

Department of Legislative Services
 Maryland General Assembly
 2015 Session

FISCAL AND POLICY NOTE

Senate Bill 868 (Senator Ferguson)
 Finance

Public Utilities - Transportation Network Services

This bill defines and exempts from the definition of a common carrier “transportation network companies” and “transportation network operators.” Statutory provisions related to for-hire driving services do not apply to a transportation network company or a transportation network operator. Statutory provisions related to rate regulation by the Public Service Commission (PSC) do not apply to “transportation network services,” a transportation network company, or a transportation network operator. A separate regulatory system is established for transportation network services that encompasses transportation network companies and transportation network operators, subject to specified requirements.

The bill takes effect July 1, 2015.

Fiscal Summary

State Effect: Special fund expenditures for PSC increase by \$109,300 in FY 2016 for staff needed to implement the bill. Future year expenditures reflect annualization and the elimination of one-time costs. Special fund revenues increase correspondingly from assessments imposed on public service companies (which does *not* include transportation network companies, as they are exempt under the bill). Maryland Insurance Administration special fund revenues increase minimally in FY 2016 due to \$125 rate and form filings fees. The volume of the filings that must be reviewed may necessitate additional contractual support for that year only.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	\$109,300	\$104,100	\$108,800	\$113,800	\$119,000
SF Expenditure	\$109,300	\$104,100	\$108,800	\$113,800	\$119,000
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local revenues decrease to the extent local governments would otherwise receive fees, taxes, or other revenues from transportation network companies or transportation network operators.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Transportation network company” means a person that uses a digital network or software application to connect a passenger to transportation network services. “Transportation network services” means transportation of a passenger between points chosen by a passenger that is prearranged by a transportation network company. It does not include (1) taxicab service; (2) specified for-hire driving services regulated by PSC; or (3) passenger services engaged by a passenger hailing a vehicle from the street.

“Transportation network operator” means an individual who owns or operates a motor vehicle that is (1) the individual’s personal motor vehicle or a motor vehicle that is otherwise authorized for use by the individual; (2) not registered as a motor carrier under a specified section of the Transportation Article; and (3) used to provide transportation network services. For purposes of the bill, transportation network services are considered to:

- begin when a transportation network operator accepts a request for transportation received through the transportation network company’s digital network or software application;
- continue while the transportation network operator transports the passenger in the transportation network operator’s motor vehicle; and
- end when the passenger exits the transportation network operator’s motor vehicle.

Exemptions from Current Law

The bill creates three exemptions from the current regulatory structure for transportation services:

- a “common carrier” as defined in current law does not include a transportation network company or a transportation network operator;

- statutory provisions related to rate regulation by PSC do not apply to transportation network services, a transportation network company, or a transportation network operator; and
- statutory provisions related to for-hire driving services do not apply to (1) a motor vehicle used by a transportation network operator to provide transportation network services; (2) a transportation network company; or (3) a transportation network operator.

New Regulatory Structure for Transportation Network Services

A separate regulatory system is established for transportation network services that encompasses transportation network companies and transportation network operators. A transportation network operator must be age 21 or older and must possess (1) a valid driver's license and (2) proof of registration and proof of insurance for the motor vehicle that is used for transportation network services. A transportation network company must:

- register with PSC;
- create an application process for an individual to apply for registration as a transportation network operator;
- maintain a current registry of the company's transportation network operators;
- submit proof to PSC that the company is registered to do business in the State and maintains a website that provides the company's customer service telephone number or email address;
- conduct, or have a third party conduct, a safety inspection of the motor vehicle that a transportation network operator will use before the motor vehicle may be used to provide transportation network services (the inspection must be consistent with current approved standards);
- provide specified information on its website related to customer service, the company's zero tolerance policy established pursuant to the bill, and complaint reporting procedures; and
- maintain specified records related to transportation network operators and applicants, including information collected through a criminal history records check, safety inspections, transportation network services arranged by the company, consumer complaints and complaint investigations, the transportation

network company's insurance policy, and accidents that involve a motor vehicle that is used for transportation network services provided by the company.

