

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: CS/CS/SB 1118

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Simmons

SUBJECT: Transportation Network Company Insurance

DATE: February 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1118 specifies minimum insurance requirements for ridesharing companies, also known as transportation network companies (TNCs), such as Uber, Lyft, and SideCar. Transportation network companies use smartphone technology to connect individuals who want to purchase rides with private drivers. Most personal automobile insurance policies do not provide coverage when a vehicle is being used to transport passengers for a fee.

When a driver is logged on a TNC's digital network or engaged in a prearranged ride, the following minimum insurance requirements apply:

- \$125,000 for death and bodily injury per person;
- \$250,000 for death and bodily injury per incident; and
- \$50,000 for property damage.

When a TNC driver is not logged on the TNC's digital network or engaged in a prearranged ride, the following minimum insurance requirements apply:

- \$25,000 for death and bodily injury per person;
- \$50,000 for death and bodily injury per incident; and
- \$10,000 for property damage.

The bill also requires TNCs or TNC drivers to maintain personal injury protection insurance under the Florida Motor Vehicle No-Fault Law.

In addition to the insurance coverage requirements, the TNC must electronically notify TNC drivers:

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network; and
- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy.

The bill preempts local ordinances imposing insurance requirements on transportation network companies.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. This new technology has led to the creation of ridesharing companies, such as Uber, Lyft, and SideCar. These companies describe themselves as "transportation network companies" (TNCs), rather than as vehicles for hire, such as taxi or limousine companies.

Some state and local governments have taken steps to recognize and regulate companies using these new technologies. At least 29 states have enacted legislation regarding transportation network companies.¹

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 and 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.

TNC drivers generally use their personal vehicles to transport passengers. Most personal automobile policies contain a "livery" exclusion that excludes coverage if the vehicle is carrying passengers for hire.² 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 coverage in the amounts of \$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. Uber advertises that its insurance policy applies from the moment a driver accepts a trip to its conclusion.³

¹See PROPERTY CASUALTY INSURERS ASSOCIATION OF AMERICA, PCI APPLAUDS INNOVATION AND COMMON SENSE APPROACH TO FIXING TRANSPORTATION NETWORK COMPANY INSURANCE GAPS: 29 STATES HAVE ENACTED RIDE HAILING LEGISLATION, <http://www.pciaa.net/industry-issues/transportation-network-companies> (last visited Jan. 12, 2016).

² The "livery" exclusion in Florida is mentioned in the definition of "motor vehicle insurance," contained in s. 627.041, F.S.

³ See UBER, INSURANCE FOR UBERX WITH RIDESHARING (Feb. 10, 2014) <http://blog.uber.com/ridesharinginsurance>.

Coverage provided by ridesharing companies, however, is often secondary to a driver's personal insurance policy. Secondary coverage means that the ridesharing company policy provides coverage when the personal policy does not. This can lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage.

In 2015, stakeholders agreed to create model legislation on regulations for TNCs.⁴ The model legislation is known as the TNC Insurance Compromise Model Bill. The model bill establishes parameters for insurance coverage for TNCs. Coverage varies under the bill, but during the time in which a driver has accepted a ride request and is transporting a passenger, the bill requires \$1 million in liability coverage for death, bodily injury, and property damage.⁵ Premiums may be paid by the TNC driver, the TNC, or a combination of both. The bill identifies and defines various terms relevant to these transactions, including the terms "personal vehicle," "digital network," "transportation network company," "driver," and "prearranged ride."⁶

Insurance Amounts Required for Taxis, Limousines and other For-hire Transportation Services

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.⁷

Local Ordinances

In 2015, several counties in Florida adopted ordinances regulating transportation network companies (TNCs). Broward adopted an ordinance requiring TNCs and drivers to undergo vehicle inspections, background checks including fingerprinting, purchase of a chauffeur's license, and purchase of 24/7 insurance.⁸ Lee County adopted an ordinance that subjects TNCs to the same requirements as those imposed on taxi and limousine services. The ordinance requires drivers to undergo background checks and requires vehicle registration and the purchase of specified insurance.⁹ Palm Beach County adopted an ordinance subjecting TNCs and drivers to background check and insurance requirements.¹⁰ The ordinance adopted by the city of Sarasota treats TNCs as taxi companies. In so doing, drivers are subject to insurance, background checks,

⁴ Stakeholders in agreement include the companies of Allstate, American Insurance Association, Lyft, State Farm, and Uber Technologies. UBER, INSURANCE ALIGNED (Mar. 24, 2015), <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/>.

