

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 509 Transportation Network Companies

SPONSOR(S): Economic Affairs Committee; Highway & Waterway Subcommittee; Gaetz and others

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	10 Y, 1 N, As CS	Johnson	Smith
2) Economic Affairs Committee	13 Y, 2 N, As CS	Johnson	Pitts

SUMMARY ANALYSIS

The bill preempts to the state the regulation of Transportation Network Companies (TNCs) and creates a regulatory framework for the operation of TNCs. Specifically, the bill:

- Defines “transportation network company” as an entity granted a permit under s. 316.680, F.S., to operate in this state using a digital network or software application service to connect riders to TNC service provided by drivers. A TNC is not deemed to own, control, operate, or manage the vehicles used by drivers; is not deemed to control or manage drivers; and is not a taxicab association or for-hire vehicle owner. A TNC does not include an individual, corporation, partnership, sole proprietorship, or other entity arranging nonemergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization. The bill also provides other definitions related to TNCs.
- Provides that a TNC is not a common carrier and does not provide taxi or for-hire vehicle service.
- Provides that a TNC driver is not required to register his or her vehicle as a commercial motor vehicle or for-hire vehicle.
- Provides that a person must obtain a permit from the Department of Highway Safety and Motor Vehicles (DHSMV) to operate as a TNC.
- Provides an annual permit fee for TNCs in the amount of \$5,000, paid to DHSMV.
- Requires TNCs charging fares to disclose the fare calculation, to provide riders with applicable rates being charged, and an option to receive an estimated fare.
- Requires an electronic receipt to be provided to TNC riders within a reasonable period of time.
- Requires the identification of TNC vehicles and drivers by license plate and picture of the driver.
- Provides minimum TNC and driver insurance requirements and requires certain insurance related disclosures.
- Provides that TNC drivers are independent contractors if certain conditions are met and TNCs are not required to provide workers’ compensation coverage for independent contractors.
- Requires TNCs to have a zero tolerance policy for illegal drug or alcohol use.
- Provides minimum requirements for TNC drivers, including a criminal background check and a driving history report.
- Prohibits certain conduct from TNC drivers such as accepting street hails or cash payments.
- Prohibits TNCs from discriminating against drivers and requires them to develop policies on nondiscrimination and accessibility.
- Requires TNCs to maintain certain records for a minimum period of time.
- Prohibits local governments from imposing taxes or licenses on TNCs relating to the provision of TNC service.
- Provides that airports may charge an annual fee to TNCs of up to \$5,000.
- Requires motor vehicle crash reports to indicate if a driver is engaged in TNC service and provides penalties for providing false information.

The bill has an indeterminate, but positive, fiscal impact on DHSMV. The bill has a potential negative fiscal impact on local governments currently collecting fees from TNCs; however, airports may see a positive fiscal impact from charging fees for the use of airport facilities.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Chapter 316, F.S., is the Florida Uniform Traffic Control Law, whose purpose is to make uniform traffic laws apply throughout the state.¹ Provisions in Ch. 316, F.S., relate to, but are not limited to, traffic laws, traffic infraction detectors, parking regulations, and driving under the influence.

Currently, the majority of taxi and limousine regulation in Florida is controlled by local governments. Florida law currently provides the following requirements relating to limousines and taxis:

- 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;²
- An owner or lessee who is required to maintain insurance under s. 324.021(9)(b), F.S., and who operates at least 300 taxicabs, limousines, jitneys, or any other for-hire passenger vehicles is authorized to fulfill the requirement through self-insurance as provided by s. 324.171, F.S.;³
- With respect to workers' compensation an "employee" is not a taxicab, limousine, or other passenger vehicle-for-hire driver who operates said vehicles pursuant to a written agreement with a company which provides any dispatch, marketing, insurance, communications, or other services under which the driver and any fees or charges paid by the driver to the company for such services are not conditioned upon, or expressed as a proportion of, fare revenues;⁴
- The child restraint requirements imposed by s. 316.613, F.S., do not apply to a chauffeur-driven taxi, limousine, sedan, van, bus, motor coach, or other passenger vehicle if the operator and the motor vehicle are hired and used for the transportation of persons for compensation;⁵ and
- To the extent not inconsistent with general or special law, the legislative and governing body of a county must have the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county; except that any constitutional charter county as defined in s. 125.011(1), F.S.,⁶ must on July 1, 1988, have been authorized to have issued a number of permits to operate taxis which is no less than the ratio of one permit for each 1,000 residents of said county, and any such new permits issued after June 4, 1988, must be issued by lottery among individuals with such experience as a taxi driver as the county may determine.⁷