Application Process for Transportation Network Operators

An individual may submit an application to a transportation network company for registration as a transportation network operator. Before approving an application, a transportation network company must (1) conduct, or have a third party conduct, a local and national criminal history records check for each applicant, using specified databases and (2) obtain and review a driving record check for each applicant.

A transportation network company may not approve an application for an applicant who (1) within the past seven years, has been convicted of a specified crime of violence, sexual abuse, robbery, or fraud punishable as a felony; (2) within the past seven years, as shown in the driving record check, has been convicted of driving under the influence, failure to remain at the scene of an accident, or fleeing or eluding the police; or (3) within the past three years, as shown in the driving record check, been convicted of reckless driving or driving with a suspended or revoked license.

Zero-tolerance Policy

A transportation network company must institute a zero-tolerance policy on the use of drugs or alcohol while an individual is arranging or providing transportation network services. The company must immediately suspend an individual who is arranging or providing transportation network services on receipt of a passenger complaint containing a reasonable allegation that the individual violated the zero-tolerance policy and must conduct an investigation into the alleged violation. A suspension lasts for the duration of the investigation.

Discriminatory Conduct

A transportation network company must adopt a policy prohibiting specified discriminatory conduct and notify peer-to-peer transportation network operators of the policy. A transportation network operator must comply with the policy and with all applicable laws regarding discriminatory conduct.

A transportation network company must adhere to further specified requirements when providing transportation network services to an individual with a disability. For example, a transportation network company may not (1) impose additional or special charges on an individual with a disability for providing services to accommodate the individual or (2) require that an individual with a disability be accompanied by an attendant. Further, by January 1, 2016, each transportation network company must (1) ensure that the

company's website is accessible to the blind and visually impaired and the deaf and hard-of-hearing and (2) provide a report to PSC on how the company intends to increase access to wheelchair-accessible transportation network services to individuals with disabilities.

Charges for Transportation Network Services

A transportation network company or a transportation network operator may (1) offer transportation network services at no cost; (2) suggest a donation for transportation network services provided; or (3) subject to specified conditions, charge a fare for transportation network services provided.

If a fare is charged, a transportation network company or a transportation network operator must disclose the following information to a passenger before the passenger arranges a trip: (1) the method for calculating the fare; (2) the applicable rate being charged; and (3) an estimated fare for the transportation network services that will be provided.

The transportation network company, on completion of transportation network services provided by a transportation network operator, must transmit an electronic receipt to the passenger's email address or mobile application documenting (1) the origin and destination of the trip; (2) the total time and distance of the trip; and (3) a breakdown of the total fare paid, if any.

Insurance Requirements and Accidents

For accidents involving a transportation network operator during the period of time in which a transportation network operator *is* providing transportation network services, the following is required:

- primary automobile liability insurance that covers the transportation network operator's provision of services in the amount of \$1,000,000 per incident for bodily injury and property damage; and
- uninsured motorist insurance coverage.

For accidents involving a transportation network operator during the period of time in which a transportation network operator is logged into the transportation network company's digital network and available to provide transportation network services but *is not* providing transportation network services, the following is required:

- automobile liability insurance for bodily injury and property damage that meets or exceeds the minimum coverage requirements under current law; and

- automobile liability insurance that meets or exceeds the minimum coverage requirements under current law.

The above insurance requirements may be satisfied by an automobile liability policy maintained by the transportation network operator, the transportation network company, or both. These requirements must be deemed to satisfy the financial responsibility requirement for a motor vehicle.

A transportation network company *must* maintain automobile liability insurance in the above amounts to provide coverage in the event a participating transportation network operator's own automobile liability insurance policy excludes coverage according to its policy terms or does not provide the minimum coverage required. However, insurers that write automobile liability insurance in the State may exclude any and all coverage and the duty to defend afforded under the owner's insurance policy for any loss or injury that occurs while an insured vehicle provides or is available to provide transportation network services if the exclusion is expressly set forth in the policy and meets other specified requirements.