⁵ See NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, SUPPLEMENTAL HANDOUT: TNC INSURANCE COMPROMISE MODEL BILL UPDATED MARCH 26, http://www.naic.org/meetings1503/committees_c_sharing_econ_wg_2015_spring_nm_additional_materials.pdf

⁶ See UBER, INSURANCE ALIGNED (Mar. 24, 2015), <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/>.

⁷ See s. 324.032(1), F.S.

⁸ See *Broward County Passes Uber, Lyft Ordinance*, NBC 6 SOUTH FLORIDA, Apr. 28, 2015, <http://www.nbcmiami.com/news/local/Broward-County-to-Vote-on-Uber-Lyft-Ordinance-301529861.html>.

⁹ See Heather Wysocki, *Lee County Oks regulation for Uber, Lyft services*, NEWS-PRESS.COM, Mar. 17, 2015, <http://www.news-press.com/story/money/2015/03/17/lee-county-oks-regulation-for-uber-lyft-services/24901931/>.

¹⁰ See Jenn Strathman, *Uber allowed to operate in Palm Beach County with some regulations: Drivers must have background checks and Insurance*, WPTV 5 WEST PALM BEACH, updated Mar. 10, 2015, <http://www.wptv.com/money/consumer/uber-allowed-to-operate-in-palm-beach-county-with-some-regulations>.

and a \$35 license fee. The ordinance additionally requires vehicle inspections and prohibits the use of vehicles over 10 years old.¹¹

III. Effect of Proposed Changes:

Insurance Requirements

The bill provides uniform statewide minimum insurance requirements for Transportation Network Companies (TNCs) and TNC drivers. The bill applies the framework of the TNC Insurance Compromise Model Bill, and imposes insurance requirements similar to those required of companies providing taxi services.

The bill replicates many of the same definitions and parameters established in the Model Bill. For example, a TNC is defined as an entity that uses a digital network¹² to connect TNC riders¹³ with TNC drivers¹⁴ who provide prearranged rides. A prearranged ride:

- Begins when the driver accepts a request for a ride by a rider through a digital network controlled by a TNC;
- Continues while the driver transports the rider; and
- Ends when the last rider departs from the vehicle.

A prearranged ride does not include a ride from a taxi, jitney, limousine, or other for-hire vehicles that transport people or goods for compensation.

The term “transportation network company” does not include entities arranging nonemergency medical transportation for individuals qualifying for Medicare or Medicaid pursuant to a contract with a state or managed care organization.

Insurance coverage can be maintained by the TNC, the TNC driver, or a combination of both. Coverage maintained by the TNC must obligate the TNC to defend the claim. The coverage may not be contingent on the denial of the claim by the TNC driver’s personal policy. In other words, the insurance must be primary.

The bill identifies two time periods during which insurance is required. The first time period is during the time when a driver is logged on to the transportation network company’s digital

¹¹ See Emily Le Coz, *Sarasota poised to regulate Uber*, HERALD-TRIBUNE, last modified Sept. 3, 2015, <http://www.heraldtribune.com/article/20150903/ARTICLE/150909881>; Aaron Eggleston, *Sarasota Uber drivers face tougher regulations*, WWSB 7 MYSUNCOAST, July 6, 2015, http://www.mysuncoast.com/news/local/sarasota-uber-drivers-face-tougher-regulations/article_2ae27ee0-245b-11e5-a38f-a7017122a16e.html.

¹² The bill defines a “digital network” as an online application, software, website, or system offered by or used by a TNC which enables rides with TNC drivers.

