

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1039 Transportation Network Companies

SPONSOR(S): State Affairs Committee, Transportation & Infrastructure Subcommittee, Rommel and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1352

FINAL HOUSE FLOOR ACTION: 117 Y's

0 N's

GOVERNOR'S ACTION: Approved

SUMMARY ANALYSIS

CS/CS/HB 1039 passed the House on March 9, 2020, as amended, and subsequently passed the Senate on March 11, 2020.

A transportation network company (TNC) is an entity that uses a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC vehicle is not a for-hire vehicle or a limousine. With certain exceptions, a "for-hire vehicle" means any motor vehicle used for transporting persons or goods for compensation, or let or rented to another for consideration. There are different regulatory and insurance requirements in place for TNCs and for-hire vehicles.

The bill allows certain motor vehicles compliant with the Americans with Disabilities Act, limousines, and luxury for-hire vehicles to operate as a TNC vehicle and allows for-hire vehicle owners to operate as a TNC.

The bill defines "luxury ground transportation network company" to mean a company that uses its digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans. The bill requires luxury ground TNCs to comply with all of the requirements applicable to a TNC and requires such TNCs to maintain specific insurance coverage at all times. The bill provides that the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles is preempted to the state.

The bill authorizes TNC drivers to contract for the installation of TNC digital advertising devices on the TNC vehicle and provides requirements for the use and display of a TNC digital advertising device. The bill defines "transportation network company digital advertising device" to mean a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle that displays advertisements on a digital screen only while the TNC vehicle is turned on.

The bill may have an indeterminate negative fiscal impact on the state and local governments. See Fiscal Analysis section for details.

The bill was approved by the Governor on June 23, 2020, ch. 2020-87, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation

Transportation Network Companies

In 2017, the Legislature established a regulatory framework for transportation network companies (TNCs).¹ A TNC is an entity operating in this state that uses a digital network to connect a rider² to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. The term does not include entities arranging nonemergency medical transportation for individuals who qualify for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

A “TNC vehicle” is a vehicle that is used by a TNC driver to offer or provide a prearranged ride that is owned, leased, or otherwise authorized to be used by the TNC driver. A vehicle that is let or rented to another for consideration may be used as a TNC vehicle. The law specifies that a taxicab, jitney, limousine, or for-hire vehicle is not a TNC vehicle.

A “prearranged ride” is the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network³ controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider departs from the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail⁴ service and does not include ridesharing,⁵ carpool,⁶ or any other type of service in which the driver receives a fee that does not exceed the driver’s cost to provide the ride. TNC drivers are prohibited from soliciting or accepting street hails.

A “TNC driver” is an individual who receives connections to potential riders and related services from a TNC and in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. The law specifies that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. The law provides that a TNC driver is not required to register a TNC vehicle as a commercial motor vehicle or a for-hire vehicle. The TNC’s digital network must display the TNC driver’s photograph and the TNC vehicle’s license plate number before the rider enters the TNC vehicle.

If a fare is collected from a rider, the TNC must disclose the fare or fare calculation method on its website or within the online-enabled technology application service before beginning the prearranged

¹ Section 627.748, F.S.

² “Rider” means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver’s TNC vehicle between points chosen by the rider.

³ The term “digital network” means any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of riders with TNC drivers.

⁴ The term “street hail” means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

⁵ Section 341.031(9)(a), F.S., defines “ridesharing” as an arrangement between persons with a common destination(s), within the same proximity, to share the use of a motor vehicle on a recurring basis for round-trip transportation to and from their place of employment or other common destination. For purposes of ridesharing, employment is deemed to commence when an employee arrives at the employer’s place of employment to report for work and is deemed to terminate when the employee leaves the employer’s place of employment, excluding areas not under the control of the employer. However, an employee is deemed to be within the course of employment when the employee is engaged in the performance of duties assigned or directed by the employer, or acting in the furtherance of the business of the employer, irrespective of location.

⁶ Section 450.28(3), F.S., defines “carpool” as “an arrangement made by the workers using one worker’s own vehicle for transportation to and from work and for which the driver or owner of the vehicle is not paid by any third person other than the members of the carpool.”

ride. If the fare is not disclosed, the rider must have the option to receive an estimated fare before beginning the prearranged ride. In addition, a TNC is required to transmit to the rider an electronic receipt within a reasonable period after the completion of a ride. The receipt must list the origin and destination of the ride, total time and distance of the ride, and total fare paid.