While the regulation of taxi and limousines is not expressly provided for, a municipality's broad home rule powers give it the authority to enact legislation concerning any subject matter upon which the state Legislature may act, except:

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;
- Any subject expressly prohibited by the constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; and

¹ Section 316.002, F.S.

² Section 324.032(1), F.S.

³ Section 324.032(2), F.S.

⁴ Section 440.02(15), F.S.

⁵ Section 316.613(6), F.S. The statute provides that it is the parent's or other caregiver's responsibility to meet the child restraint requirements.

⁶ Section 125.011(1), F.S., defines "county" as "any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred. Use of the word "county" within the above provisions must include "board of county commissioners" of such county."

⁷ Section 125.01(1)(n), F.S.

- Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.⁸

Since the regulation of taxis, limousines, and other for-hire vehicles has not been expressly preempted to the state or county government, municipalities may regulate these vehicles under their broad home rule powers.

For-hire vehicle services are undergoing changes with respect to models most often associated with the provision of transportation to individuals, such as by taxi. Technological advances are resulting in new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, e-mail, and text messages. Some states and local governments have taken steps to recognize and regulate companies using these new technologies, which describe themselves as “transportation network companies” (TNCs) and not vehicles for hire.

Currently, Florida law does not recognize TNCs, but some local governments are in various stages of imposing regulations on TNCs and the regulations vary by jurisdiction.

National Criminal Database

A National Criminal Database, or Multi-Jurisdictional Search, is a database of criminal records collected by a commercial entity from a patchwork of state, local and other criminal records. These resources are generally created by large background screening firms and other data aggregators who have specialized in the collection of criminal data for resale purposes. The information collected by individual background screening firms is unique to the company hosting the database. Although many records are similar, providers use different mixes of sources and methods to match results. No National Criminal Database has all criminal records to date.⁹

The Dru Sjodin National Sex Offender Public Website (NSOPW)

The Dru Sjodin National Sex Offender Public Website contains public information regarding individuals who are required to register through a State Sex Offender Registry, and consists of the individual registries and public registry websites operated by all 50 States, the District of Columbia, four of the principal U.S. Territories, as well as over 70 federally-recognized Indian Tribes. The NSOPW contains information on those who have committed sexually violent offenses against adults and children, as well as certain sexual contact and other crimes against victims who are minors. Information about individuals who appear on these lists depends on the individual states’ registry requirements. The NSOPW, as well as more detailed database for law enforcement, are administered through the United States Department of Justice.¹⁰

Proposed Changes

The bill creates s. 316.830, F.S., relating to transportation network companies. The bill preempts the permitting and regulation of TNCs to the state. Additionally, the bill creates a regulatory framework governing the operation of TNCs in the state.

Transportation Network Company Regulation

Definitions

The bill provides the following definitions relating to TNCs:

- Digital Network-any online-enabled application, software, website or system offered or used by a TNC that enables the prearrangement of rides with TNC drivers.

⁸ Section 166.021(3), F.S.

⁹ NATIONAL ASSOCIATION OF PROFESSIONAL BACKGROUND SCREENERs (NAPBS), portal.napbs.com/files/public/Consumer_education/Resources/standardization_of_common_industry_terms.pdf (last visited November 17, 2015).

¹⁰ UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART), <https://www.nsopw.gov/en/Home/About> (last visited November 17, 2015).

- Personal Vehicle-a vehicle that is used by a TNC driver in connection with providing TNC service and is:
 - Owned, leased, or otherwise authorized for use by a TNC driver; and
 - Not a taxi, jitney, limousine,¹¹ or for-hire vehicle as defined in s. 320.01(15), F.S.¹²
 Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a personal vehicle.

