nv.gov/Driver\\_Info/Driver\\_Permit\\_Requirements/](http://taxi.nv.gov/Driver_Info/Driver_Permit_Requirements/)

**EXHIBIT 3**

<b>Background checks and disqualifying convictions</b>						
	<b>Act 3: TNCs only</b>	<b>Burlington: TNCs and taxis</b>	<b>Barre: Taxis only</b>	<b>Brattleboro: Taxis only</b>	<b>Hartford: Taxis only</b>	<b>Rockingham: Taxis only</b>
<b>Background checks</b>	Companies required to conduct annual local, state, and national background checks of drivers through accredited entity	Annual; company can conduct through accredited entity or choose to have city conduct	Applications referred to chief of police for investigation	Upon application, record check required to be conducted through Vermont Crime Information Center	Chief of police has discretion to consider applicant's police record	Upon application, record check required to be conducted through Vermont Crime Information Center
<b>Dis-qualifying convictions</b>	<b>Ever:</b> <ul style="list-style-type: none"> <li>• Sex offender</li> <li>• Homicide</li> <li>• Manslaughter</li> <li>• Kidnapping</li> <li>• Offense involving sexual exploitation of children</li> </ul>	<b>Ever:</b> <ul style="list-style-type: none"> <li>• Sex offender</li> <li>• Homicide</li> <li>• Manslaughter</li> <li>• Kidnapping</li> <li>• Sex assault</li> </ul>		<b>Ever:</b> Any felony		<b>Ever:</b> Any felony
	<b>Within last 7 years:</b> <ul style="list-style-type: none"> <li>• a "listed crime" [13 VSA § 5301(7);</li> <li>• Felony for selling, dispensing, or trafficking regulated drug</li> <li>• Felony fraud, larceny, or embezzlement</li> <li>• Comparable offense in another jurisdiction</li> </ul>	<b>Within last 7 years:</b> <ul style="list-style-type: none"> <li>• DUI</li> <li>• Felony for sale or possession of controlled substance</li> <li>• Offense involving threats, physical violence, weapon</li> <li>• Felony involving reckless driving, negligent operation, or leaving scene of accident</li> </ul>				

**Background checks and disqualifying convictions**

	<b>Act 3: TNCs only</b>	<b>Burlington: TNCs and taxis</b>	<b>Barre: Taxis only</b>	<b>Brattleboro: Taxis only</b>	<b>Hartford: Taxis only</b>	<b>Rockingham: Taxis only</b>
	<p><b>Within last 5 years:</b> Subject to civil suspension for DUI</p>		<p><b>Within last 5 years</b> (operator's license only):</p> <ul style="list-style-type: none"> <li>• Any felony</li> <li>• 3+ moving violations</li> </ul>	<p><b>Within last 5 years:</b></p> <ul style="list-style-type: none"> <li>• Negligence in civil action for damages in 2+ motor vehicle accidents</li> <li>• Driving under the influence</li> <li>• Careless or negligent operation</li> </ul>	<p><b>Within last 5 years:</b> Serious motor vehicle conviction (DWI, OOC, DLS, OSC-criminal, etc.)</p>	<p><b>Within last 5 years:</b></p> <ul style="list-style-type: none"> <li>• Negligence in civil action for damages in 2+ motor vehicle accidents</li> <li>• Driving under the influence</li> <li>• Careless or negligent operation</li> </ul>
	<p><b>Within last 3 years:</b></p> <ul style="list-style-type: none"> <li>• 3+ moving violations;</li> <li>• grossly negligent operation</li> </ul>	<p><b>Within last 3 years:</b></p> <ul style="list-style-type: none"> <li>• 3+ moving violations;</li> <li>• driving on a suspended or revoked license</li> </ul>	<p><b>Within last 3 years</b> (initial application for driver's license only):</p> <ul style="list-style-type: none"> <li>• At fault for collision involving property damage &gt; \$1000 or personal injury requiring &gt; 2 days hospitalization for any person involved</li> </ul>		<p><b>Within last 3 years:</b> 2+ moving violations</p>	

**Background checks and disqualifying convictions**

	Act 3: TNCs only	Burlington: TNCs and taxis	Barre: Taxis only	Brattleboro: Taxis only	Hartford: Taxis only	Rockingham: Taxis only
			<p><b>Within last 2 years</b> (initial application for driver's license only):</p> <ul style="list-style-type: none"> <li>• Any felony</li> <li>• Driving under the influence of alcohol or drugs</li> <li>• 3+ moving violations</li> <li>• Breach of the peace for destruction of property, assaulting, beating, or striking another person</li> <li>• 2+ convictions for intoxication</li> </ul>			
			<p><b>Within last year</b> (driver's license renewal only):</p> <ul style="list-style-type: none"> <li>• Any felony</li> <li>• Driving under the influence of alcohol or drugs</li> <li>• Breach of the peace for destruction of property, assaulting, beating, or striking another person</li> </ul>		<p><b>Within last year:</b> License suspension</p>	

**Background checks and disqualifying convictions**

	<b>Act 3: TNCs only</b>	<b>Burlington: TNCs and taxis</b>	<b>Barre: Taxis only</b>	<b>Brattleboro: Taxis only</b>	<b>Hartford: Taxis only</b>	<b>Rockingham: Taxis only</b>
		<p><b>Other:</b>                      City has discretion to disqualify if determined driver would jeopardize health, safety, or general welfare of public</p>			<p><b>Other:</b>                      Any criminal activity, criminal convictions, or contact with law enforcement deemed by chief of police to be not in the best interest of public safety</p>	