If an accident occurs involving a motor vehicle that is being used for transportation network services, the transportation network operator must provide proof of his or her personal insurance and liability coverage and must cooperate and facilitate the exchange of information related to the accident.

Vehicle Requirements

A motor vehicle used to provide transportation network services must:

- have a manufacturer's rated seating capacity of eight or fewer individuals, including the driver;
- have at least four doors and meet applicable federal motor vehicle safety standards for vehicles of its size, type, and proposed use;
- be no more than 10 model years of age at entry into service and no more than 12 model years of age while being used to provide transportation network services; and
- display a consistent and distinctive trade dress consisting of a logo, an insignia, or an emblem at all times that the transportation network operator is providing transportation network services, subject to specified requirements.

Records

Subject to specified conditions, if PSC has a reasonable basis to suspect that a transportation network company is not in compliance with the bill, the commission may inspect the company's records at the company's place of business or an agreed-on third-party location to the extent necessary to determine whether the company is in compliance.

State Preemption

Notwithstanding any other law, transportation network companies and transportation network operators are governed exclusively by the bill's provisions and any regulations adopted by PSC in accordance with the bill. A county or municipality may not (1) impose a tax on or require a transportation network company or transportation network operator to obtain a license if the tax or license relates to providing transportation network services or (2) subject a transportation network company to a local permitting process, rate limitation, or any other local requirement.

Current Law: PSC generally regulates persons engaged in the public transportation of individuals for-hire in vehicles such as cars, vans, limousines, and buses.

Common Carriers

"Common carrier" means a person, public authority, or federal, State, district, or municipal transportation unit that is engaged in the public transportation of persons for hire, by land, water, air, or any combination of them. It includes, among others:

- a car company, motor vehicle company, automobile company, or a motor bus company;
- a taxicab company; and
- a transit company.

It does not include a county revenue authority, a toll bridge or other facility owned and operated by a county revenue authority, a vanpool or launch service, or a for-hire water carrier.

Each common carrier must provide reasonable, proper, and equal facilities for the prompt interchange and transfer of passengers between its lines and the lines of every other common carrier. A common carrier may not discriminate against other common carriers in transferring, receiving, or forwarding passengers to or from other common carriers.

In addition to other information that PSC requires, the tariff schedules of each common carrier must show (1) all of the current rates, fares, and charges for the transportation of passengers within the State between specified points; (2) the points between which passengers will be carried; (3) the classification of passengers; (4) the privileges or facilities granted; and (5) all rules and regulations that may change, affect, or determine any part of the aggregate of the rates, fares, or charges or the value of the service rendered.

Motor Carrier Permits for Vehicles

Generally, a motor carrier permit is required for a *passenger motor vehicle* used in the transportation of persons for hire. A motor carrier permit may not be issued unless PSC, after considering the number of vehicles the applicant will use, the rate the applicant will charge, the potential demand, the qualifications of the applicant, and any other factors that PSC considers relevant, determines that the issuance of a motor carrier permit will be best for the public welfare and convenience. PSC may suspend, revoke, or subsequently deny a motor carrier permit for specified violations.

Taxicab Permits

A person must have a permit issued by PSC whenever the person operates as a taxicab business in or from a point in Baltimore City, Baltimore County, the City of Cumberland, or the City of Hagerstown. Local jurisdictions regulate taxicabs outside of these areas. An applicant for a taxicab permit to operate a taxicab business must apply to PSC, which must issue a permit if, after investigation, PSC determines that issuing the permit would be best for the public welfare and convenience.

In determining whether to issue a permit, PSC must consider all relevant factors including the number of taxicabs to be used, the taxicab and other transportation services already available in the locality, and the rate to be charged. PSC must reject an application or revoke or suspend an existing permit if it appears that a taxicab company is making an effort to mislead the public by imitating the name, design, or distinctive combination of colors of any taxicab already approved by PSC. Each taxicab must have the name of the permit holder displayed on each side of the vehicle and the word “taxicab” conspicuously displayed.