- Transportation Network Company or Company-an entity granted a permit under s. 316.680, F.S., to operate in this state using a digital network or software application service to connect riders to TNC service provided by drivers. A TNC is not deemed to own, control, operate, or manage the vehicles used by drivers; is not deemed to control or manage drivers; and is not a taxicab association or for-hire vehicle owner. A TNC does not include an individual, corporation, partnership, sole proprietorship, or other entity arranging non-emergency medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or managed care organization.

- Transportation Network Company Driver or Driver-an individual who:
 - Receives connections to potential riders and related services from a TNC in exchange for payment of a fee to the TNC; and
 - Uses a personal vehicle to provide TNC service to riders upon connection through a digital network controlled by a TNC in return for compensation or a payment of a fee.

- Transportation Network Company Rider or Rider-an individual or person who uses a TNC's digital network to connect with a TNC driver who provides TNC service to the rider in the driver's personal vehicle between points chosen by the rider.

- Transportation Network Company Service-the provision of transportation by a driver to a rider, beginning when a driver accepts a ride request by a rider through a digital network controlled by a TNC, continuing while the driver transports a rider, and ending when the last rider departs from the personal vehicle. The term does not include a taxi, for-hire vehicle, or street hail service and does not include ridesharing as defined in s. 341.031, F.S.,¹³ a carpool service, as

¹¹ The terms "taxi," "jitney," and "limousine" are not defined in Florida Statutes.

¹² Section 320.01(15), F.S. defines "for-hire vehicle" as "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." The following are not included in the term "for-hire vehicle": a motor vehicle used for transporting school children to and from school under contract with school officials; a hearse or ambulance when operated by a licensed embalmer or mortician or his or her agent or employee in this state; a motor vehicle used in the transportation of agricultural or horticultural products or in transporting agricultural or horticultural supplies direct to growers or the consumers of such supplies or to associations of such growers or consumers; a motor vehicle temporarily used by a farmer for the transportation of agricultural or horticultural products from any farm or grove to a packinghouse or to a point of shipment by a transportation company; or a motor vehicle not exceeding 11/2 tons under contract with the Government of the United States to carry United States mail, provided such vehicle is not used for commercial purposes."

¹³ Section 341.031(9)(a), F.S., defines "ridesharing: as "an arrangement between persons with a common destination, or destinations, 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 shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall be 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 shall be 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."

defined in s. 450.28, F.S.,¹⁴ or any other type of service in which the driver receives a fee that does not exceed the individual's cost to provide the ride.

- Trip-the duration of TNC service beginning at the point of origin where the rider enters the driver's vehicle and ending at a point of destination where the rider exits the vehicle.

Preemption

The bill provides Legislative intent providing for uniformity of laws governing TNCs, TNC drivers, and vehicles used by TNC drivers throughout Florida. Notwithstanding any other provision of law, TNCs, TNC drivers, and vehicles used by TNC drivers are governed exclusively by state law and any rules adopted by the Department of Highway Safety and Motor Vehicles (DHSMV).¹⁵ A county, municipality, special district, airport authority, port authority, or other local government entity or subdivision may not impose a tax on, or require a license for, a TNC or a driver, or a vehicle used by a driver, if such tax or license relates to providing TNC services, or subjects a company to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, or other local governmental entity or subdivision. The bill does not prohibit an airport from charging an appropriate annual fee, not to exceed \$5,000 per transportation network company, for use of the airports facilities or designating locations for staging, pickup, and other similar operations of the airport.

Not a Common Carrier

The bill provides that a TNC or a TNC driver is not a common carrier¹⁶ and is not providing taxi or for-hire vehicle service. In addition, TNC drivers are not required to register vehicles used for TNC service as commercial motor vehicles or for-hire vehicles.

Permit Required

The bill requires a TNC to obtain a permit from the DHSMV in order to operate. DHSMV is required to issue a permit to each TNC that meets the requirements of a TNC and pays DHSMV a \$5,000 annual permit fee. The annual permit fee is to be deposited into the Highway Safety Operating Trust Fund.

