

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 723 Peer-to-Peer Car Sharing

**SPONSOR(S):** Commerce Committee; Insurance & Banking Subcommittee; Fischer and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 1 N, As CS	Lloyd	Cooper
2) State Affairs Committee	19 Y, 2 N	Roth	Williamson
3) Commerce Committee	18 Y, 4 N, As CS	Lloyd	Hamon

### SUMMARY ANALYSIS

In recent years, the private market, through the Internet and smart phone technology, has allowed the development of new forms of direct person-to-person economic arrangements. Companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is given over to another individual to operate for a period. This is known as “peer-to-peer car-sharing.” These services are different from transportation network companies, like Uber, Sidecar, and Lyft, in that another person takes over possession and control of the motor vehicle from the owner, rather than simply obtaining a ride. There are similar commercial services available where one can rent a car from a business on an hourly basis; these are known as car-sharing services and are similar to but distinct from traditional rental car companies. Unlike transportation network companies and car-sharing services, there are no statutes directly regulating peer-to-peer car-sharing.

The bill establishes statutory requirements for peer-to-peer car-sharing, including liabilities and insurance obligations among participants. The bill:

- Defines the term “peer-to-peer car-sharing” as the authorized use of a motor vehicle by an individual other than the vehicle’s owner through a peer-to-peer car-sharing program. The term does not include the renting of a motor vehicle through a rental company, the use of a for-hire vehicle, joint use of motor vehicles (such as ridesharing or carpooling) or a program that might otherwise be considered a peer-to-peer car-sharing program, if it is not used to process payment for use of a shared vehicle.
- Establishes insurance requirements for each party involved in peer-to-peer car-sharing. During the period that the owner is sharing the car with another driver, the peer-to-peer car-sharing program (e.g., Turo, Drift, and Getaround) is responsible for providing motor vehicle insurance at or above the statutory minimums for private passenger motor vehicles. It coordinates coverage if there are multiple insurance policies involved and depending on the circumstances. If the owner’s or driver’s policy lapses or is inadequate, the program is responsible for the insurance requirements.
- Allows motor vehicle insurers insuring the shared vehicle owner to exclude coverage for use of the vehicle in car-sharing.
- Provides that the peer-to-peer car-sharing program and vehicle owner are not vicariously liable for the actions and damages of the driver during periods of peer-to-peer car-sharing use.
- Specifies recordkeeping requirements and retention periods.
- Includes requirements for consumer protection notifications.
- Addresses the repair, use, and non-use of motor vehicles under a safety recall notice.
- Provides that the bill does not limit the liability of the peer-to-peer car-sharing program for its acts or omissions that cause bodily harm during peer-to-peer car-sharing; nor, the owner or driver to the peer-to-peer car-sharing program for economic losses due to a breach of contract.

The bill does not appear to have a fiscal impact on the state or local governments.

The bill is effective March 1, 2021.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

In recent years, the private market, using the Internet and smart phone technology, has allowed the development of new forms of direct person-to-person economic arrangements. Transportation network companies (TNCs) have organized to allow individuals to earn extra income by sharing rides in their personal cars. Entities like Uber, Lyft, and Sidecar facilitate the connection of individuals seeking rides with those offering rides and manage payment transactions for the service. Because of questions over safety, regulations, and insurance considerations, the Legislature passed CS/HB 221<sup>1</sup> in 2017 to preempt local regulations and establish statutory requirements for TNCs, including defining insurance liabilities and standards.

In a manner similar to TNCs, new companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is provided to another individual to operate for a period. This is known as peer-to-peer car-sharing.

Currently, there are three motor vehicle rental or sharing models available. They are motor vehicle rental companies, car-sharing services, and peer-to-peer car-sharing programs. Motor vehicle rental companies and car-sharing services<sup>2</sup> are regulated by statute; however, there are no statutes specifically regulating the standards and requirements applicable to peer-to-peer car-sharing.

#### For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the state qualifies the vehicle as a “for-hire vehicle.” Specifically, s. 320.01(15)(a), F.S., provides:

“For-hire vehicle” means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a “share-expense” basis. 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 “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.”

