

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 377 Motor Vehicle Rentals

SPONSOR(S): Transportation & Infrastructure Subcommittee, Latvala and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	11 Y, 2 N, As CS	Roth	Vickers
2) Ways & Means Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

Car owners interested in sharing their vehicles can register as a host on a peer-to-peer car-sharing website. These sites require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport.

A \$2 surcharge is imposed on any day or part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed. The surcharge is subject to all applicable taxes imposed in ch. 212, F.S.

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

- Defines terms, including "peer-to-peer car sharing," which is the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. Further, it is not rental, for-hire, or joint use of motor vehicles, such as ridesharing or carpooling.
- Establishes insurance requirements for each party involved in car sharing. During the period that the owner is sharing the car to another driver, the car-sharing program 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 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 car-sharing program and vehicle owner are not vicariously liable for the actions and damages of the driver during periods of car sharing use.
- Specifies recordkeeping requirements and retention periods, and 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 car-sharing program for its acts or omissions that cause bodily harm during car sharing; nor, the owner or driver to the car-sharing program for economic losses due to a breach of contract.
- Extends the current \$2 surcharge and subsequent sales tax on the lease or rental of a motor vehicle to car-sharing programs.

The bill will likely have an indeterminate fiscal impact on state and local governments. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the state of Florida qualifies the vehicle as a “for-hire vehicle.” A “for-hire vehicle” is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is considered “for hire”. The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation “for hire”.¹

Florida law provides specific financial responsibility requirements to for-hire vehicles. For-hire vehicles, such as taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, \$250,000 per incident for bodily injury, and \$50,000 for property damage.² The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.³

For counties, to the extent not inconsistent with general or special law, the legislative and governing body of a county has the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, and limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.⁴

Peer-to-Peer Car Sharing

Car owners interested in sharing their vehicles can register as a host on a peer-to-peer car-sharing program’s website.⁵ Car-sharing programs require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car’s availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport. Hosts typically receive between 65 and 75 percent of the fees. Payments are typically through direct deposit.⁶

Guests also register with the car-sharing site. The car-sharing program will conduct a background check and review the guests’ driving records before approving them. The process involves choosing an available car, reserving a pick-up date and time, and providing credit card information if it is not already on file. At the end of the sharing period, the guest replaces any consumed fuel before returning the car to its pickup location.⁷

One car-sharing website reports that its program 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.⁸ In Florida, the same car-sharing program has over 611,000 residents signed up as guests

¹ Section 320.01(15)(a), F.S.

² Section 324.032(1), F.S.

³ Section 324.031, F.S.

⁴ Section 125.01(1)(n), F.S.

⁵ Turo, Getaround, and Drift are examples of car-sharing programs.

⁶ Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (February 2015), available at <https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961> (last visited January 14, 2020).

⁷ *Id.*

⁸ Turo, *About Turo*, available at <https://turo.com/about> (last visited January 14, 2020).

and 23,000 hosts (of which 95 percent share two or fewer cars).⁹ The average trip duration is 4.4 days and the average host earns \$300 per month.¹⁰

Car-Sharing Service

“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 lease, rental, or usage of a motor vehicle for a location-owned, operated, or leased by or for the benefit of an airport or airport authority is not eligible for the imposition of the surcharge for car-sharing services in lieu of the standard rental car surcharge.¹¹

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.¹² 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, record must keep 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.

Rental Car Surcharge

A \$2 surcharge is imposed on any day or part of a day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers, regardless of whether the vehicle is licensed in Florida.¹³ The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the rental car surcharge are required to report surcharge collections according to the county to which the surcharge was attributed. The surcharge is subject to all applicable taxes imposed in Chapter 212, F.S.

The surcharge only applies to the first 30 days of the term of any lease or rental. If payment for the lease or rental of a motor vehicle is made in Florida, the surcharge applies. The surcharge is not imposed on leases or rentals to tax-exempt entities. Section 216.0606(4), F.S., exempts from payment of the surcharge a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 212.0606(2), F.S., provides that if a member of a car-sharing service uses a motor vehicle pursuant to an agreement with a car-sharing service for less than 24 hours, in lieu of the daily rental car surcharge,¹⁴ a surcharge of \$1.00 per use is imposed. If a member of a car-sharing service uses the same motor vehicle for 24 consecutive hours or more, the surcharge of \$2 per day or any part of a day shall be imposed.

After deduction for administrative fees and the general revenue service charge, the rental car surcharge is distributed as follows:

⁹ Turo, *Florida Fast Facts* (on file with the Transportation & Infrastructure Subcommittee).

¹⁰ *Id.*

¹¹ Section 212.0606(2), F.S.

¹² Section 322.38, F.S.,

¹³ Section 212.0606(1), F.S.

¹⁴ This surcharge is imposed pursuant to s. 212.0606(1), F.S.

- 80 percent to the State Transportation Trust Fund;
- 15.75 percent to the Tourism Promotional Trust Fund; and
- 4.25 percent to the Florida International Trade and Promotion Trust Fund.