Agent for Service of Process Required

The bill requires a TNC to designate and maintain an agent for service of process in the state. If the TNC's registered agent cannot, with reasonable diligence, be found or if the TNC fails to designate or maintain a registered agent in the state, DHSMV's executive director must be an agent for the TNC upon whom any process, notice, or demand may be served.^{17, 18}

Fare Collected for Services

The bill authorizes a TNC to collect a fare on behalf of a driver for services provided to riders; however, if a fare is collected from a rider, the TNC is required to disclose to the rider the fare calculation method on its website or within its software application service. The TNC is also required to provide the rider with the applicable rates being charged and the option to receive an estimated fare before the rider enters the driver's vehicle. By required policy, payment for TNC service must be made electronically using the company's digital network or software application service. Cash payments are prohibited.

¹⁴ 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."

¹⁵ The bill does not give DHSMV specific rulemaking authority regarding TNCs.

¹⁶ The term "common carrier" is not defined for purposes of Ch. 316, F.S.

¹⁷ Section 48.091, F.S., requires any corporation doing business in the state to have a registered agent and registered office in the state.

¹⁸ Section 48.161, F.S., provides that "[w]hen any law designates a public officer, board, agency, or commission as the agent for service of process on any person, firm, or corporation, service of process thereunder shall be made by leaving one copy of the process with the public officer, board, agency, or commission or in the office thereof, or by mailing one copy to the public officer, board, agency, or commission. The public officer, board, agency, or commission so served shall retain a record copy and promptly send the copy served, by registered or certified mail, to the person to be served as shown by his or her or its records. Proof of service on the public officer, board, agency, or commission shall be by a notice accepting the process which shall be issued by the public officer, board, agency, or commission promptly after service and filed in the court issuing the process. The notice accepting service shall state the date upon which the copy of the process was mailed by the public officer, board, agency, or commission to the person being served and the time for pleading prescribed by the rules of procedure shall run from this date. The service is valid service for all purposes on the person for whom the public officer, board, agency, or commission is statutory agent for service of process."

Electronic Receipt

The bill requires that within a reasonable period of time, the TNC is required to provide an electronic receipt to the rider which lists:

- The origin and destination of the trip.
- The total time and distance of the trip.
- An itemization of the total fare paid.

Identification of Vehicle and Drivers

The bill requires a TNC's software application service or website to display a picture of the driver and the license plate number of the motor vehicle used to provide TNC service before the rider enters the driver's vehicle.

Transportation Network Company and Driver Insurance Requirements

The bill provides that beginning March 1, 2017, a TNC driver or a TNC on the driver's behalf is required to maintain primary automobile insurance that recognizes that the driver is a TNC driver or otherwise uses the vehicle to transport riders for compensation and covers the driver:

- While the driver is logged into the TNC digital network; or
- While the driver is engaged in TNC service.

The above provision is the only insurance provision that goes into effect on March 1, 2017. The remainder of the insurance provisions go into effect on July 1, 2016.

The bill provides that the following automobile insurance requirements apply while a participating driver is logged into the TNC's digital network and is available to receive transportation requests but **is not** engaged in TNC service (i.e., the driver **is not** connected to a rider):

- Primary automobile liability insurance in the amount 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.
- Personal injury protection benefits that provide the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.¹⁹ The amount of insurance required is \$10,000 for disability and \$5,000 for death.²⁰ It is notable that no-fault coverage is for the named insured (TNC driver), relatives, residing in the same household, persons operating the insured motor vehicle, riders in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant of a self-propelled vehicle.²¹

The bill provides that the following automobile insurance requirements apply while a driver is engaged in TNC service (i.e., the driver **is** connected to a rider):

- Primary automobile liability insurance that provides at least \$1 million for death, bodily injury, and property damage; and
- Personal injury protection benefits that provide the minimum coverage amounts for a limousine under the Florida Motor Vehicle No-Fault Law. Pursuant to s. 627.733(1)(a), F.S., limousines are exempt from the Florida Motor Vehicle No-Fault Law; however, if the Legislature removes this exemption or makes certain parts of the Florida Motor Vehicle No-Fault Law applicable to limousines, the changes in that law would also apply to TNCs and their drivers.

For purposes of comparison, s. 324.032, F.S., requires for-hire passenger transportation vehicles to carry limits of \$125,000/\$250,000 for bodily injury and \$50,000 for property damage.²² The bill requires less coverage than required for for-hire transportation vehicles when a driver is logged onto the TNCs digital network, but is not engaged in TNC service. However, the bill requires more coverage than required for for-hire passenger transportation vehicles when a driver is engaged in providing TNC service.