A taxicab for which a permit is required may not be operated unless the permit holder:

- obtains a liability insurance policy that is approved by PSC and insures the permit holder and taxicab driver against liability to a passenger or member of the public for property damage, personal injury, or death resulting from an accident in which the taxicab is involved; or

- deposits with PSC a bond with a casualty or surety company authorized to do business in the State that is approved by PSC and is made out to the State as obligee for the use and benefit of passengers and members of the public, and undertakes to indemnify passengers and members of the public against property damage, personal injury, or death resulting from an accident in which the taxicab is involved.

Taxicabs are subject to specified requirements for operation, fares, and rates. Taxicabs may only charge the rate of fare or charge established by law, which must be displayed in each taxicab, and must give a receipt of fares on request. A driver of a taxicab may not operate the taxicab recklessly, in an unsafe manner, or in disregard of the laws or municipal ordinances governing the operation of motor vehicles.

Individuals Licensed to Provide For-hire Driving Services

Current law relating to for-hire driving services supplements other law relating to the operation and licensing of motor vehicles. It applies to any motor vehicle used in the transportation of persons in exchange for remuneration except (1) motor vehicles designed to transport 15 or more persons and (2) subject to specified conditions, transportation solely provided by or on behalf of a unit of government or certain nonprofits, provided that the entity requires a criminal history records check and driving record check for its drivers.

Generally, a person may not operate a motor vehicle for hire in the State under a permit or authorization to transport passengers (such as a motor carrier permit) issued by PSC or the appropriate local authority unless the person holds a for-hire driver's license issued by PSC. Certain exceptions apply for local governments that issue taxicab licenses.

Generally, an applicant for a for-hire driver's license must (1) submit to PSC a completed application; (2) state on the form that the applicant is applying for a passenger-for-hire driver's license or a taxicab driver's license; (3) pay an application fee set by PSC; (4) file with the application two recent photographs; and (5) apply to the Criminal Justice Information System Central Repository for a State criminal history records check as specified. PSC must require a driving record check of the applicant, attach one of the photographs to the for-hire driver's license when issued, and file the other photograph with the for-hire driver's license application. In addition to the State criminal history records check, PSC may require an applicant to obtain a federal criminal history records check.

After the initial criminal history records check is complete, PSC must issue a passenger-for-hire driver's license or a taxicab driver's license, as appropriate, to each applicant that meets the statutory requirements. A for-hire driver must have the license in his or her possession whenever operating a motor vehicle for hire.

PSC may deny an applicant a license or suspend or revoke the license of a licensee if the applicant or licensee has been convicted of a crime that bears a direct relationship to the applicant's or licensee's fitness to serve the public as a for-hire driver.

Civil Penalties

Generally, a person may not transport, solicit for transport, or agree to transport any person or baggage in a motor vehicle for hire unless the operator of the motor vehicle is licensed by PSC. A person who owns or is in charge of a motor vehicle may not allow the motor vehicle to be used in violation of the laws relating to for-hire driving services. Subject to specified hearing provisions, PSC may impose a penalty of up to a \$500 fine for each violation.

Personal Automobile Insurance

Maryland law requires an owner of a motor vehicle that is required to be registered in the State to maintain insurance for the vehicle during the registration period. The security required must provide at least the payment of claims (1) for bodily injury or death arising from an accident of up to \$30,000 for any one person and up to \$60,000 for any two or more persons; (2) for property of others damaged or destroyed in an accident of up to \$15,000; (3) unless waived, for personal injury protection of \$2,500 per person; and (4) for uninsured motorist coverage in the same amounts as required for bodily injury or death. Automobile liability insurance coverage is mandatory in 49 states and the District of Columbia. Maryland law requires drivers to purchase uninsured motorist coverage.

