

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 1298

INTRODUCER: Appropriations Committee and Senator Simmons

SUBJECT: Insurance for Short-term Rental and Transportation Network Companies

DATE: April 10, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------------|----------------|-----------|------------------|
| 1. | <u>Billmeier</u> | <u>Knudson</u> | <u>BI</u> | Favorable |
| 2. | <u>Brown</u> | <u>Cibula</u> | <u>JU</u> | Favorable |
| 3. | <u>Betta</u> | <u>Kynoch</u> | <u>AP</u> | Fav/CS |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1298 specifies minimum insurance requirements for short-term rental network (STR) and transportation network companies (TNC). The bill requires written notice to lessors and drivers of the insurance provided by the STR and TNC, and requires the insurer to indemnify and defend its insured.

The bill requires a short-term rental network company to carry primary insurance that insures the participating lessor for personal injury and property damage in an amount of at least \$1 million of liability coverage. The bill does not limit the liability of a short term rental network company for an amount that exceeds coverage limits.

The bill requires the TNC driver or the TNC on the driver's behalf to maintain the following specified insurance coverage:

- Primary insurance coverage of at least \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident; coverage for uninsured and underinsured motorists with at least those limits; \$50,000 in property damage liability coverage; and coverage for personal injury protection during the period when the driver is logged on the digital network but not engaged in prearranged ride.
- Primary liability coverage of at least \$1 million for death and bodily injury per person, \$2 million for death and bodily injury per incident; coverage for uninsured and underinsured motorists with at least those limits; \$50,000 in property damage liability coverage; and

coverage for personal injury protection during the period when a driver is engaged in a prearranged ride.

- Primary insurance coverage of at least \$100,000 for death and bodily injury per person, \$200,000 for death and bodily injury per incident, coverage for uninsured and underinsured motorists with at least those limits; \$50,000 in property damage liability coverage; and coverage for personal injury protection during all other times. The coverage must be maintained for six months after the driver has had an arrangement to provide transportation services to riders.

The TNC insurance requirements of this bill must be satisfied by an insurer authorized to do business in Florida and which is a member of the Florida Insurance Guaranty Association. Coverage cannot be provided by a surplus lines insurer.

There is no fiscal impact to state funds.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation and short-term rentals, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages.

Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as “transportation network companies” (TNCs), rather than as vehicles for hire. Short-term rental companies (STRs), such as Airbnb, use the Internet or smartphone applications to connect potential hosts who wish to rent their homes or rooms in their homes with persons who desire short-term rentals.

Short-term Rental (STR) Networks

Many homeowner policies exclude from coverage losses that occur when the home is used for business purposes. This exclusion can lead to situations in which homeowners who use their homes for short-term rentals are subject to liability claims without liability insurance. Short-term rental networks are dealing with the issue in different ways. One company advertises an insurance product that replaces homeowner coverage and provides short-term rental coverage as well.¹ Another provides coverage as part of its agreement with clients as secondary coverage.² However, some homeowner policies cover short-term rentals in certain situations.³ According to the Office of Insurance Regulation, at least one property insurer in the state allows short term rentals of one-to-three weeks with eligibility subject to an underwriting evaluation and an additional \$50 premium. In contrast, the Florida Hurricane Catastrophe Fund (FHCF) will not

¹ See HomeAway, *Do I need a special vacation rental insurance policy for my property?* http://help.homeaway.com/articles/en_US/Article/Do-I-need-a-special-vacation-rental-insurance-policy-for-my-property (last visited March 28, 2015).

² See Airbnb, *Host Protection Insurance*, <https://www.airbnb.com/host-protection-insurance> (last visited March 28, 2015).