¹⁹ Sections 627.730 through 627.7405, F.S.

²⁰ Section 627.736, F.S.

²¹ Section 627.736(1), F.S.

²² Section 320.032(1)(a), F.S.

The insurance coverage requirements above may be satisfied by:

- Automobile liability insurance maintained by the driver;
- Automobile liability insurance maintained by the TNC; or
- A combination of coverage maintained by the driver and the TNC.

The bill provides that if insurance maintained by a driver has lapsed or does not provide the required coverage, insurance maintained by a TNC is required to provide the required coverage beginning with the first dollar of a claim.

Coverage under an automobile insurance policy maintained by the TNC is not dependent on a personal automobile insurer's first denying a claim nor is a personal automobile insurance policy required to first deny a claim.

The required insurance may be placed with an insurance carrier authorized to do business in the state or with a surplus lines insurer eligible under the Surplus Lines Law.²³

The bill requires a driver to carry proof of coverage satisfying provisions of the bill at all times during his or her use of a vehicle in connection with a TNC's digital network. In the event of an accident, the driver is required to provide this insurance coverage information to interested parties, automobile insurers, and investigating police officers. Proof of financial responsibility may be presented through a digital phone application under s. 316.646, F.S.,²⁴ controlled by a TNC. Upon such request, the TNC driver is also required to disclose to directly interested parties, automobile insurers, and investigating police officers whether he or she was logged into the TNC's digital network or engaged in TNC service at the time of the accident.

The bill provides that if a TNC's insurer makes a payment for a claim covered under comprehensive coverage or collision coverage, the TNC is required to cause its insurer to issue the payment directly to the business repairing the vehicle or jointly to the owner of the vehicle and the primary lienholder on the covered vehicle.

Transportation Network Company and Insurer; Exclusions; Disclosure

The bill requires TNCs to disclose the following in writing to drivers before they are allowed to accept a request for TNC service on the TNC's digital network:

- The insurance coverage, including the types of coverage and the limits for each coverage that the TNC provides while the driver uses a personal vehicle in connection with a TNC's digital network.
- That the driver's own automobile insurance policy may not provide any coverage while the driver is logged into the TNC's digital network and is available to receive transportation requests or is engaged in TNC service depending on its terms.
- That the provision of rides for compensation, whether prearranged or otherwise, which is not covered by s. 316.680, F.S., subjects the driver to the coverage requirements imposed by s. 324.032(1), F.S., and that failure to meet such limits subjects the driver to penalties provided in s. 324.221, up to and including a misdemeanor of the second degree.

The bill provides that an insurer that provides automobile liability insurance policies under Part XI of Ch. 627, F.S.²⁵ may exclude any and all coverage afforded under the owner's or driver's insurance policy for any loss or injury that occurs while a driver is logged into a TNC's digital network or while a driver provides TNC service. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

²³ Sections 626.913 through 626.937, F.S. "Surplus Lines" is "property/casualty insurance coverage that isn't available from insurers licensed in the state, called admitted companies, and must be purchased from a non-admitted carrier. Examples include risks of an unusual nature that require greater flexibility in policy terms and conditions than exist in standard forms or where the highest rates allowed by state regulators are considered inadequate by admitted companies. Laws governing surplus lines vary by state."

<http://www.iii.org/services/glossary/s/> (Last visited November 23, 2015).

²⁴ Section 316.646, F.S., relates to required proof of automobile insurance and the display of such proof.

²⁵ Part XI of Ch. 627, F.S., relates to motor vehicle and casualty insurance contracts.

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

The exclusions described above apply notwithstanding any requirement under the Financial Responsibility Law of 1955.²⁶ The bill does not require or imply that a personal automobile insurance policy provides coverage while the driver is logged into the TNC's digital network, while the driver is engaged in TNC service, or while the driver otherwise uses a vehicle to transport passengers for compensation.

The bill does not preclude an insurer from providing coverage for TNC services by contract or endorsement for the driver's vehicle.

The bill provides that an insurer that excludes the coverage described above has no duty to defend or indemnify any claim expressly excluded. The bill does not invalidate or limit an exclusion contained in a policy in use or approved for use in the state before July 1, 2016.