#### Renting a Motor Vehicle to Another

Current law establishes the requirements for a person (including natural persons and businesses) who wishes to rent a motor vehicle to another.<sup>3</sup> These include requiring: inspection of the driver license of the person to whom the vehicle is to be rented; and, comparing and verifying the signature thereon with the signature of such person written in his or her presence before the vehicle can be rented. Further, a record must be kept of the registration number of the motor vehicle rented, the name and address of the person renting, and the number, date, and place of issue.

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<sup>1</sup> Ch. 2017-12, Laws of Fla.

<sup>2</sup> S. 212.0606, F.S.

<sup>3</sup> S. 322.38, F.S.,

## Car-Sharing Service

For the purposes of defining the applicability of the rental car surcharge<sup>4</sup> authorized by s. 212.0606, F.S., a “car-sharing service” is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles:

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

The car rental surcharge applicable to car-sharing services does not apply to the lease, rental, or usage of a motor vehicle from a location-owned, operated, or leased by or for the benefit of an airport or airport authority.<sup>5</sup>

## Peer-to-Peer Car-sharing

In peer-to-peer car-sharing, owners interested in sharing their vehicles can register as a host on a peer-to-peer car-sharing site.<sup>6</sup> Sites require photos of the car and help the owner determine a fee based on the location and type of vehicle. The host then specifies the vehicle’s availability. The host may choose to have the vehicle picked up at his or her house, deliver the vehicle, or have it picked up at another location, such as an airport. Hosts typically receive between 65 and 75 percent of fees collected on their behalf by the site from the guest. Payments are typically made to the owner through direct deposit.<sup>7</sup> The site provides the recordkeeping necessary to the transaction and in compliance with requirements of law.

Guests also register with the peer-to-peer car-sharing site. The site will conduct a background check and look at the guests’ driving records before approving them. The process involves choosing an available vehicle, reserving a date and time, and providing credit card information, if it is not already on file. At the end of the sharing period, the driver replaces any consumed fuel before returning the vehicle to its pickup location.<sup>8</sup>

One peer-to-peer car-sharing website, Turo.com, reports that its company has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to \$1 million in liability insurance.<sup>9</sup> The average host earns \$500 per month. Hosts with three or more vehicles average over \$3,000 per month.<sup>10</sup>

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<sup>4</sup> A rental car surcharge of \$2.00 per day for each day of the first 30 days of a car rental and \$1.00 per day for a car sharing service, if the rental by the service is less than 24 hours, is required to be collected and paid to the state. S. 212.0606, F.S.

<sup>5</sup> S. 212.0606(2), F.S.

<sup>6</sup> Turo, Getaround, and Avail are examples of car sharing websites/applications.

<sup>7</sup> Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (Feb. 2015), <https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961> (last visited Jan. 25, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> Turo, *About Turo*, <https://turo.com/en-us/about> (last visited Jan. 25, 2020).

<sup>10</sup> *Id.*

## Documentation Required for Operation of a Vehicle

Section 320.0605(1), F.S., requires that at all times while a vehicle is being used or operated on the roads of Florida, the operator of the vehicle must be in the possession of:

- The registration certificate or an official copy;
- A true copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period;
- A temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet; or
- A cab card issued for a vehicle registered under the International Registration Plan.

The certificate or document must be shown upon demand of any authorized law enforcement officer or agent of the Department of Highway Safety and Motor Vehicles (DHSMV), except for a registered fleet vehicle.<sup>11</sup> This provision does not apply during the first 30 days after purchase of a replacement vehicle. A violation is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.<sup>12</sup>

Section 320.0605(2), F.S., specifies that for a vehicle rented from a motor vehicle rental company, the rental or lease documentation must include:

- Date of rental and time of exit from rental facility;
- Rental station identification;
- Rental agreement number;
- Rental vehicle identification number;
- Rental vehicle license plate number and state of registration;
- Vehicle's make, model, and color;
- Vehicle's mileage; and
- Authorized renter's name.

