

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 Judiciary

BILL: SB 1298

INTRODUCER: Senator Simmons

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

DATE: March 30, 2015

REVISED: 03/31/15

	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> </u>	<u> </u>	<u>AP</u>	<u> </u>

I. Summary:

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

A short-term rental network 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 application, or app, such as uber.com, connects persons who need transportation by vehicle to private drivers. Compensation is charged for both services.

Short-term Rental Network Company

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.

Transportation Network Companies

The bill requires transportation network companies to carry insurance. The bill creates two time periods during which the TNC insurance must provide different coverages: a “ride-acceptance” period and an “on-call” period. The ride acceptance period is the period from the time a driver accepts a ride request to the time the ride is completed.

The bill requires the TNC to carry, during the ride-acceptance period liability coverage of at least \$1 million for death, bodily injury, and property damage and uninsured and underinsured

motorist coverage, personal injury protection, and physical damage coverage if the driver carries this coverage on a personal motor vehicle insurance policy.

The “on-call” period is the period of time when a driver is using the application to find passengers but has not accepted a ride request. During the on-call period, the TNC company insurance must provide insurance coverage, including liability coverage for death and bodily injury of at least \$125,000 per person and \$250,000 per incident, liability coverage for property damage of at least \$50,000, and uninsured and underinsured motorist coverage of at least \$250,000.

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 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 1-3 weeks with eligibility subject to an underwriting evaluation and an additional \$50 premium. In contrast, the Florida Hurricane Catastrophe Fund (FHCF) will not 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

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>.

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

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 2 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

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

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

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).

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>.

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 residential property, condominium, tenancy in common, apartment, or 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.
- 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.
- May not require as a prerequisite of coverage that another insurance policy 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:

⁹ See s. 324.032(1), F.S.

- 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 transportation network company as an entity for which drivers provide transportation services for compensation using an application to connect a passenger with a driver.

The bill requires TNCs to carry insurance.¹⁰ The bill creates two time periods during which the TNC insurance must provide different coverages: a "ride-acceptance" period and an "on-call" period.

The bill defines "ride-acceptance" period as starting when a driver accepts a ride request made through an application and ending when the driver completes the ride request on the application or the ride is completed, whichever is later. If the ride is not completed, the ride-acceptance period ends at the time the ride request is terminated by the driver or requester.

During the ride-acceptance period, the TNC insurance must provide:

- Liability coverage of at least \$1 million for death, bodily injury, and property damage.
- Uninsured and underinsured motorist coverage of at least \$1 million.

¹⁰ The bill defines TNC insurance as "an insurance policy that expressly provides coverage for a participating driver's use of a motor vehicle in connection with an application."

- Personal injury protection as required under s. 627.736, F.S.
- Physical damage coverage, including collision or comprehensive physical damage coverage, if the driver carries such coverage on his or her personal motor vehicle insurance policy.

The bill defines the “on-call” period as the period:

- Beginning at the time the driver logs onto an application and ending at the time the driver accepts a ride request through the application; or
- Beginning at the time the driver completes a ride request on an application, or the ride is complete, whichever is later, or, if not completed, beginning at the time the ride request is terminated by the driver or requester, and ending at the time the driver accepts another ride request on the application or logs off the application.

During the on-call period, the TNC company insurance must provide:

- Liability coverage for death and bodily injury of at least \$125,000 per person and \$250,000 per incident.
- Liability coverage for property damage of at least \$50,000.
- Uninsured and underinsured motorist coverage of at least \$250,000.
- Personal injury protection as required under s. 627.736, F.S.
- Physical damage coverage, including collision or comprehensive physical damage coverage, if the driver carries the coverage on a personal motor vehicle insurance policy.

Coverage requirements may be satisfied by TNC insurance maintained by a driver, by a company, or by both. If the requirement is satisfied by a policy maintained by the driver, the TNC must verify that the insurance policy is specifically written to cover the driver’s use of a motor vehicle in connection with an application. 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 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.

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 company shall advise the driver that the personal motor vehicle insurance policy of the driver may not provide the required insurance coverage.

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

The bill provides that it cannot be construed to require a participating driver’s personal motor vehicle insurance policy to provide primary or excess coverage during the on-call period or the ride-acceptance period. The personal motor vehicle insurance policy of the driver or motor vehicle owner may not, during the on-call period or ride-acceptance period, provide any coverage to the driver, motor vehicle owner, or a third party or have a duty to defend or

indemnify the driver's activities in connection with the company unless the policy expressly provides otherwise.

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.

This bill takes effect 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:

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

The bill could have the effect of requiring licensees such as hotels and motels, pursuant to ch. 509, F.S., to obtain insurance.

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

The Office of Insurance Regulation notes that TNC insurance is required to include physical damage coverage, but limits of coverage and deductibles are not specified.¹¹

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

None.

B. **Amendments:**

None.

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

¹¹ Office of Ins. Reg., *supra* note 4, at 3.