Insurance or Bonds Required for Motor Vehicles Carrying Passengers

In Maryland, a motor vehicle carrying passengers for which a motor carrier permit is required may not be operated unless the owner maintains a minimum liability insurance policy or bond for that vehicle. As shown below, this security is greater than the requirement for personal vehicles. The owner of the motor vehicle must file proof of either the insurance coverage or the bond with PSC. Coverage minimums vary based on the carrying capacity of the vehicle. The minimum per-accident insurance required for each motor vehicle is:

- with a seating capacity of 7 passengers or fewer: \$50,000 for injury to any 1 person, \$100,000 for injuries to 2 or more persons, and \$20,000 for property damage; or a \$120,000 combined single limit.
- with a seating capacity from 8 to 15 passengers: \$75,000 for injury to any 1 person, \$200,000 for injuries to 2 or more persons, and \$50,000 for property damage; or a \$250,000 combined single limit.

- with a seating capacity of 16 passengers or more: \$75,000 for injury to any 1 person, \$400,000 for injuries to 2 or more persons, and \$100,000 for property damage; or a \$500,000 combined single limit.

Washington Metropolitan Area Transit Commission

The Washington Metropolitan Area Transit Commission (WMATC) was created in 1960 by the Washington Metropolitan Area Transit Regulation Compact to regulate certain transportation carriers on a coordinated regional basis. Today, WMATC regulates private sector passenger carriers, including some sedan and limousine operators, transporting passengers for hire between points in the Washington Metropolitan Area Transit District (generally, all of Washington, D.C., parts of Northern Virginia, and Montgomery and Prince George's counties).

PSC includes its share of the WMATC budget in its own budget. Budget allocations are based upon the population of the compact signatories in the compact region. In Maryland, this includes Montgomery and Prince George's counties. Maryland's share of WMATC's fiscal 2015 budget is \$375,227.

Background: The bill creates a regulatory system for transportation network companies and transportation network operators. There are currently multiple services that likely meet these definitions. For example, Uber Technologies, LLC and Lyft likely meet the definition of a "transportation network company," with the drivers for certain Uber services (UberX and UberXL) and Lyft likely meeting the definition of "transportation network operator." The companies have developed applications that use a mobile phone's GPS to detect the user's location and connect the user with the nearest available driver (transportation network operator).

The various Uber services are generally reflective of the mode of transportation offered. For example, UberX offers "everyday cars," Uber Black offers "high-end sedans," and Uber SUV offers an SUV to seat up to six people. These services are coordinated through a mobile phone application created and owned by Uber Technologies, LLC.

Regulation as a Common Carrier by PSC

In May 2013, PSC initiated Case No. 9325 involving UberBlack and UberSUV (which are Uber's motor carrier services). In February 2014, PSC issued an order in the case approving a proposed settlement between Uber and PSC staff. Under the terms of the settlement, Uber's subsidiary, Drinnen LLC, agrees to be treated as a common carrier and must file for a motor carrier permit with PSC. The settlement also requires Drinnen to provide PSC with the names of all drivers who accept trip requests through Uber's digital

platform in Maryland. Drinnen must file with PSC a schedule of its times, rates, and charges, which may include maximum and minimum rates and surge pricing. This information will also be made available to the public on the Internet.

A remaining issue in Case No. 9325 concerns draft regulations that would govern all nontaxicab for-hire carriers, including transportation network operators that use drivers who are not already licensed by PSC. The draft regulations, which were filed by PSC's Office of Staff Counsel after receiving input from a working group, are the subject of a rulemaking (RM 55) on March 20, 2015.

Insurance

One of the biggest concerns expressed by citizens and regulators related to ride-share programs is safety, and a large component of driver and passenger safety is automobile insurance. Both Uber and Lyft (the two most prominent transportation network companies in Maryland), currently provide commercial automobile insurance after a ride request has been accepted until the time the ride has ended in the application for their personal vehicle transportation services. Uber and Lyft each provide \$1.0 million in liability coverage, equal to the amount specified in the bill.

Uber's limited excess policy provides coverage when a driver is signed into the application but before a ride is accepted. The policy provides coverage for bodily injury up to \$50,000 per person per accident with a total of \$100,000 per accident and up to \$25,000 per accident for property damage. This policy is contingent to a driver's personal automobile insurance policy, which means it will only pay if the driver's personal automobile insurer declines a claim or pays nothing on a claim. This policy meets the minimum insurance security required by Maryland law.