### **Effect of the Bill**

The bill creates a new section of the Florida Insurance Code<sup>13</sup> providing requirements for "peer-to-peer car-sharing," also called "car-sharing" in the bill. Peer-to-peer car-sharing is the authorized use of a shared vehicle (vehicle or car) through a peer-to-peer car-sharing program (program) by an individual, the shared vehicle driver (driver), who is not the shared vehicle owner (owner).

"Peer-to-peer car-sharing" does not include the renting of a motor vehicle through a rental company, the use of a for-hire vehicle, or joint use of motor vehicles, such as ridesharing or carpooling. The bill defines the term "peer-to-peer car-sharing program" (program) as a business platform that enables peer-to-peer car-sharing by connecting motor vehicle owners with drivers for financial consideration. It does not include a rental car company, taxi cab association, the owner of a for-hire vehicle, a car-sharing service, or a program that might otherwise be considered a peer-to-peer car-sharing program, if it is not used to process payment for use of a shared vehicle.<sup>14</sup>

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<sup>11</sup> A fleet vehicle registered under s. 320.0657, F.S., provides for the permanent registration of fleet license plates.

<sup>12</sup> Chapter 318, F.S., relates to the disposition of traffic infractions.

<sup>13</sup> The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

<sup>14</sup> A "for-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. 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 "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." S. 320.01(15), F.S.

## Peer-to-Peer Car-Sharing Insurance Requirements

The bill requires the program to ensure that, during each car-sharing period, the owner and driver of the vehicle have the following minimum coverage for motor vehicle insurance, which are the current statutory minimums required for private passenger motor vehicles, during peer-to-peer car-sharing periods:

- Property damage coverage of at least \$10,000;
- Bodily injury coverage of at least \$10,000 for injury to one person and \$20,000 for injury to two or more persons;
- Personal injury protection of \$10,000; and
- Uninsured/underinsured motorist coverage, as required by s. 627.727, F.S.<sup>15</sup>

The program must also ensure that the insurance policy either recognizes the use of the vehicle in peer-to-peer car-sharing or does not exclude shared use. Compliant insurance coverage may be maintained by the vehicle owner, driver, the program, or any combination thereof, which will be the primary insurance coverage during periods the vehicle is shared. If the owner's or driver's insurance lapses or does not provide the required coverage, the program's coverage must provide coverage as if it were primary from day one, i.e., provide coverage from the first dollar claimed. Further, the program's coverage must not require that a claim be denied by another insurer. The program is authorized to maintain multiple insurance policies to meet its obligations.<sup>16</sup>

### Liabilities and Exclusions

If it is determined that the vehicle owner was in control<sup>17</sup> of the vehicle at the time of a loss, the owner must indemnify the program to the extent of the insurer's obligation.

During shared periods, the program assumes the liability of the vehicle owner for bodily injury and property damage to third parties, uninsured/underinsured motorists, and personal injury protection coverages in the amount specified in the car-sharing agreement, which must meet statutory minimums. This shifting of liability is void if the owner makes an intentional or fraudulent material misrepresentation or omission to the program before the sharing period when the loss occurred or if the owner acts in concert with a vehicle driver who fails to return the vehicle as provided in the peer-to-peer car-sharing agreement.

If a dispute exists about who was in control of a vehicle at the time of a loss and the program does not have, did not retain, or fails to provide specific required information, the program will have primary liability for a claim.

If the owner's insurer defends or indemnifies a claim related to a vehicle that it has excluded from coverage and for which it is not liable under the bill, the owner's insurer is entitled to contribution from the program's insurer under certain conditions.

### Exemption from Vicarious Liability

The program and the shared vehicle owner are exempted from vicarious liability under any local or state law that imposes liability based on vehicle ownership.<sup>18</sup> This means that the actions and liabilities of the driver cannot be imputed to be those of the program or the vehicle owner.

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<sup>15</sup> While uninsured/underinsured motorist coverage is required to be offered to every purchaser of motor vehicle insurance in this state, the purchaser may reject such coverage in writing. S. 627.727(1), F.S. Therefore, such insurance is elective.