³ See Ron Lieber, *A Liability Risk for Airbnb Hosts*, THE NEW YORK TIMES, (December 5, 2014) <http://www.nytimes.com/2014/12/06/your-money/airbnb-offers-homeowner-liability-coverage-but-hosts-still-have-risks.html>.

provide coverage if a property is rented for six or more rental periods to different renters in a 12-month period.⁴

A number of cities and counties regulate short-term rentals by imposing restrictions, requiring licensing, and charging taxes. The city of St. Helena, California, adopted perhaps the most restrictive ordinance on short-term rentals, short of an outright ban. Under the ordinance, short-term rentals must have a permit. Permit applicants must submit an application containing a floor plan of the property, a non-refundable fee of \$1,075, and a \$200 fee for a mailing list and labels for the planning department to notify neighbors. Proof of a fire inspection, subject to reinspection annually, is also required. If 30 percent of neighbors file a written protest, the planning commission will hold a hearing to review the application. Once issued, a permit for a short-term rental is valid for two years.

The ordinance also imposes conditions on properties used as short-term rentals and their owners. For example, the rental must provide at least two on-site parking spaces, the property may not be a multi-family unit, and the owner must include house policies in rental agreements which are posted in each guest bedroom. Owners must collect and remit to the city a 12 percent transient occupancy tax.⁵

Transportation Network Companies (TNC)

Ridesharing companies, or transportation network companies, use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application that indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and proceeds to pick up the passenger. Once at the destination, payment is made through the phone application.

Some state and local governments have taken steps to recognize and regulate companies using these new technologies. Six states so far, California, Colorado, Illinois, Kentucky, Rhode Island, and Virginia, along with Washington, D.C., have enacted legislation regarding transportation network companies.⁶

⁴ Office of Insurance Regulation, *2015 Agency Legislative Bill Analysis* (March 9, 2015).

⁵ MUN. CODE CHAPTER 17.134, St. Helena, CA; Other cities and counties that regulate short-term rentals include: Austin, TX (requires all persons who wish to provide short-term rentals for less than 30 consecutive days to possess an operating license, provide notice to adjacent neighbors through the planning department, and submit a \$285 application fee (ORD. NO. 20130926-144)); Monterey County (requires an administrative permit, minimum rentals of 7 consecutive days or the longer if specified in the property covenants or conditions, and provides that a person who violates the ordinance is subject to a misdemeanor charge (ORD. NO. 21.64.280)); Maui County (prohibits short-term rentals outside of the hotel district and imposes a \$1,000 fine for violations, along with a daily fine of up to \$1,000 (MAUI CTY. CODE CH. 19.37)); Pacific County (requires licensing and collection of local taxes, including the local lodging tax (PACIFIC CTY. ORD. NO. 162)). National Conference of State Legislatures (NCSL), E-mail from Erica Michel (Mar. 26, 2015) (on file with the Senate Committee on Judiciary).

⁶ National Conference of State Legislatures (NCSL), *State TNC Regulatory Actions 2014-2015* (March 23, 2015) (on file with the Senate Committee on Judiciary).

Drivers generally use their personal vehicles and most personal automobile policies contain a “livery” exclusion that excludes coverage if the vehicle is carrying passengers for hire.⁷ Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is operating the vehicle. For example, Uber advertises that its policy provides from the moment a driver accepts a trip to its conclusion, \$1 million of liability per incident, \$1 million of uninsured/underinsured motorist coverage per incident, and comprehensive and collision insurance if the driver holds personal comprehensive and collision coverage on the vehicle.⁸ Coverage provided by ridesharing companies is often secondary to a driver’s personal insurance policy. Secondary coverage means that the ridesharing company policy provides coverage when the personal policy does not.

Taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, up to \$250,000 per incident for bodily injury, and \$50,000 for property damage.⁹

III. Effect of Proposed Changes:

The bill specifies minimum insurance requirements on short-term rentals and transportation network companies. A short-term rental network (STR) company is an online website, such as airbnb.com, which facilitates rentals of private lodgings ranging from the rental of a room in a home to an entire house or apartment. A transportation network company (TNC) website, such as uber.com, connects persons who need transportation by vehicle to private drivers.