The bill provides that an automobile insurer that defends or indemnifies a claim against a driver, which is excluded under the terms of its policy, has a right of contribution against other insurers that provide automobile insurance to the same driver in satisfaction of the coverage requirements in the bill at the time of loss.

The bill provides that in a claims coverage investigation, TNCs and any insurer potentially providing coverage is required to cooperate to facilitate the exchange of relevant information with directly involved parties and any insurer of the driver, if applicable, including the precise times that a driver logged into and off of the TNC's digital network during the 12-hour period immediately before and the 12-hour period immediately after the accident and disclose to one another a clear description of the coverage exclusions, and limits provided under any automobile insurance maintained under the requirements of the bill.

Drivers as Independent Contractors

The bill provides that a TNC driver is an independent contractor and **not** an employee of the TNC if all of the following conditions are met:

- The TNC does not prescribe specific hours during which the driver must be logged into the TNC's digital network.
- The TNC does not impose restrictions on the driver's ability to use digital networks from other TNCs.
- The TNC does not assign the driver to a particular territory in which TNC services are authorized to be provided.
- The TNC does not restrict the driver from engaging in any other occupation or business.
- The TNC and driver agree in writing that the driver is an independent contractor of the company.

The bill provides that a TNC is not required to provide workers' compensation coverage to a TNC driver who is classified as an independent contractor.

Zero Tolerance for Drug and Alcohol Use

The bill requires a TNC to implement a zero tolerance policy on the use of illegal drugs or alcohol by a driver who is providing TNC service or who is logged into the TNC's digital network but is not providing service.

The bill requires a TNC to provide notice on its website of a zero tolerance policy on the use of illegal drugs and alcohol by drivers and shall provide procedures for a rider to file a complaint about a driver who the rider reasonably suspects was under the influence of drugs or alcohol during the course of a trip.

Upon receiving a rider complaint alleging a violation of the zero tolerance policy, the TNC is required to immediately suspend the accused driver's access to the TNC's digital network and conduct an investigation into the reported incident. The suspension is required to last for the duration of the investigation.

Transportation Network Company Driver Requirements

The bill provides that before allowing a person to act as a driver and at least once annually thereafter, the TNC shall:

- Require the applicant to submit an application to the TNC, including his or her address, date of birth, social security number, driver license number, driving history, motor vehicle registration, automobile liability insurance, and other information required by the TNC.
- Conduct, or have a third party conduct, a criminal background check for each applicant to include:
 - A Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial national database with validation.
 - The Dru Sjodin National Sex Offender Public Website.
- Conduct a social security trace or similar identification check that is designed to identify relevant information about the applicant, including first name, last name, middle name or initial, aliases, maiden name, alternative spellings, nicknames, date of birth, and any known addresses.
- Obtain and review a driving history research report for such persons.

The bill requires a TNC to prohibit a person from acting as a driver on its digital network if the person:

- Has had more than three moving violations in the preceding three-year period or one major violation in the preceding three-year period. A major violation is fleeing or attempting to elude a law enforcement officer, reckless driving, or driving with a suspended or revoked license;
- Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage or theft, acts of violence, or acts of terror;
- Has been convicted, within the past seven years of any offenses listed on the level 2 screening standards set forth in s. 435.04(2) or (3), F.S.,²⁷ or a substantially similar law of another state or federal law;
- Is a match in the Dru Sjodin National Sex Offender Public Website;
- Does not possess a valid driver license;
- Does not possess proof of registration for the motor vehicle used to provide TNC service;
- Does not possess proof of automobile liability insurance for the motor vehicle used to provide TNC service; or
- Has not attained the age of 19 years.

Prohibited Conduct

The bill provides that a TNC driver may not:

- Accept a rider other than a rider arranged through a digital network or software application service.
- Solicit or accept street hails.
- Solicit or accept cash payments from riders. A TNC is required to adopt a policy prohibiting solicitation or acceptance of cash payments from riders and notify drivers of such policy. Such policy must require a payment for TNC service to be made electronically using the TNCs digital network or software application service.

Nondiscrimination; Accessibility

²⁷ Section 435.04, F.S., contains the level 2 background screening standards.