<sup>16</sup> The program has an insurable interest in the shared vehicle. Also, it may meet its insurance obligations by purchasing insurance from an admitted insurer, which means claims are backed by the Florida Insurance Guaranty Association, in the event the insurer becomes insolvent, or the insurance may be purchased from an authorized surplus lines company, provided the company carries a minimum rating specified by the bill.

<sup>17</sup> See Section III.C. Drafting Issues or Other Comments.

<sup>18</sup> The bill references the federal Graves Amendment, 49 U.S.C. 30106 (2005). The Graves Amendment provides that the owner of a motor vehicle who engages in the business of renting or leasing vehicles and has not been negligent or committed a crime is not liable for the damages caused by a

## Motor Vehicle Insurance Policy Exclusions

The bill specifies that a motor vehicle insurer may exclude coverage and the duty to defend or indemnify any claim under an owner's policy, including, but not limited to, all types of motor vehicle coverage. The bill provides current insurance policies approved for use in Florida that exclude coverage of vehicles offered for rent, sharing, or hire or for any business use are not invalidated or limited.

## Notification Regarding Liens

If the vehicle has a lien against it at the time it is registered for use within the program, the program must notify the owner that using the vehicle for car-sharing may violate the terms of the contract with the lienholder.

## Required Recordkeeping

The program must collect and verify records regarding vehicle use, including the times used, fees paid by the driver, and revenues received by the owner. These records must be retained for at least the duration of the statute of limitations for personal injuries and provided on request to the vehicle owner, the owner's insurer, or the vehicle driver's insurer. The program must also keep the following records:<sup>19</sup>

- The name and address of the driver;
- The driver license number of the driver and each other person, if any, who will operate the vehicle; and
- The place of issuance of the driver license.

## Consumer Protections

The peer-to-peer car-sharing agreement must include the following disclosures to the owner and driver:

- Any right of the program to seek indemnification from either the owner or driver for economic losses due to a breach of contract;
- A motor vehicle insurance policy issued to the owner for the vehicle or to the driver does not provide a defense or indemnification for any claim asserted by the program;
- The program's insurance is only in effect during the sharing period;
- If the driver uses the vehicle beyond the agreed termination time, the owner and driver may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the owner or the driver;
- The vehicle owner's motor vehicle liability insurance may exclude coverage for a vehicle;
- An emergency telephone number of the personnel capable of fielding calls for roadside assistance and other customer service inquiries; and
- Any conditions under which a vehicle driver must maintain a personal motor vehicle insurance policy with certain coverage on a primary basis in order to book a vehicle.

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renter/lessee during the rental or lease period merely based on being the owner of the rented or leased vehicle. The Graves Amendment defines owner as a person who is—

(A) a record or beneficial owner, holder of title, lessor, or lessee of a motor vehicle;

(B) entitled to the use and possession of a motor vehicle subject to a security interest in another person; or

(C) a lessor, lessee, or a bailee of a motor vehicle, in the trade or business of renting or leasing motor vehicles, having the use or possession thereof, under a lease, bailment, or otherwise.

<sup>19</sup> See Section III.C. Drafting Issues or Other Comments.

The program may not enter into an agreement with a driver, unless the driver:

- Holds a Florida driver license of the type required for the class of vehicle shared;
- Holds a driver license issued by the driver's state or country of the type required for the class of vehicle and the driver is the minimum age to operate a vehicle in Florida; or
- Is specifically authorized by DHSMV to drive vehicles of the class shared.

The program is solely responsible for program equipment installed in or on the vehicle for the purposes of allowing use of the vehicle in car-sharing through the program. The program must indemnify the owner for any damage to or theft of such equipment during share periods that is not caused by the owner; the program may seek indemnification from the driver for such damage.

### Motor Vehicle Safety Recalls

The program must verify the recall and repair status of the vehicle when it is registered for use with the program. The owner must be notified by the program that: vehicles under recall cannot be shared until repaired; if the owner receives a recall notice while the vehicle is available for sharing, the vehicle must be removed from sharing as soon as practicable; and, if the vehicle is in the possession of a driver, the owner must notify the program as soon as practicable so that it can be repaired.<sup>20</sup>

### Construction

The bill specifically provides that it does not limit the liability of the program for acts and omissions by the program that cause bodily harm to a person as a result of peer-to-peer car-sharing. It also provides that it does not limit the program's right to contract for indemnification from owners or drivers for economic losses due to a breach of contract.

