

STATE OF MARYLAND

OFFICE OF PEOPLE'S COUNSEL

Paula M. Carmody, People's Counsel

6 St. Paul Street, Suite 2102

Baltimore, Maryland 21202

410-767-8150; 800-207-4055

www.opc.state.md.us

BILL NO.: **Senate Bill 919**
Public Utilities – Transportation Network Services -
Establishment

COMMITTEE: **Senate Finance**

HEARING DATE: **March 4, 2014**

SPONSOR: **Senator Ferguson**

POSITION: **Oppose**

Senate Bill 919 would exempt certain types of companies and individuals using personal vehicles to provide transportation services from the Public Service Commission's existing regulatory scheme for common carriers, such as sedans and taxis, and licensed for-hire drivers. The Bill creates a new category of "transportation network services," which encompasses both a "transportation network application company" and a "transportation network operator." The company uses a digital network or software application (for example, a smart phone app) to connect a person seeking transportation and a person offering transportation. While the statutory scheme would be part of the Public Utilities Article, there is nothing in the proposed Title 10.5 that subjects either the company or the drivers to any regulatory oversight by the Commission; in fact, the companies and the drivers are expressly exempt from Title 10 (For Hire Driving Services).

The Office of People's Counsel opposes this Bill. Whatever the form and whatever the technology, the companies and the drivers are providing a transportation service to the public. Both with regard to the vehicles and the drivers, these services should be subject to a regulatory scheme to ensure the safety of the consumers seeking transport.

To be clear, OPC supports the use of technology and mobile applications or any other efficient means of connecting consumers seeking transportation and those offering transportation to the public. However, certain out-of-state companies, such as Uber Technologies, LLC and Lyft, without regulatory oversight of the company or drivers, are currently operating in parts of Baltimore City and elsewhere, as well as other States. They cast themselves as technology companies, simply providing the "digital connector" between the driver and the passenger, and have solicited drivers, using personal vehicles, to provide driving services to consumers and collect a fee (or "donation"). The types of services provided by UberX and Lyft are often referred to as "ride-sharing," and portrayed as nothing more than individuals using mobile apps to offer rides as a convenience to others and getting compensation. However, this is not "ride-sharing" with a neighbor to work, or from college to home, but rather is a business operation.

Unfortunately, the Bill would permit a diminished form of oversight, provided by the company itself and not the Commission, and a substandard set of protections for the riding public. Unlike most transportation for hire companies that are regulated by the Commission, under the Bill these entities would be excluded from the definitions of "common carrier" and "transportation of persons for hire" under current law. This means that the companies and drivers would be expressly exempt from Commission oversight regarding matters of public safety; for example, the fitness and training of drivers, insurance requirements, vehicle safety requirements and inspections, non-discrimination provisions and protections against unreasonable pricing.

The Public Service Commission (PSC) has the jurisdictional authority to regulate companies operating as common carriers. The fact that a company chooses to use web technology to connect drivers and customers for rides for compensation rather than the traditional method of a 'hail' or a phone reservation does not seem to require that a company be treated any differently in terms of regulatory oversight than current providers of similar services.¹ The current PSC law applied to taxi and sedan services is in place, in part, to provide safety assurances to the riding public. This Bill would dilute and possibly negate that important PSC function. Some of the particular protections for the riding public that would be deleted or minimized by this Bill include:

- Specific and detailed criminal background checks using the Criminal Justice Information System, which is considered to be more up-to-date and accurate than the commercial background checks permitted under the Bill;
- The ability to suspend or revoke the license of driver if the driver 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. Under the Bill, it is entirely up to the transportation network company to police itself or its drivers.
- The assurance that an appropriate liability insurance policy exists and insures the driver against liability to a passenger or member of the public for property damage, personal injury, or death resulting from an accident. Additionally, there is the possibility of

¹ In Case No 9325, the Commission is currently considering whether two Uber Services (Uber Black and UberSUV) are subject to its jurisdiction. That PSC case does not include the UberX service, the ridesharing service which involves drivers who do not have "passenger for hire" licenses issued by the PSC. The Office of People's Counsel has filed two "Requests for Investigation" with the PSC regarding the ridesharing services provided by UberX and Lyft. The Commission has not yet acted on those requests.

insurance liability gaps if a driver kills or injures a person while not in the specific act of transporting a passenger. Under the Bill, the purported insurance provided by the companies would cover incidents only while the vehicle is being used to provide transportation services. If the driver is circling streets while logged in to the transportation network “app” awaiting a request for service and has an accident or hits a pedestrian, the companies’ insurance may not pay the claim since most private passenger insurance policies exclude coverage for “livery” service.

- Vehicle safety inspections would not be performed by a disinterested third party such as the PSC but would be performed by the companies themselves or some “third party” who presumably would have a commercial interest in “passing” as many cars as possible.
- There would be no regulation of specific rates and charges.
- Non-discrimination provisions in the current PSC law would not apply.

Senate Bill 919 is designed to address both companies and drivers in the business of enabling or providing transportation services. While an evaluation and potential modification of the existing regulatory scheme for common carriers and for-hire drivers may be reasonable and appropriate, regulatory oversight itself should not be eliminated. Self-policing by the “transportation network company” is not a sufficient way to address the safety of the riding public.

Therefore, the Office of People’s Counsel respectfully requests an UNFAVORABLE report.