

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 365 Motor Vehicle Rentals
SPONSOR(S): Ways & Means Committee, Caruso
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 566

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee	13 Y, 3 N	Fortenberry	Keating
2) Ways & Means Committee	14 Y, 1 N, As CS	Berg	Aldridge
3) Commerce Committee	21 Y, 1 N	Fortenberry	Hamon

SUMMARY ANALYSIS

In recent years, the private market, through the Internet and smart phone technology, has allowed the development of new forms of direct person-to-person economic arrangements. Companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is given over to another individual to operate for a period. This is known as “peer-to-peer car-sharing.” Unlike transportation network companies, another person takes over possession and control of the motor vehicle from the owner, rather than simply obtaining a ride. Car-sharing services, where one can rent a car from a business on an hourly basis, are similar to, but distinct from traditional rental car companies. Unlike transportation network companies and car-sharing services, peer-to-peer car-sharing is not regulated.

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

- Requires peer-to-peer car-sharing programs to collect and remit sales tax on the lease or rental of motor vehicles on their platform.
- Requires peer-to-peer car-sharing programs to collect and remit a \$1 surcharge on the lease or rental of a motor vehicle.
- 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 and coordinated coverage for each party involved in car sharing.
- Allows motor vehicle insurers insuring the shared vehicle owner to exclude coverage for use of the vehicle in car-sharing.
- Provides that the peer-to-peer car-sharing program and vehicle owner are not vicariously liable for the actions and damages of the driver during periods of peer-to-peer car-sharing use.
- Specifies recordkeeping requirements and retention periods.
- Includes requirements for consumer protection notifications.
- Addresses the repair, use, and non-use of motor vehicles under a safety recall notice.
- Provides that the bill does not limit the liability of the peer-to-peer car-sharing program for its acts or omissions that cause bodily harm during peer-to-peer car-sharing nor the owner or driver to the peer-to-peer car-sharing program for economic losses due to a breach of contract.

The Revenue Estimating Conference (REC) has not estimated the potential revenue impacts of the bill. Staff estimates that the bill will have a recurring positive indeterminate impact on state and local government revenues.

The bill has an effective date of January 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

In recent years, the private market, using the Internet and smart phone technology, has allowed the development of new forms of direct person-to-person economic arrangements. Transportation network companies (TNCs) allow individuals to earn extra income by providing rides in their personal cars. TNCs like Uber and Lyft facilitate the connection of individuals seeking rides with those offering rides and manage payment transactions for the service. Because of safety, regulatory, and insurance considerations, the Legislature passed CS/HB 221¹ in 2017 to preempt local regulations and establish statutory requirements for TNCs, including defining insurance liabilities and standards.

In a manner similar to TNCs, new companies have emerged to facilitate the sharing of motor vehicles such that a private passenger vehicle is provided to another individual to operate for a period of time. This is known as peer-to-peer car-sharing. Peer-to-peer car-sharing adds a third motor vehicle rental or sharing model to the existing two models, which consist of motor vehicle rental companies and car-sharing services. Motor vehicle rental companies and car-sharing services are regulated by statute; however, peer-to-peer car-sharing is not regulated.

For-Hire Vehicles

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

“For-hire vehicle” means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a “share-expense” basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is “for hire.” The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation “for hire.”

Renting a Motor Vehicle to Another

Current law establishes requirements for a person² who wishes to rent a motor vehicle to another.³ These include inspecting the driver license of the person to whom the vehicle is to be rented and comparing and verifying the signature thereon with the signature of such person written in his or her presence before the vehicle can be rented. Further, a record must be kept of the registration number of the motor vehicle rented, the name and address of the person renting, and the number, date, and place of issue.⁴

¹ Ch. 2017-12, Laws of Fla.

² In this context, person means both natural persons and businesses.

³ S. 322.38, F.S.

⁴ *Id.*

Car-Sharing Service

A “car-sharing service”⁵ is a membership-based organization or business that requires the payment of an application or membership fee and provides member access to motor vehicles⁶:

- 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.

Peer-to-Peer Car-Sharing

In peer-to-peer car-sharing, owners interested in sharing their vehicles so that renters can drive them can register as a host on a peer-to-peer car-sharing site.⁷ Sites require photos of the car and help the owner determine a fee based on the location and type of vehicle. The host then specifies the vehicle’s availability. The host may choose to have the vehicle picked up at his or her house, deliver the vehicle, or have it picked up at another location, such as an airport. Hosts typically receive between 65 and 75 percent of fees collected on their behalf by the site from the guest. Payments are typically made to the owner through direct deposit.⁸ The site provides the recordkeeping necessary to the transaction and in compliance with requirements of law.

