

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 919
Finance

(Senator Ferguson)

Public Utilities - Transportation Network Services - Establishment

This bill defines and exempts from the definition of a common carrier “transportation network application companies” and “transportation network operators.” Statutory provisions related to for-hire driving services do not apply to a transportation network application company or a transportation network operator. A separate regulatory system is established for transportation network services that encompasses transportation network application companies and transportation network operators.

The bill takes effect July 1, 2014.

Fiscal Summary

State Effect: The Public Service Commission (PSC) can implement the bill with existing budgeted resources. The bill does not materially affect State finances or operations.

Local Effect: Minimal.

Small Business Effect: Meaningful.

Analysis

Bill Summary: “Transportation network application 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 application company. A “transportation network operator” means an individual who owns or

operates a motor vehicle that is (1) the individual's own motor vehicle; (2) not registered as a motor carrier under a specified section of the Transportation Article; and (3) used to provide transportation network services.

Exemptions from Current Law

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

- a “common carrier” as defined in current law does not include a transportation network application company or a transportation network operator; and
- statutory provisions related to for-hire driving services do not apply to a transportation network application company or 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 application companies and transportation network operators. A transportation network operator must be age 21 or older and must possess a (1) 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 application company must:

- create an application process for individuals 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 licensed 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;
- 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;

- maintain specified records related to transportation network operators and applicants, safety inspections, transportation network services arranged by the company, consumer complaints and complaint investigations, the transportation network application company's insurance policy, and accidents that involve a motor vehicle that is used for transportation network services provided by the network application company.

A transportation network application 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 alleging that the individual violated the zero-tolerance policy and must conduct an investigation for the alleged violation. A suspension lasts for the duration of the investigation.

Application Process for Transportation Network Operators

An individual may submit an application to a transportation network application company for registration as a transportation network operator. The transportation network application company must approve or deny an application within 60 days. Before approving an application, a transportation network application 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 application 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 by a felony; (2) within the past seven years, as shown in the driving record check, has been convicted of reckless driving, 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, been convicted of driving with a suspended or revoked license.

Charges for Transportation Network Services

A transportation network application 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 application company or a transportation network operator must disclose the following information to a passenger before the passenger arranges a trip with either the transportation network application company or a transportation network operator: (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 application 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

A transportation network application company must maintain a commercial liability insurance policy that (1) provides coverage of at least \$1 million per incident for accidents involving a transportation network operator while providing transportation network services and (2) covers a claim involving a motor vehicle operated by a transportation network operator who is providing transportation network services, regardless of whether the transportation network operator has an insurance policy that is adequate to cover any portion of the claim.

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 excess liability coverage. A transportation network operator who is involved in an accident while providing transportation network services has 24 hours to provide proof of excess liability coverage.

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.

Background: The bill creates a regulatory system for transportation network application 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 application company,” with the drivers for certain Uber services and Lyft likely meeting the definition of “transportation network operator.” The applications 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.

Uber’s website states that an applicant to be an Uber Black driver must be “a professional chauffeur with a commercial license and commercial auto insurance.” If this is true, then Uber Black drivers likely do not fall under the bill’s definition of “transportation network operator” because the definition specifically excludes a vehicle operating under a motor carrier permit. However, UberX drivers must be “at least 23 years old, with a personal license and personal auto insurance” and therefore likely fall under the bill’s definition of transportation network operator.

For Uber services, rates are disclosed to the user on the application, along with a fare quote for each trip. When the user arrives at his or her destination, the fare is automatically charged to a credit card on file with Uber and a receipt is emailed to the user.

Lyft is a similar mobile phone application that connects users to drivers. Lyft’s website states that it conducts criminal history records checks and driving records checks and has a zero-tolerance policy on drug and alcohol use. The website also states that Lyft provides its drivers with (1) \$1.0 million excess liability coverage for passengers and third parties; (2) contingent collision insurance with a \$2,500 deductible and a \$50,000 maximum applicable to drivers who have purchased collision coverage on their personal policies; and (3) excess uninsured/underinsured motorist coverage with a \$1.0 million limit covering drivers if they are hit by an uninsured motorist who is at fault. The service does not have a required fare, but rather a suggested “donation.” Drivers get 80% of the total donations received from passengers, deposited into their accounts each week.

Regulation as a Common Carrier by PSC

PSC is currently considering the nature and extent of regulation over the operations of Uber Technologies, LLC and other similar companies in Case No. 9325. The case is considering Uber Black and Uber SUV. At issue is whether Uber Technologies, LLC is providing transportation services in the State and is therefore a public service company subject to PSC jurisdiction. No decision has been made in the case as of February 26, 2014. A proposed order by the Public Utility Law Judge Division within PSC is anticipated in the spring of 2014.

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.

Additional Information

Prior Introductions: None.

Cross File: Although HB 1160 (Delegate Barnes - Economic Matters) is designated as a cross file, it is different.

Information Source(s): Public Service Commission, Office of People's Counsel, Maryland Department of Transportation, Uber Technologies, Lyft.me, Department of Legislative Services

Fiscal Note History: First Reader - February 27, 2014
mc/lgc

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510