The proceeds of the rental car surcharge (as illustrated in the below chart) are deposited into the State Transportation Trust Fund, Tourism Promotional Trust Fund, and Florida International Trade and Promotion Trust Fund, and are allocated to each Department of Transportation district for transportation projects, based on the amount of proceeds collected in the counties within each respective district.¹⁵

Revenue from Rental Car Surcharge for Fiscal Years 2013-2020¹⁶

Fiscal Year	Total** Collections	Annual Change %	State Transportation Trust Fund	Tourism Promotional Trust Fund	Florida International Trade and Promotion Trust Fund
2019-20	182,800,000	2.58%	146,200,000	28,800,000	7,800,000
2018-19*	178,200,000	3.02%	142,500,000	28,100,000	7,600,000
2017-18*	172,700,000	-0.96%	138,200,000	27,200,000	7,300,000
2016-17	174,367,779	-0.93%	139,492,736	27,464,097	7,410,947
2015-16	176,001,151	6.37%	140,800,921	27,731,681	7,468,549
2014-15	165,464,220	6.41%	132,371,376	26,060,615	7,032,229
2013-14	155,492,431	7.58%	124,393,945	24,490,058	6,608,428

* Estimate ** Excluding administrative fees and service charge

Motor Vehicle Insurance Requirements

Chapter 324, F.S., is the Financial Responsibility Law of 1955.¹⁷ Florida's Financial Responsibility Law requires proof of ability to pay monetary damages for bodily injury (BI) and property damage (PD) liability arising out of a motor vehicle accident or serious traffic violation.¹⁸ The owner or operator of a motor vehicle is not required to provide proof of BI coverage at the time of vehicle registration. Motorcycle owners also are not required to provide proof of BI coverage at the time of registration. Proof of such coverage is only required after an accident.¹⁹ At that time, a driver proves financial responsibility by furnishing an active motor vehicle liability policy, a certificate showing a qualifying security deposit with the Department of Highway Safety and Motor Vehicles (DHSMV), or proof of qualifying self-insurance.²⁰

The required minimum amounts of BI insurance coverages are \$10,000, in the event of bodily injury to, or death of, one person, and \$20,000, in the event of bodily injury to, or death of, two or more persons.²¹ The required minimum amount of PD insurance coverage is \$10,000, in the event of

¹⁵ Section 212.0606(3), F.S.

¹⁶ Florida Revenue Estimating Conference, *2019 Florida Tax Handbook*, at 154, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited January 14, 2020).

¹⁷ Section 324.251, F.S.

¹⁸ Chapter 324, F.S.

¹⁹ Sections 320.02 and 324.011, F.S.

²⁰ Sections 324.031, 324.061, 324.161, and 324.171, F.S. Businesses that choose to self-insure the financial responsibility requirements must deposit \$30,000 per vehicle, up to a maximum of \$120,000, with DHSMV and maintain excess insurance with limits of \$125,000/\$250,000/\$300,000. Individuals that choose to self-insure must deposit \$30,000 with DHSMV. Individuals and businesses can also obtain a certificate of self-insurance to satisfy the financial responsibility requirements. Individuals must have an unencumbered net worth of \$40,000 and businesses must have either an unencumbered net worth of \$40,000 for the first vehicle and \$20,000 for each additional vehicle or a sufficient net worth determined by DHSMV by rule. Currently, the applicable rule provides that \$40,000 for the first vehicle and an amount less than \$20,000 for each additional vehicle is sufficient if the applicant carries excess insurance in the amounts of \$25,000/\$50,000/\$100,000. The amount applicable to each additional vehicle is determined annually under a "Manual of Financial Responsibility Rates" (Revised 05-89) adopted by rule by the Office of Insurance Regulation. Rule 15A-3.011, F.A.C.

²¹ Section 324.021(7), F.S.

damage to property of others, or \$30,000 combined for both BI and PD coverage.²² Some refer to these coverage amounts in a summary manner, i.e., \$10,000/\$20,000/\$10,000 or 10/20/10.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD coverage requirement.²³ One may obtain a driver's license and registration reinstatement by obtaining a liability policy and by paying a fee to DHSMV.²⁴

Financial responsibility requirements are common. All states have financial responsibility laws that require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states.

Florida's Motor Vehicle No-Fault Law (No-Fault Law)²⁵ requires motorists to carry no-fault insurance known as personal injury protection (PIP) coverage. The purpose of PIP coverage under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry \$10,000 of PIP coverage.²⁶ However, motorcycles are excluded from this requirement.

Effect of Proposed Changes

The bill provides that car-sharing programs are required to collect the \$2 per day rental car surcharge plus applicable sales tax from the customer and remit them to the state. However, a member of a car-sharing service who uses the vehicle for less than 24 hours will only pay a \$1 surcharge and there is no surcharge imposed for the lease, rental, or use of a motor vehicle from a location owned, operated, or leased by or for the benefit of an airport or airport authority.

The bill moves the imbedded definition of "car-sharing service" into a stand-alone definition and creates definitions for the terms "motor vehicle rental company" and "peer-to-peer car-sharing program".