The bill provides that a TNC may not discriminate against a driver on the basis of race, color, national origin, religious belief or affiliation, sex, disability, age, or sexual orientation. A TNC is required to adopt a policy to assist a driver who reasonably believes that he or she received a negative rating from a rider because of his or her race, color, national origin, religious belief or affiliation, sex, disability, age, or sexual orientation.

A TNC is required to adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, or sexual orientation with respect to riders or potential riders and shall notify drivers of such policy.

Drivers are required to comply with the nondiscrimination policy and with all applicable laws relating to the accommodation of service animals.

The bill prohibits a TNC from imposing additional charges for providing TNC service to persons with physical disabilities because of those disabilities.

A TNC is required to provide riders an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible service, the TNC is required to direct the rider to an alternate provider of the wheelchair-accessible service, if available.

Records

The bill requires TNCs to maintain:

- Individual trip records for at least one year after the date each trip was provided.
- Driver records for at least one year after the date on which a driver's activation on the TNCs digital network has ended.
- The TNC is required to maintain records of written rider complaints received through the TNC's software application for at least two years after the date the complaint was received by the TNC.

Current Situation-Proving Financial Responsibility

Chapter 324, F.S., is the Financial Responsibility Law of 1955²⁸ and relates to financial responsibility regarding the operation of a motor vehicle.²⁹

Section 324.031, F.S., provides that the owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8), F.S.,³⁰ or s. 324.151, F.S.,³¹ which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association.³²

Proposed Changes-Proving Financial Responsibility

The bill amends s. 324.031, F.S., allowing the owner or operator of a taxicab, limousine, jitney, or any vehicle used in connection with a TNC or any other for-hire vehicle transportation to prove financial

²⁸ Section 324.251, F.S.

²⁹ Section 324.011, F.S.

³⁰ Section 324.021(8), F.S., defines "motor vehicle liability policy" as "any owner's or operator's policy of liability insurance furnished as proof of financial responsibility pursuant to s. 324.031, insuring such owner or operator against loss from liability for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of a motor vehicle in not less than the limits described in subsection (7) and conforming to the requirements of s. 324.151, issued by any insurance company authorized to do business in this state. The owner, registrant, or operator of a motor vehicle is exempt from providing such proof of financial responsibility if he or she is a member of the United States Armed Forces and is called to or on active duty outside this state or the United States, or if the owner of the vehicle is the dependent spouse of such active duty member and is also residing with the active duty member at the place of posting of such member, and the vehicle is primarily maintained at such place of posting. The exemption provided by this subsection applies only as long as the member of the armed forces is on such active duty outside this state or the United States and the owner complies with the security requirements of the state of posting or any possession or territory of the United States."

³¹ Section 324.151, F.S., provides required provisions for motor vehicle liability policies.

³² The Florida Insurance Guaranty Association is created in s. 631.55, F.S.

responsibility by providing evidence of holding a motor vehicle liability policy issued by an insurance carrier who is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer³³ rated “A-“ or higher by A.M. Best Company.

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers.³⁴ These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results. While the rating results are similar, one should review the rating organization’s own explanation of its approach and methods to understand the subtle differences that occur when a particular insurer is rated by multiple rating organizations. A.M. Best’s Financial Strength Rating is divided between “Secure,” with ratings between A++ and B+, or “Vulnerable,” with ratings of B or lower. Among the “Secure” ratings, A++ and A+ are described as “Superior,” A and A- are described as “Excellent,” and B++ and B+ are described as “Good” in terms of A.M. Best’s opinion of the company’s ability to meet financial obligations.³⁵

The bill amends ss. 324.023, 324.051, 324.071, 324.151, and 627.733, F.S., conforming to changes made to ss. 324.031 and 324.032, F.S.

Motor Vehicle Crash Reports

Section 316.066, F.S., creates the requirements for both the Florida Traffic Crash Report, Long Form and short form. Information required includes date, time, and location of the crash, names and addresses of parties involved and insurance information.