Recent Activities in Other States

In September 2014, California enacted legislation that sets insurance standards for ride-share companies. Effective July 2015, the legislation requires ride-share vehicles to have \$50,000 coverage per injury in an accident with up to \$100,000 covered and \$30,000 for property damage before the driver picks up a passenger.

In October 2014, the Florida Office of Insurance Regulation announced that Uber's insurance policy legally meets the minimum insurance requirements in that state. In the same month, the South Carolina Department of Insurance also found that Uber's insurance policy legally meets that state's minimum insurance requirements, and the D.C. Council voted to approve new rules governing ride-share services, including a requirement that a transportation network company provide coverage of at least \$1.0 million per occurrence

for accidents when a passenger is in a vehicle being used for transportation network services.

In February 2015, Virginia passed legislation establishing a regulatory framework for the application based car services, allowing them to legally operate in the State. Virginia's legislation includes the following:

- companies must pay \$100,000 for a license to operate in Virginia;
- operators must be at least 21 years of age and properly licensed to drive;
- operators must undergo a background check that includes a comprehensive review for felonies and a search of the sex offender and crimes against minors registry;
- the company or operator must have insurance that covers up to \$1.0 million in accident damage; and
- operators must abide by a zero-tolerance policy regarding drug and alcohol use.

State Fiscal Effect: PSC special fund expenditures increase by \$109,302 in fiscal 2016, which accounts for the bill's July 1, 2015 effective date. This estimate reflects the cost of hiring one administrative specialist and one *half-time* assistant staff counsel to implement and oversee the regulation of transportation network services. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.5
Salaries and Fringe Benefits	\$95,554
Other Operating Expenses	<u>12,748</u>
Total FY 2016 PSC Expenditures	\$109,302

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Special fund revenues increase correspondingly from assessments imposed on public service companies, as authorized under current law. However, as noted above, this does *not* include transportation network companies, as they are not considered public services companies under the bill. PSC must instead impose assessments on public service companies, including electric companies, gas companies, and common carrier companies (such as taxicab companies).

The Department of Legislative Services notes that PSC includes a portion of WMATC's budget in its own budget. As noted above, WMATC regulates certain types of for-hire transportation services in Montgomery and Prince George's counties. WMATC, like PSC, must regulate transportation network companies under the bill, but funding for any expenditures will not be from assessments on those companies.

Local Fiscal Effect: A county or municipality is prohibited from (1) imposing a tax on or requiring a transportation network company or a transportation network operator to obtain a license if the tax or license related to providing transportation network services and (2) subjecting a transportation network company to a permitting process, rate limitation, or any other local requirement. Local revenues decrease to the extent that local governments would otherwise receive permit, fee, tax, or other revenue from transportation network companies or transportation network operators.

Small Business Effect: Many transportation network operators may be considered small businesses. The effect of the bill on these businesses is unclear, as they are currently operating outside the traditional regulatory structure for transportation services. Transportation network operators benefit to the extent that the bill precludes PSC from regulating their service under the current for-hire transportation structure – the decision on which has yet to be made by PSC. However, taxicab companies are also generally small businesses, and may experience reduced demand for their services due to the bill's establishment of a regulatory framework for transportation network services.

Additional Information

Prior Introductions: SB 919 of 2014, a similar bill, received a hearing in the Senate Finance Committee, but no further action was taken. Its cross file, HB 1160, received a hearing in the House Economic Matters Committee but was subsequently withdrawn.

Cross File: HB 1231 (Delegate Waldstreicher, *et al.*) - Rules and Executive Nominations.

Information Source(s): Public Service Commission, Office of People's Counsel, Maryland Insurance Administration, Department of Public Safety and Correctional Services, Maryland Department of Transportation, Uber Technologies Inc., Lyft, *The Washington Post*, *The New York Times*, Department of Legislative Services

Fiscal Note History: First Reader - March 20, 2015
min/lgc

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