## B. SECTION DIRECTORY:

**Section 1.** Creates s. 627.7483, F.S., relating to peer-to-peer car sharing; insurance requirements.

**Section 2.** Provides an effective date of March 1, 2021.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:  
None known.
2. Expenditures:  
None known.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:  
None known.
2. Expenditures:  
None known.

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<sup>20</sup> *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Providing specific requirements and delineating insurance obligations and liabilities of the various parties to a peer-to-peer car-sharing agreement may increase economic activity and avoid litigation over the scope of each party's liability.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill defines a "shared vehicle owner" as the registered owner, or a natural person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. The bill uses the term "shared vehicle owner" exclusively in the context of the role of the registered owner of the motor vehicle. It does not provide a separate context for when an individual or entity designated by the owner would act on behalf of the owner or limit the liability of designated person or entity to only the liabilities that could arise from their actions performed in the interest of the owner. Therefore, all responsibilities, obligations, and liabilities that the bill places on the owner are shared by the designee, without limitation. This may create a situation where a person is designated only to facilitate delivery or return of a vehicle and they become liable for all of the owner's insurance obligations with respect to the vehicle and the program.

The bill requires the peer-to-peer car-sharing program to ensure that the owner and driver of a vehicle have uninsured/underinsured motorist coverage as required by law. The uninsured/underinsured motorist coverage statute is elective. However, on lines 175-182, the bill shifts liability for specified coverages from the owner to the program, including liability to uninsured/underinsured motorists. This language implies that the program is required to provide uninsured/underinsured motorist coverage meeting or exceeding statutory minimums. It is unclear if the intent of the bill is to require uninsured/underinsured motorist coverage, despite its elective status or to allow the program to accept arrangements and be free from liability where the owner and or the driver have rejected uninsured/underinsured motorist coverage.

The bill provides that the "car-sharing termination time" is when agreed use time ends and the vehicle is returned to the agreed upon location, the vehicle is returned to an alternate agreed upon location, or the vehicle owner takes *possession and control* of the vehicle. In three instances, the bill provides for limitations or liabilities when the vehicle owner is in control of the vehicle. It is unclear if references to "in control" and "in possession and control" are intended to have the same meaning. Further, it is unclear if the term "in control" refers to an individual actively operating the vehicle or if it means the general responsibility for a vehicle by means of being able to exclude others from its use without

permission. Since a clear understanding of this term is needed to understand the extent of liability shifting between the owner and the program, the use of the term may need to be clarified.

On lines 289-291, the bill requires designation of personnel capable of fielding calls for roadside assistance and other customer service inquiries. It is not clear to whom the term “personnel” refers to for this purpose or who will designate them.

On lines 313-318, the bill specifies certain records that the program must keep. This occurs in a section titled “Consumer Protections” rather than in an earlier section titled “Recordkeeping.” The bill requires the retention of a non-exclusive list of specified records for a designated period. It is unclear if listing additional recordkeeping requirements in another portion of the bill is subject to the same retention period. It may avoid confusion to list all recordkeeping requirements in a single section of the bill.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 28, 2020, the Insurance & Banking Subcommittee considered the bill, adopted two amendments, and reported the bill favorably as a committee substitute. The amendments clarified the term “person” is a “natural person,” for purposes of designating someone to act on behalf of a vehicle owner, and replaced the term “network” where context indicated that the term should be “peer-to-peer car-sharing program.”

On February 27, 2020, the Commerce Committee considered the bill, adopted an amendment, and reported the bill favorably as a committee substitute. The amendment clarified that the bill does not apply to a program that might otherwise be considered a peer-to-peer car-sharing program, if it is not used to process payment for use of a shared vehicle.

The staff analysis reflects the committee substitute.