Short-Term Rental Network Company Insurance

The bill defines the following terms:

- An application is an Internet-enabled application or platform owned or used by a short-term rental network company or any similar method of providing rental services to a participating renter.
- A participating lessor is a person who makes a short-term rental property available through an application to participating renters.
- A short-term rental network company is an entity for which participating lessors provide prearranged, short-term rentals for compensation using an application to connect a participating renter with a participating lessor.
- A short-term rental property can be all or part of a condominium, an apartment, a multifamily dwelling, a single family structure, or any other rental unit.

The bill requires short-term rental network companies to carry insurance that:

- Is primary.
- Insures the participating lessor against direct physical loss to the property and its contents, exclusive of the property of the renter, with limits equal to any multi- or named-peril property insurance maintained by the lessor.

⁷ The “livery” exclusion in Florida is mentioned in the definition of “motor vehicle insurance” contained in s. 627.041, F.S.

⁸ See Uber, *Insurance for Uberx with Ridesharing*, (February 10, 2014) <http://blog.uber.com/ridesharinginsurance> and Uber, *Eliminating Ridesharing Insurance Ambiguity*, (February 14, 2014) <http://blog.uber.com/uberXridesharinginsurance>.

⁹ See s. 324.032(1), F.S.

- Provides liability coverage for personal injury and property damage with limits of at least \$1 million to cover the short-term rental network company, a lessor, and persons using or occupying the property. The liability coverage may not contain an exclusion for co-insureds.
- May not require as a prerequisite of coverage that another insurance policy be primary or first deny a claim.

The bill does not limit liability of a short-term rental network company for an amount that exceeds coverage limits.

The bill requires a short-term rental network company to provide written notice to a participating lessor relating to insurance coverage. The notice must:

- Inform the participating lessor of the insurance coverages and limits of liability that the short-term rental network company provides during the short-term rental period.
- Advise the participating lessor in writing that the participating lessor's personal insurance policy may not provide the insurance coverage required by the bill.

The bill requires an insurer that provides short-term rental network company insurance to defend and indemnify the insured.

During the short-term rental period, the participating lessor's personal insurance policy for the short term rental property may not:

- Be required to provide primary or excess coverage.
- Provide any coverage to the participating lessor, the participating renter, or a third party unless the policy expressly provides this coverage.
- Provide a duty to indemnify or defend for liabilities arising during the short-term rental period unless the policy expressly provides.

Before or after the rental period, the lessor's personal policy for the rental property may not provide coverage for claims arising from any rental arrangement entered into by a renter with the company or the lessor for the property or for acts and omissions related to the rental arrangement unless the policy provides for such coverage.

The bill requires a short-term rental network company or its insurer to cooperate with other insurers in a claims investigation to facilitate the exchange of information. The information must include the number and duration of all short-term rental periods made with respect to the short-term rental property for the 12 months preceding the date of loss.

Transportation Network Company Insurance

This bill defines a TNC as an entity which uses a digital network to connect TNC riders to TNC drivers who provide prearranged rides. The bill provides that a TNC may not be deemed to control, direct, or manage the personal vehicles or TNC drivers that connect to its digital network, unless agreed to in a written contract. A TNC does not include an entity arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

The bill defines “prearranged ride” as the provision of transportation by a driver to or on behalf of a rider, beginning when a driver accepts a ride requested by a rider through a digital network controlled by a TNC, continuing while the driver transports the rider, and ending when the last rider has exited the vehicle.

The bill requires TNC driver, or a TNC on the driver’s behalf, to maintain primary automobile liability insurance. The bill creates three time periods during which coverage must be maintained.

During the time the driver is logged on to the digital network and is available to receive transportation requests, the insurance must provide:

- Liability coverage of at least \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident.
- Coverage in an equivalent amount for uninsured and underinsured motorist coverage.
- Personal injury protection as required under ss. 627.730 – 627.7405, F.S.
- \$50,000 coverage for property damage.