Guests also register with the peer-to-peer car-sharing site. The site will conduct a background check and look at the guests’ driving records before approving them. The process involves choosing an available vehicle, reserving a date and time, and providing credit card information, if it is not already on file. At the end of the sharing period, the driver replaces any consumed fuel before returning the vehicle to its pickup location.⁹

One peer-to-peer car-sharing website, Turo.com, reports that its company has users in over 5,500 cities across the world. It offers over 850 makes and models of vehicles and up to \$750,000 in liability insurance.¹⁰ According to Turo, the average host earns over \$700 per month.¹¹

Rental Car Taxes and Fees

The lease or rental of tangible personal property, including vehicles, is subject to state and local sales and use tax.¹² When a motor vehicle is leased or rented in Florida for a period of less than 12 months, the entire amount of such rental is taxable at the rate of 6 percent¹³ of the gross proceeds derived from the lease or rental.¹⁴ A “lease or rental” is defined as the leasing or renting of tangible personal property and the possession or use of property by the lessee or renter for a consideration, without transfer of

⁵ The definition for a “car-sharing service” is in s. 212.0606, F.S.

⁶ One well-known example of a car-sharing service is Zipcar. See Zipcar, <https://www.zipcar.com/> (last visited Mar. 11, 2021).

⁷ Turo, Getaround, and Avail are examples of car sharing websites/applications.

⁸ Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car Sharing*, Autotrader, (Feb. 2015), <https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961> (last visited Mar. 11, 2021).

⁹ *Id.*

¹⁰ Turo, *About Turo*, <https://turo.com/en-us/about> (last visited Mar. 11, 2021). Turo’s insurance offering is a policy purchased from Liberty Surplus Lines, a Liberty Mutual Group company, which is issued through Turo Insurance Agency, LLC.

¹¹ *Id.*

¹² S. 212.05(1), F.S.

¹³ Discretionary county sales surtax, if any, is also owed if the 6 percent Florida state sales tax applies. See s. 212.054, F.S.

¹⁴ S. 212.05(1)(c), F.S.

title.¹⁵ The lessor is required to be registered as a dealer and to collect tax on the total amount of the lease or rental charges from the lessee.¹⁶

Florida law imposes a surcharge¹⁷ of \$2.00 per day, or any part of a day, upon the lease or rental of a “motor vehicle licensed for hire”¹⁸ and designed to carry less than nine passengers, regardless of whether such motor vehicle is licensed in Florida.¹⁹ The surcharge applies to the first 30 days of the term of any lease or rental.²⁰ Pursuant to Rule 12A-16.002(1)(b), F.A.C., “[e]ach person engaged in the business of leasing or renting for hire passenger motor vehicles is required to collect the rental car surcharge when the lease or rental payments are to be paid under the terms of the lease or rental agreement.” The term “person” includes “any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit...”²¹ The term “business” is defined to mean “any activity engaged in by any person, or caused to be engaged in by him or her, with the object or public gain, benefit, or advantage, either direct or indirect.”²²

Rule 12A-16.002(7), F.A.C., provides in pertinent part that “any person who has leased or rented a for hire passenger motor vehicle under the terms of a lease or rental agreement...and cannot prove that the rental car surcharge has been paid to the lessor or other person will be directly liable to the state for any surcharge, interest, or penalty due on such transaction.” The lessee, therefore, is also liable for payment of the rental car surcharge if the lessor fails to collect.

The \$2.00 surcharge only applies to rentals by a member of a car-sharing service when the motor vehicle is used for more than 24 hours.²³ Members of a car-sharing service who use a motor vehicle for less than 24 hours (pursuant to an agreement with the service) are required to pay a \$1.00 surcharge, per usage.²⁴ The car-rental surcharge applicable to car-sharing services does not apply to the lease, rental, or usage of a motor vehicle from a location-owned, operated, or leased by or for the benefit of an airport or airport authority.²⁵

Total rental car surcharge collections in FY 2019-20 were \$176.0 million.²⁶ After deduction for administrative fees and the general revenue service charge, the rental car surcharge is distributed as follows:

- 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.

Documentation Required for Operation of a Vehicle

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

- The registration certificate or an official copy;
- A true copy of rental or lease documentation issued for a motor vehicle or issued for a replacement vehicle in the same registration period;

¹⁵ S. 212.02(10)(g), F.S.

¹⁶ Rule 12A-1.007(13)(a)1, F.A.C.

¹⁷ The rental car surcharge is subject to sales and use tax. See s. 212.0606(1), F.S. and Rule 12A-16.002(6)(c), F.A.C.