The bill amends s. 316.066, F.S., requiring both the long form and the short form crash reports to contain a statement as to whether, at the time of the crash, a driver was engaged in TNC service or logged into the TNC’s digital network,

The bill also provides that any driver providing a false statement to law enforcement regarding whether or not he or she was engaged in TNC service or logged into the TNC’s digital network commits a misdemeanor in the second degree, punishable as provided in ss. 775.082 or 775.083, F.S. This is consistent with other provisions regarding providing false statements to law enforcement regarding traffic crashes.

Effective Date

The bill has an effective date of July 1, 2016.

B. SECTION DIRECTORY:

- | | |
|-----------|-------------------------------------------------------------------------------------------------------------|
| Section 1 | Amends s. 316.066, F.S., relating to written reports of crashes. |
| Section 2 | Creates s. 316.680, F.S., relating to transportation network companies. |
| Section 3 | Amends s. 324.031, F.S., relating to the manner of proving financial responsibility. |
| Section 4 | Amends s. 324.023, F.S., relating to financial responsibility for bodily injury or death to conform. |
| Section 5 | Amends s. 324.051, F.S., relating to reports of crashes; suspensions of licenses and registrations conform. |

³³ Section 626.918, F.S., provides the statutory requirements for eligible surplus lines insurers.

³⁴ Financial strength rating organizations include: A.M. Best (www.ambest.com), Fitch (www.fitchratings.com), Moody’s Investor Services (www.moody.com), Standard & Poor’s (www.standardandpoors.com), and Demotech (www.demotech.com).

³⁵ See A.M. BEST COMPANY, Guide to Best’s Financial Strength Ratings, <http://www.ambest.com/ratings/guide.pdf>. (Last visited Nov. 13, 2015).

- Section 6 Amends s. 324.071, F.S., relating to reinstatement; renewal of license; reinstatement fee to conform.
- Section 7 Amends s. 324.151, F.S., relating to motor vehicle liability policies; required provisions to conform.
- Section 8 Amends s. 627.733, F.S., relating to required security to conform.
- Section 9 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate. The bill will increase revenues to DHSMV. The bill requires TNCs to pay an annual permit fee of \$5,000 to DHSMV; however, the number of applicants to be TNCs is unknown at this time. The permit fees may be used by DHSMV to fund the administration of issuing TNC permits.

2. Expenditures:

DHSMV may incur some expenditures associated with regulating TNCs and with updating the Florida Traffic Crash Reports.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill preempts to the state the regulation of TNCs. To the extent municipalities, counties, and other local governmental entities are imposing fees on TNCs, they will experience an indeterminate negative fiscal impact.

The bill does not prohibit airports from charging an annual fee of up to \$5,000, per TNC, for use of the airports facilities. This may provide a positive fiscal impact to the airports, but the total fiscal impact is unknown at this time.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

TNCs may see a reduced cost associated with statewide regulation instead of regulation at the local government level.

Motor vehicle insurers may see a positive impact due to insurance premiums from TNC and their drivers for covering TNC service.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill preempts to the state the regulation of TNCs reducing the authority of cities and counties to raise total aggregate revenues; however, an exemption applies since the bill appears to have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides that TNCs, TNC drivers, and vehicles used by TNC drivers are governed exclusively by s. 316.680, F.S., and any rules adopted by DHSMV to administer s. 316.680, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments

The bill provides that TNCs must maintain the level of coverage required for limousines under the Florida Motor Vehicle No-Fault Law. However, limousines are exempt from this law. This may exempt TNC drivers from the coverage requirements under The Florida Motor Vehicle No-Fault under certain circumstances.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 2, 2015, the Highway and Waterway Safety Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Revised the definition of “transportation network company service.”
- Revised insurance requirements.
- Revised background check requirements for TNC driver.
- Removed a requirement that vehicles being used to provide TNC service meet state safety and emissions standards of the state where the vehicle is registered.
- Authorized airports to charge certain annual fees to TNCs.
- Removes provisions deleting the statutory authorization for certain entities to self-insure their vehicles.
- Makes various technical and conforming changes to the bill.

On January 13, 2016, the Economic Affairs Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Provided that leased or rented vehicles may be considered a personal vehicle for the provision of TNC service.
- Required motor vehicle crash reports to indicate if a driver was engaged in TNC service at the time of the crash and provided penalties for providing false information.

This analysis is written to the committee substitute as it was reported out of the Economic Affairs Committee.