A TNC is required to designate and maintain an agent for service of process in this state.⁷

Because a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service, a TNC driver is not required to register the TNC vehicle as a commercial motor vehicle or a for-hire vehicle.⁸

While a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:⁹

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.¹⁰

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:¹¹

- Primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law.

The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.¹²

The law preempts to the state the regulation of TNCs and specifies that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on or require a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides;
- Subject a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Require a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.¹³

However, an airport or seaport is not prohibited from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport's or seaport's facilities or from designating locations for staging, pickup, and other similar operations at the airport or seaport.¹⁴

⁷ Section 48.091, F.S., requires any corporation doing business in the state to have a registered agent and registered office in the state.

⁸ Section 627.748(2), F.S.

⁹ Section 627.748(7)(b), F.S.

¹⁰ Sections 627.730-627.7405, F.S. The amount of insurance required is \$10,000 for emergency medical disability, \$2,500 non-emergency medical, and \$5,000 for death.

¹¹ Section 627.748(7)(c), F.S.

¹² Section 627.748(7)(b) and (c), F.S.

¹³ Section 627.748(15)(a), F.S.

¹⁴ Section 627.748(15)(b), F.S.

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a “for-hire vehicle.” A “for-hire vehicle” is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is considered “for hire.” The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation “for hire.”¹⁵

Florida law establishes specific financial responsibility requirements applicable to for-hire vehicles. For-hire vehicles, such as taxis and limousines, must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, \$250,000 per incident for bodily injury, and \$50,000 for property damage.¹⁶ The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.¹⁷

In general, a county may, to the extent not inconsistent with general or special law, license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.¹⁸

Digital Advertising Device

Certain companies allow taxi and TNC drivers to generate revenue through digital advertising via a digital smart screen on top of the taxi or TNC vehicle. The digital screen allows advertisers to run targeted, geofenced campaigns.¹⁹ Digital advertising screens are installed on the roofs of motor vehicles owned or operated by individuals who commit to drive a minimum number of hours per week in certain urban markets. Drivers with digital advertising screens report earning an average of \$300 a month, depending on how many hours are driven.²⁰

There are currently digital advertising screens in use on vehicles in New York, Los Angeles, San Francisco, Chicago, and Dallas.²¹

Prohibition Against Certain Lights

A person may not drive any vehicle or equipment upon any highway in this state with any lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front of the vehicle, except for certain exceptions, such as fire department vehicles and road maintenance equipment.²² The law expressly prohibits any vehicle or equipment, except police vehicles, from showing or displaying blue lights, except for Department of Corrections vehicles or county correctional agency vehicles when responding to emergencies. Flashing lights are prohibited on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle’s headlamps at an oncoming vehicle notwithstanding the motorist’s intent for doing so; and
- Flashing lamps authorized for bicycle riders and deceleration lighting systems on buses.

¹⁵ Section 320.01(15)(a), F.S.

¹⁶ Section 324.032(1), F.S.

¹⁷ Section 324.031, F.S.

¹⁸ Section 125.01(1)(n), F.S.

¹⁹ Anthony Ha, *Rideshare Advertising Startup Firefly Launches with \$21.5M in Funding*, Techcrunch.com (December 6, 2018), available at <https://techcrunch.com/2018/12/06/firefly-launch/> (last visited January 22, 2020).

²⁰ Sarah Holder, *Car-Mounted Ads Take a New Direction: Data Collection*, Citylab.com (November 20, 2019), available at <https://www.citylab.com/transportation/2019/11/firefly-digital-advertising-driver-pay-uber-lyft-cars-data/602077/> (last visited January 22, 2020).

²¹ See Firefly.com, available at <https://fireflyon.com/> (last visited January 22, 2020).

²² Section 316.2397, F.S.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.²³ The purpose²⁴ of FDUTPA is to:

- 1) Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
- 2) Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
- 3) Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

FDUTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”²⁵ The term “trade or commerce” is defined as “advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated,” and the term includes “the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.”²⁶

Americans with Disabilities Act

The Americans with Disabilities Act (ADA)²⁷ is a civil rights law prohibiting discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public. The purpose of the law is to make sure that people with disabilities have the same rights and opportunities as everyone else and guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, government services, and telecommunications.²⁸

Private entities providing transportation services to the public are required to be accessible to individuals with disabilities.²⁹ Federal regulations provide ADA specifications for various transportation vehicles including disability-accessible buses and vans.³⁰

