

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 Banking and Insurance

BILL: SB 1298

INTRODUCER: Senator Simmons

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

DATE: March 20, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 1298 creates insurance requirements for short-term rentals and transportation network companies. A short-term rental network company is an entity for which participating lessors provide prearranged, short-term rentals, such as homes or rooms within homes, for compensation using a software application to connect a participating renter with a participating lessor. The bill requires a short-term rental network company to maintain insurance that:

- Is primary;
- Insures the participating lessor against direct physical loss to the short-term rental property and its contents; and
- Provides liability coverage for personal injury and property damage with limits of at least \$1 million.

The bill does not limit the liability of a short term rental network company arising out of the use or occupancy of a short-term rental property by a participating renter for an amount that exceeds the coverage limits.

A transportation network company (TNC) is an entity for which drivers operating a vehicle in this state provide transportation services for compensation using an application to connect a passenger with a participating driver. The bill creates requirements for TNC 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 beginning at the time a driver accepts a ride request and ending at the time the ride is completed.

The bill provides that 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.
- Personal injury protection.

- 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 “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:

- 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.
- 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 provides that its coverage requirements may be satisfied by TNC insurance maintained by a driver, by a company, or by both.

The bill also requires written notifications to drivers and lessors relating to insurance for TNC activities and short-term rentals, requires that the insurer indemnify and defend its insured, and provides specific situations where a driver or lessor’s personal policy is not required to provide coverage.

II. Present Situation:

Technological advances are resulting in 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. Some states and local governments have taken steps to recognize and regulate companies using these new technologies. Ridesharing companies describe themselves as “transportation network companies” (TNCs) and not vehicles for hire. Short-term rental companies, 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.

Many homeowner policies exclude coverage when the home is used for business purposes. This exclusion could lead to situations in which homeowners who use their homes for short-term rentals are subject to liability claims without liability insurance. Companies are dealing with the issue in different ways. One company advertises an insurance product which 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 Some homeowner policies cover short-term rentals in some situations.³

¹ See http://help.homeaway.com/articles/en_US/Article/Do-I-need-a-special-vacation-rental-insurance-policy-for-my-property? (last accessed March 19, 2015).

² See <https://www.airbnb.com/host-protection-insurance> (last accessed March 19, 2015).

³ See <http://www.nytimes.com/2014/12/06/your-money/airbnb-offers-homeowner-liability-coverage-but-hosts-still-have-risks.html> (last accessed March 19, 2015).

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 into a phone application that indicates the driver is ready to accept passengers. Potential passengers can log into the application, 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.

Drivers generally use their personal vehicles and most personal automobile policies contain a “livery” exclusion that provides there is no coverage if the vehicle is carrying passengers for hire.⁴ Consequently, most personal automobile insurance policies do not cover any damages or losses when a car is being used for commercial ridesharing. Some ridesharing companies provide some insurance for portions of the time when the driver is operating the vehicle. For example, UberX advertises that its policy provides, “from the moment a driver accepts a trip to its conclusion,” \$1 million of liability per incident, that it provides \$1 million of uninsured/underinsured motorist coverage per incident, and that it provides comprehensive and collision insurance if the ridesharing driver holds personal comprehensive and collision coverage on the vehicle.⁵ Coverage provided by ridesharing companies is often secondary to a driver’s personal insurance policy. This 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.⁶

III. Effect of Proposed Changes:

The bill creates insurance requirements for short-term rentals and transportation network companies.

Short-Term Rental Network Company Insurance

The bill defines the following terms:

- “Application” means 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.
- “Participating lessor” means a person who makes a short-term rental property available through an application to participating renters.
- “Participating renter” means a person who enters into a short-term rental arrangement through an application.
- “Short-term rental network company” means 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.

⁴ The “livery” exclusion in Florida is mentioned in the definition of “motor vehicle insurance” contained in s. 627.041, F.S.

⁵ See <http://blog.uber.com/ridesharinginsurance> and <http://blog.uber.com/uberXridesharinginsurance> (last accessed March 16, 2015).

⁶ See s. 324.032(1), F.S.

- “Short-term rental period” means the period beginning at the time the participating renter first uses or occupies the short-term rental property and ending at the time the participating renter vacates the short-term rental property.
- “Short-term rental property” means the entirety or any portion of a residential property, condominium, tenancy in common, apartment, or other rental unit located in this state which is owned or rented by a participating lessor.

The bill provides that, during the short-term rental period, a short-term rental network company must maintain short-term rental network company insurance that:

- Is primary.
- Insures the participating lessor against direct physical loss to the short-term rental property and its contents, exclusive of the property of the participating renter, with limits equal to any multi- or named-peril property insurance maintained by the participating lessor.
- Provides liability coverage for personal injury and property damage with limits of at least \$1 million which covers the acts and omissions of the short-term rental network company, a participating lessor, and all persons using or occupying the short-term rental property.
- May not require as a prerequisite of coverage that another insurance policy first deny a claim.

The bill does not limit the liability of a short term rental network company arising out of the use or occupancy of a short-term rental property by a participating renter for an amount that exceeds the 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.

The bill requires that, 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 for such coverage.
- Have any duty to indemnify or defend for liabilities arising during the short-term rental period unless the policy expressly provides for such duties.

The bill provides that, before or after the short-term rental period, the participating lessor’s personal policy for the short-term rental property may not provide coverage for claims arising from any rental arrangement entered into by a participating renter with the short-term rental company or the participating lessor for the short-term rental 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 operating a vehicle in this state provide transportation services for compensation using an application to connect a passenger with a participating driver.

The bill creates requirements for TNC insurance.⁷ 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 the period beginning at the time a driver accepts a ride request made through an application and ending at the time 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.

The bill provides that 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.
- 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 such coverage on his or her personal motor vehicle insurance policy.

⁷ 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.”

The bill provides that its 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.

The bill provides that its provisions determine the minimum obligations of an insurance policy issued to a transportation network company and a participating driver using a motor vehicle in connection with an application notwithstanding any law regarding primary or excess policy coverage.

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 short-term rental companies and TNCs that do not currently exist in law. The cost of complying with such requirements is not known.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill takes effect July 1, 2015. It is not known if insurers will be able to offer the required policies by that date.

The bill could have the effect of requiring licensees 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.

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.