During the time that a TNC driver is engaged in a prearranged ride, the insurance must provide:

- Liability coverage of at least \$1 million for death and bodily injury per person and \$2 million per incident.
- Coverage in an equivalent amount for uninsured and underinsured motorist coverage.
- Personal injury protection as required under ss. 627.730 – 627.7405, F.S. and
- \$50,000 coverage for property damage.

At all other times if a driver has or, within the previous 6 months has had, an agreement with a TNC to provide transportation to riders, the insurance must provide:

- Liability coverage of at least \$100,000 for death and bodily injury per person and \$200,000 per incident.
- Coverage in an equivalent amount for uninsured and underinsured motorist coverage.
- Personal injury protection as required under ss. 627.730 – 627.7405, F.S. and
- \$50,000 coverage for property damage.

Coverage requirements may be satisfied by TNC insurance maintained by a driver, by a company, or by both. If a driver fails to continuously maintain the required insurance, the TNC must provide it. The TNC insurance policy may not require as a condition of coverage that coverage first be denied under another motor vehicle insurance policy.

The insurance requirements of this bill must be satisfied by an insurer authorized to do business in Florida and which is a member of the Florida Insurance Guaranty Association. Coverage cannot be provided by a surplus lines insurer.

The bill requires a participating driver to carry proof of TNC insurance coverage at all times during the use of a motor vehicle in connection with an application. If the participating driver is involved in an accident, the driver shall provide insurance coverage information to any party involved in the accident and to a police officer. A TNC driver involved in an accident must

disclose whether the driver was logged on to the digital network or engaged in a prearranged ride.

The bill requires a TNC to disclose in writing to a participating driver the insurance coverage and limits of liability the company provides when the driver uses a motor vehicle in connection with an application. The TNC must also disclose the coverage that the driver must maintain.

The bill requires an insurer that provides TNC insurance to defend and indemnify the insured.

The bill provides that an insurer that provides personal automobile insurance policies may exclude from coverage any loss or injury that occurs while the driver is logged on to the digital network or engaged in a prearranged ride. An insurer may voluntarily elect to provide such coverage. If coverage is excluded, the insurer does not have a duty to defend the insured and has a right of contribution against other insurers if it defends an excluded claim.

The bill requires the TNC or its insurer to cooperate with other insurers in a claims investigation to facilitate the exchange of information. The information must include the date and time at which the accident occurred which involved a participating driver and the precise times that the driver logged on and off the application.

The bill provides that the Office of Insurance Regulation may adopt rules to implement its provisions relating to TNCs and TNC insurance requirements.

This bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1298 imposes insurance requirements on STRs and TNCs which do not currently exist in law. The cost of complying with insurance requirements is not known. If the cost of insurance mandated by the bill is significant, the bill may have a negative effect on the businesses that are unable to absorb the costs or pass the costs onto their customers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The effective date of the bill is July 1, 2015. Whether insurers will be able to offer the required policies by that date is unknown.

The bill does not contain enforcement provisions if TNC companies do not comply with the insurance requirements.

VIII. Statutes Affected:

The bill creates the following sections of the Florida Statutes: 627.716 and 627.748.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 9, 2015:

The committee substitute requires the TNC driver or the TNC on the driver's behalf to maintain primary insurance coverage of at least \$100,000 for death and bodily injury per person, \$200,000 for death and bodily injury per incident, coverage for uninsured and underinsured motorists, and coverage for personal injury protection during all times other than when the driver is on a prearranged ride or when the driver is logged on to the application but does not have a prearranged ride. The coverage must be maintained for six months after the driver has had an arrangement to provide transportation services to riders.

The committee substitute provides that the insurance requirements of this bill must be satisfied by an insurer authorized to do business in Florida and which is a member of the Florida Insurance Guaranty Association. Coverage cannot be provided by a surplus lines insurer.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