Vicarious Liability

The court-created dangerous instrumentality doctrine holds an owner strictly liable for injuries caused by another person’s negligent use of the owner’s property. Specifically, when the owner entrusts a dangerous instrumentality to another person, the owner is responsible for damages caused by the other person. Whether the owner was negligent or at fault is irrelevant. The rationale for holding an innocent person responsible for such damages is that the owner of an instrumentality capable of causing death or destruction should be liable for damages caused by anyone operating it with the owner’s consent.³¹

The Florida Legislature has limited the dangerous instrumentality doctrine by providing that a rental car company, or a motor vehicle dealer that provides a temporary replacement vehicle to a customer for up to 10 days, is liable for damages only up to \$100,000 per person and \$300,000 per incident for bodily injury and up to \$50,000 for property damage.³² If the driver of the vehicle is uninsured or has insurance limits of less than \$500,000 combined property damage and bodily injury liability, the motor

²³ Chapter 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

²⁴ Section 501.202, F.S.

²⁵ Section 501.204(1), F.S.

²⁶ Section 501.203(8), F.S.

²⁷ 42 U.S.C. 12101 et seq.

²⁸ ADA National Network Website, *What is the Americans with Disabilities Act*, available at: <https://adata.org/learn-about-ada> (last visited February 27, 2020).

²⁹ ADA National Network Website, *The ADA & Accessible Ground Transportation*, available at: <https://adata.org/factsheet/ADA-accessible-transportation> (last visited February 27, 2020).

³⁰ 59 C.F.R. part 38

³¹ *Roman v. Bogle*, 113 So. 3d 1011, 1016 (Fla. 5th DCA 2013).

³² Section 324.021(9)(b)2. and (c)1., F.S.

vehicle dealer or car rental company is liable for up to an additional \$500,000 in economic damages arising out of the use of the vehicle.³³

In 2005, Congress passed what is commonly known as the Graves Amendment to prohibit states from imposing vicarious liability on car rental companies.³⁴ Vicarious liability is “liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate (such as an employee) based on the relationship between the two parties.”³⁵ To benefit from the Graves Amendment, the “owner” must be “engaged in the business of renting or leasing motor vehicles.” A vehicle “owner” may be the titleholder, lessee, or bailee of the vehicle.³⁶ The Graves Amendment, however, does not protect a rental company from its own active negligence or criminal wrongdoing. If an injury is caused by a rental company’s negligent or criminal act, the rental company can still be directly liable for its actions or inactions, even if an accident occurs while a renter is driving the vehicle.³⁷ Federal law supersedes Florida’s dangerous instrumentality doctrine when a rental car company rents a car to a driver who negligently injures another person.³⁸

In 2011, the Florida Supreme Court held that as it relates to rental car companies, the Graves Amendment specifically preempts s. 324.021(9)(b)2., F.S., and relieves rental car companies, while engaged in the trade or business of renting or leasing motor vehicles, from vicarious liability for harm caused by the driver.³⁹

Effect of the Bill

The bill authorizes an ADA compliant motor vehicle, which is owned and used by a company that uses a digital network to facilitate prearranged rides to persons with disabilities for compensation, to operate as a TNC vehicle. The bill also allows a limousine and luxury for-hire vehicle to operate as a TNC vehicle. The bill defines a “luxury ground transportation network company” or “luxury ground TNC” as a company that uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans and excluding taxicabs.

An entity operating luxury sedans and limousines may elect, upon written notification to the Department of Financial Services (DFS), to be regulated as a luxury ground TNC. A luxury ground TNC must comply with all of the requirements applicable to a TNC, but is not required to comply with any requirements that prohibit the company from connecting riders to drivers who operate for-hire vehicles.

At all times, a luxury ground TNC must maintain insurance coverage at the levels of a TNC. The bill changes the minimum insurance requirements applicable to a vehicle that is sometimes operated as a limousine or for-hire vehicle compared to periods when the vehicle is operated as a luxury ground TNC. The insurance differences are:

Insurance Coverage	Limousine or For-hire Vehicle	Luxury Ground TNC		Result
		Logged on/No rider	Connected to Rider	
Personal Injury Protection	Not required	Not required	Not required	No change
Bodily Injury or Death	\$125,000 per person \$250,000 per incident	\$50,000 per person \$100,000 per incident	\$1,000,000 combined for bodily	Decrease when logged on/no rider

³³ *Id.*
³⁴ 49 U.S.C. § 30106; Auto Rental News, The Graves Amendment: Challenges, Interpretations, Answers, <https://www.autorentalnews.com/156611/the-graves-amendment-challenges-interpretations-and-answers> (last visited Apr. 30, 2019).
³⁵ Black’s Law Dictionary 427 (3rd pocket ed. 2006).
³⁶ Auto Rental News, *supra* at FN 34.
³⁷ *Id.*
³⁸ 49 U.S.C. § 30106.
³⁹ *Vargas v. Enterprise Leasing Co.*, 60 So.3d 1037 (Fla. 2011).