¹³ The bill defines a TNC “rider” as an individual who directly or indirectly uses a TNC’s digital network to connect with a TNC driver who provides transportation services in the TNC driver’s personal vehicle. The bill defines personal vehicle as a vehicle used by the TNC driver in connection with providing TNC services and which is owned, leased, or otherwise authorized for use by the TNC driver. The bill provides that a vehicle that is let or rented to another for consideration may be used as a personal vehicle.

¹⁴ The bill defines a TNC “driver” as an individual who receives connections to potential riders and related services from a TNC in exchange for any form of compensation to the TNC and uses a personal vehicle to offer or provide a prearranged ride upon connection through a digital network controlled by a TNC in return for compensation.

network or providing a prearranged ride. The second time period applies at all times other than when a driver is logged on to the TNC network or providing a prearranged ride.

During the first time period, the bill requires transportation network companies or drivers to maintain a minimum of primary automobile liability insurance in the same amounts as is required of taxi and limousine companies. These limits are:

- \$125,000 for death and bodily injury per person;
- \$250,000 for death and bodily injury per incident; and
- \$50,000 for property damage.

During the second time period, the following insurance requirements apply and are the responsibility of the driver:

- \$25,000 for death and bodily injury per person;
- \$50,000 for death and bodily injury per incident; and
- \$10,000 for property damage.

The bill also requires a company or a driver to maintain personal injury protection under the Florida Motor Vehicle No-Fault Law.¹⁵

If a driver carries insurance as required by this bill, the driver is deemed to comply with other statutory insurance requirements.

Responsibilities of the TNC and the TNC Driver

The bill requires a TNC to disclose in writing the following to a TNC driver:

- The type and limits of insurance coverage provided by the TNC;
- The type of automobile insurance coverage that the driver must maintain while the driver uses a personal vehicle in connection with the TNC; and
- The fact that if a driver provides rides for compensation not covered by the bill the driver must maintain the same coverage limits required of other for-hire passenger transportation vehicles such as taxicabs, jitneys, and limousines¹⁶ and is subject to criminal penalties for failing to comply.¹⁷

The TNC must also provide, through electronic notice, a statement to TNC drivers:

- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy; and
- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network.

Although the required notice states that rides not arranged through a TNC's digital network are illegal, the bill does not specify a penalty for the illegal conduct.

¹⁵ Section 627.736(1), F.S., requires personal injury protection of \$10,000 in medical and disability benefits and \$5,000 in death benefits.

¹⁶ Section 324.032(1), F.S., requires minimum coverage of \$125,000/250,000/50,000.

¹⁷ A driver who fails to comply with the insurance requirements commits a second-degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine. Sections 324.221(1) and (2), 775.082(4)(b), and 775.083(1)(e), F.S.

The bill requires the TNC driver to carry proof of insurance required under the bill at all times during the TNC driver's use of a personal vehicle. In the event of an accident, the bill requires the TNC driver to:

- Provide the insurance coverage information to the directly involved parties, automobile insurers, and investigating law enforcement officers. Proof of financial responsibility may be provided through a digital telephone application controlled by a TNC.
- Disclose, upon request, to the directly involved parties, automobile insurers, and investigating law enforcement officers whether the TNC driver was logged on to the TNC digital network or engaged in a prearranged ride at the time of the accident.

Insurer Exclusions

The bill authorizes an insurer that provides personal automobile insurance policies to exclude from coverage any loss or injury that occurs while a TNC driver is logged onto the TNC's digital network or while a driver is engaged in a prearranged ride. The right to exclude coverage includes:

- Liability coverage for bodily injury and property damage;
- Personal injury protection coverage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage; and
- Collision damage coverage.

If an insurer excludes such coverages, the insurer does not have the duty to defend or indemnify the excluded claim. The bill does not invalidate or limit exclusions contained in policies in use or approved before July 1, 2017. The insurer has a right of contribution against other insurers that provide automobile insurance to the same driver if the insurer defends or indemnifies a claim which is excluded under the terms of its policy.