The bill creates a new section of the Florida Insurance Code²⁷ providing requirements for "peer-to-peer car sharing," also called "car sharing" in the bill. Car sharing is the authorized use of a "shared vehicle" (vehicle or car) through a "peer-to-peer car-sharing program"²⁸ (program) by an individual, the "shared vehicle driver" (driver) that is not the "shared vehicle owner" (owner). The following terms relevant to the events and roles involved in car sharing are also defined:

- "Car-sharing delivery period";
- "Car-sharing period";
- "Car-sharing start time";

²² Section 324.022(1), F.S.

²³ Section 324.0221(2), F.S. Failure to maintain PIP coverage will also result in suspension of the driver's license and vehicle registration.

²⁴ Section 324.0221(3), F.S.

²⁵ Sections 627.730-627.7405, F.S.

²⁶ Section 627.7275, F.S. Under Florida's Financial Responsibility Law (Ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for Bodily Injury and Property Damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires \$10,000, per person, and \$20,000, per incident, of Bodily Injury coverage, and \$10,000 of Property Damage liability coverage.

²⁷ The Florida Insurance Code is chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

²⁸ The bill defines "peer-to-peer car sharing 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, taxicab association, the owner of a for-hire vehicle, or a car sharing service. 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.

- "Car-sharing termination time";
- "Peer-to-peer car-sharing program";
- "Peer-to-peer car-sharing program agreement";
- "Shared vehicle";
- "Shared vehicle driver"; and
- "Shared vehicle owner"²⁹

Where applicable, exceptions are provided by the bill to establish car sharing as a separate concept from current laws that govern rental, for-hire, or joint use of motor vehicles, such as ridesharing or carpooling.

Car-Sharing Insurance Requirements

The program is required to ensure that the owner and driver of the vehicle have the following motor vehicle insurance, which are the statutory minimums required for private passenger motor vehicles, during 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.³⁰

The program must also ensure that the insurance coverage above either recognizes the use of the vehicle in 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.³¹

Liabilities and Exclusions

If it is determined that the vehicle owner was in control of the vehicle at the time of a loss, the owner must indemnify the program for the liabilities it assumes under the bill.

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 car-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 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.

²⁹ The bill defines "shared vehicle owner" as the registered owner, or a 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. Therefore, an individual or a business may "stand in the shoes" of the registered owner for purpose of any responsibility or obligation of the owner under the bill.

³⁰ 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.

³¹ 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.

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.³² This means that the actions and liabilities of the driver cannot be imputed to be those of the program or the vehicle owner.

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 following records must also be kept by the program:

- 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 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 car-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;

³² 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 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.

- 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.

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 shared 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 car sharing, the vehicle must be removed from car 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.³³

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 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: Amends s. 212.05, F.S., relating to sales, storage use tax.

Section 2: Amends s. 212.0606, F.S., relating to rental car surcharge.

Section 3: Creates s. 627.7483, F.S., relating to peer-to-peer car sharing; insurance requirements.

Section 4: Provides an effective date of March 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may result in an increase in revenue associated with the requirement that specified entities remit the rental car surcharge. These revenues will be deposited into the State Transportation Trust Fund, the Tourism Promotional Trust Fund, and the Florida International Trade and Promotion Trust Fund.

Additionally, the state may experience an increase in revenue from additional sales tax that is deposited into the General Revenue Fund.

³³ *Id.*

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Counties may experience an increase in revenue associated with additional sales taxes from motor vehicle rental companies.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Car-sharing programs will be required to remit the rental car surcharge and appropriate sales taxes as well as comply with insurance regulations.

D. FISCAL COMMENTS:

According to the Department of Revenue, the rental car surcharge under s. 212.0606, F.S., and sales and use taxes under s. 212.05, F.S., on rental revenue generated by participating in a "Peer-to-Peer", or other, ride-share model program, apply under current law and are currently required to be remitted to the state.³⁴

The Revenue Estimating Conference (REC) met on November 12, 2019, and adopted a positive indeterminate impact for cash and recurring funds to the General Revenue Fund and State Transportation Trust Fund. REC found that it is unclear the extent to which the provisions of the bill are enforceable given the out-of-state nature of the current marketplace providers.³⁵

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 expenditures 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:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Art. VII, s. 19 of the Florida Constitution may apply if the tax provisions in the bill are interpreted to be a new tax.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Shared Vehicle Owner

³⁴ Email from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: SB 1148 Questions (March 18, 2019).

³⁵ Revenue Estimating Conference (November 12, 2019), p. 14.

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 car sharing to 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.

Other Comments: Uninsured Motorist Coverage

The bill requires the 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 345-361, 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.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Conformed the bill to the National Council of Insurance Legislators peer-to-peer model insurance act.
- Provided that peer-to-peer car-sharing programs are exempt from vicarious liability.
- Revised provisions relating to notification of implications of lien, record keeping, consumer protection, and construction.
- Specified that peer-to-peer car-sharing programs are required to remit sales tax.
- Changed the effective date to March 1, 2021.

This analysis is written to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.