Insurance Coverage	Limousine or For-hire Vehicle	Luxury Ground TNC		Result
		Logged on/No rider	Connected to Rider	
Property Damage	\$50,000	\$25,000	injury, death, or property damage	Increase when connected to rider

A limousine or luxury sedan that wishes to become a luxury ground TNC may continue to use self-insurance to satisfy the insurance requirements for a luxury ground TNC, as long as the self-insurance satisfies the minimum insurance requirements for luxury ground TNCs.

The bill adds TNC vehicle owners to the list of insureds whose coverage can be used to satisfy the insurance requirements for TNCs. The required coverage may be provided by the TNC, TNC driver, TNC owner, or any combination of the three. This allows the insurance maintained by the owner of a luxury ground TNC, who is not necessarily the driver, to satisfy the insurance requirements.

The bill preempts the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles to the state.

The bill provides that a TNC or TNC affiliate is not be liable under Florida law for harm to persons or property that results or arises out of the use, operation, or possession of a motor vehicle operating as a TNC vehicle while the driver is logged on to the digital network if:

- There is no negligence under s. 627.748, F.S., or criminal wrongdoing under the federal or Florida criminal code on the part of the TNC;
- The TNC has fulfilled all of its obligations under s. 627.748, F.S., with respect to the TNC driver; and
- The TNC is not the owner or bailee of the motor vehicle that caused harm to persons or property.

However, these provisions do not alter or reduce the coverage or policy limits of the insurance requirements in s. 627.748(7), F.S., or the liability of any person other than vicarious liability of a TNC as described above.

The bill authorizes TNC drivers to contract for the installation of TNC digital advertising devices on the TNC vehicle. The bill defines a “transportation network company digital advertising device” or “TNC digital advertising device” as a device no larger than 20 inches tall and 54 inches long which is fixed to the roof of a TNC vehicle and which displays advertisements on a digital screen only while the TNC vehicle is turned on.

The bill provides the following requirements for a TNC digital advertising device:

- A TNC digital advertising device must follow the lighting requirements of s. 316.2397, F.S.
- No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver’s vision.
- A TNC digital advertising device must display advertisements only on the sides of the device and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising.
- A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard,⁴⁰ or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.
- A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the FDUTPA.

⁴⁰ MIL-STD-810G is a U.S. military specification that guarantees a level of durability for a piece of technology. Specifically, it means the equipment has gone through a series of 29 tests, including shock tests, vibration tests, and more.

The bill provides that a TNC, TNC driver, TNC vehicle owner, or owner or operator of a TNC digital advertising device, is immune from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the TNC, TNC driver, TNC vehicle owner, or the owner or operator of the TNC digital advertising device is the advertiser and has actual knowledge that the advertisement violates s. 627.748, F.S., or the FDUTPA.

The bill provides that the TNC advertising device is part of a TNC vehicle. Because of the inclusion of the TNC digital advertising device as part of a TNC vehicle, the regulation of such devices is preempted to the state.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will likely have no impact on state government revenues.

2. Expenditures:

The bill may have a fiscal impact on DFS, but the impact is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill preempts the regulation of luxury ground TNCs, luxury ground TNC drivers, luxury ground TNC vehicles, and TNC digital advertising devices to the state. To the extent local governments are imposing fees on luxury ground TNCs, luxury ground TNC drivers, luxury ground TNC vehicles, and TNC digital advertising devices, they will experience an indeterminate negative fiscal impact. The bill also authorizes limousines and other luxury for-hire vehicles to register as luxury ground TNCs. As such, the bill may have an insignificant negative fiscal impact to local government revenues to the extent that such vehicles elect to operate as luxury ground TNCs and no longer register as commercial motor vehicles or for-hire vehicles.

2. Expenditures:

The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the use of TNC digital advertising devices, thus enabling TNC drivers to install the devices and earn additional monthly revenue. The bill also authorizes certain limousine and for-hire vehicle owners and drivers to begin operating as or with a luxury ground TNC, thus increasing competition within the TNC market and allowing them access to TNC customers.

D. FISCAL COMMENTS:

None.