The bill does not require a personal automobile insurance policy to provide coverage while the driver is logged into the TNC digital network, while the driver is engaged in a prearranged ride, or while the driver otherwise uses a personal vehicle to transport riders for compensation. The bill allows an insurer to provide coverage by contract or endorsement when a personal vehicle is used for such purposes.

Claims Investigations

The bill requires a TNC and any insurer potentially providing coverage for a claim to cooperate to facilitate the exchange of information. The information must provide the precise times that a driver logged on and off the TNC's digital network during the 12 hour periods immediately before and after the accident and provide a clear description of automobile insurance maintained.

A driver who provides a false statement to a law enforcement officer in connection with an accident that may involve a TNC driver commits a second-degree misdemeanor.

Preemption

The bill provides that TNC insurance requirements are governed exclusively by the provisions of the bill and any rules adopted by the Financial Services Commission. A political subdivision may not adopt ordinances imposing insurance requirements on TNCs or TNC drivers. Any existing ordinances are preempted.

Other Provisions

Section 316.066, F.S., requires law enforcement officers to submit crash reports to the Department of Highway Safety and Motor Vehicles after an accident. The reports must include information relating to drivers, passengers, witnesses, and insurance. This bill amends s. 316.066, F.S., to require crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers to include a statement as to whether any driver was provided a prearranged ride or logged into a TNC's digital network at the time of the accident. A driver that provides a false statement in connection with such information commits a second degree misdemeanor.

The insurance required under this bill must be provided by an insurer authorized to do business in Florida which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer that has a "superior," "excellent," "exceptional," or equivalent rating by a rating agency acceptable to the Office of Insurance Regulation.

If the TNC's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the TNC's insurer must issue payment directly to the entity repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

The bill provides that a TNC is not deemed to control, direct, or manage the personal vehicles or TNC drivers who connect to the TNC's digital network. This declaration may minimize a TNC's exposure to lawsuits based on the negligence of its drivers.

The bill provides that the Financial Services Commission may adopt rules to administer the provisions of the bill.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill preempts and supersedes local ordinances, but the bill does not appear to impose a mandate on a city or county.

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 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:

The bill preempts local ordinances that address transportation network companies (TNC). The preemption clause provides that TNC insurance requirements are governed exclusively by the bill and any rules adopted by the Financial Services Commission. Although rules may need to be adopted, the Department of Financial Services and the Office of Insurance Regulation do not expect a fiscal impact from the provisions of the bill.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 316.066 of the Florida Statutes.

This bill creates section 627.748 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Judiciary on February 9, 2016:

¹⁸ Department of Financial Services, *Fiscal Impact Statement* (Jan. 11, 2016); Office of Insurance Regulation, *2016 Legislative Bill Analysis* (Jan. 15, 2016).

The CS requires the TNC to provide, through electronic notice, a statement to TNC drivers:

- That it is illegal for a TNC driver to solicit or accept a ride if the ride is not arranged through the TNC's digital network; and
- That if a TNC driver provides a ride not arranged through the TNC network, the ride is not covered by the TNC driver's or the TNC's insurance policy.

CS by Banking and Insurance on January 19, 2016:

The CS changes the required insurance requirements to \$125,000 for death and bodily injury per person, \$250,000 for death and bodily injury per incident, \$50,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law for time periods in which the driver is logged on to the TNC's digital network and for time periods in which the driver is providing a prearranged ride. At all other times, the coverage requirements are \$25,000 for death and bodily injury per person, \$50,000 for death and bodily injury per incident, \$10,000 for property damage, and coverage that meets the requirements of the Florida No-Fault Law.

The CS provides that information about whether a driver is logged on a digital network must be included in crash reports submitted to the Department of Highway Safety and Motor Vehicles by law enforcement officers.

The CS removed a reference to A.M. Best Company and gave the Office of Insurance Regulation the discretion to rely on other rating agencies to determine financial strength ratings of surplus lines insurers.

B. Amendments:

None.