¹⁸ The term “for hire passenger motor vehicle” means any automobile designed to carry fewer than nine passengers let or rented to another for consideration; offered for lease or rent as a means of transportation for compensation; advertised; or generally held out as being for lease or rent. The term “for hire passenger motor vehicle” does not include any motorcycle, moped, truck, truck trailer, travel trailer, camping trailer, recreational vehicle with living facilities, or van conversion. See Rule 12A-16.002(2)(c), F.A.C.

¹⁹ S. 212.0606(1), F.S.

²⁰ *Id.*

²¹ S. 212.02(12), F.S.

²² S. 212.02(2), F.S.

²³ Rule 12A-16.002(3), F.A.C.

²⁴ S. 212.0606(2), F.S.

²⁵ S. 212.0606(2), F.S.

²⁶ Table 8 of the Revenues to State Transportation Trust Fund Forecast, adopted by the Revenue Estimating Conference March 24, 2021, available at <http://edr.state.fl.us/Content/conferences/transportation/Transresults.pdf> (last visited March 27, 2021).

- A temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet; or
- A cab card issued for a vehicle registered under the International Registration Plan.²⁷

The certificate or document of any vehicle, other than a fleet vehicle²⁸ or a replacement vehicle purchased within the last 30 days, must be shown upon demand by any authorized law enforcement officer or Department of Highway Safety and Motor Vehicles (DHSMV) agent. A violation of this request is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in ch. 318, F.S.²⁹

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

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

Motor Vehicle Insurance Requirements

Chapter 324, F.S., is the Financial Responsibility Law of 1955.³⁰ 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.³¹ 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.³² 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 DHSMV, or proof of qualifying self-insurance.³³

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.³⁴ The required minimum amount of PD insurance coverage is \$10,000, in the event of damage to property of others, or \$30,000 combined for both BI and PD coverage.³⁵

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 and the minimum coverage amounts vary for each state.

²⁷ The International Registration Plan is a reciprocity agreement among the states of the United States, Washington, D.C., and the provinces of Canada, which recognizes the registration of commercial vehicles registered in other jurisdictions. International Registration Plan, Inc., <https://www.irponline.org/> (last visited Mar. 11, 2021).

²⁸ A fleet vehicle registered under s. 320.0657, F.S., provides for the permanent registration of fleet license plates.

²⁹ Ch. 318, F.S., relates to the disposition of traffic infractions.

³⁰ S. 324.251, F.S.

³¹ Ch. 324, F.S.

³² Ss. 320.02 and 324.011, F.S.

³³ Ss. 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.

³⁴ S. 324.021(7), F.S.

³⁵ S. 324.022(1), F.S. These coverage amounts are commonly referred to in a summary manner, i.e., \$10,000/\$20,000/\$10,000 or 10/20/10.

Florida's Motor Vehicle No-Fault Law (No-Fault Law)³⁶ 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.³⁷ However, motorcycles are excluded from this requirement.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD and PIP coverage requirements.³⁸ A suspended driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to DHSMV.³⁹

Effect of the Bill

The bill creates a new section of the Florida Insurance Code⁴⁰ providing requirements for "peer-to-peer car-sharing," also called "car-sharing" in the bill. Peer-to-peer car-sharing is the authorized use of a shared vehicle (vehicle or car) through a peer-to-peer car-sharing program by an individual, the shared vehicle driver (driver), who is not the shared vehicle owner (owner).

"Peer-to-peer car-sharing" does not include the renting of a motor vehicle through a rental company, the use of a for-hire vehicle, or joint use of motor vehicles, such as ridesharing, carpooling, or a car-sharing service. The bill defines the term "peer-to-peer car-sharing program" (program) as a business platform that enables peer-to-peer car-sharing by connecting motor vehicle owners with drivers for financial consideration. It does not include a rental car company, taxi cab association, the owner of a for-hire vehicle, a car-sharing service, or a program that might otherwise be considered a peer-to-peer car-sharing program, if it is not used to process payment for use of a shared vehicle.⁴¹

Sales Tax and Surcharge

The bill provides that peer-to-peer car-sharing programs are required to collect sales tax and a \$1 per day rental car surcharge from the customer and remit them to the state. The bill requires the peer-to-peer car-sharing program to report surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time.

Peer-to-Peer Car-Sharing Insurance Requirements

The bill requires the program to ensure that, during each car-sharing period, the owner and the driver of the vehicle and the peer-to-peer car-sharing program have the following minimum coverage for motor vehicle insurance, during peer-to-peer car-sharing periods:

- Property damage coverage of at least \$10,000;
- Bodily injury coverage of at least \$10,000 for injury to one person and \$20,000 for injury to two or more persons;
- Personal injury protection of \$10,000; and

³⁶ Ss. 627.730-627.7405, F.S.

³⁷ S. 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.

³⁸ S. 324.0221(2), F.S.

³⁹ S. 324.0221(3), F.S.

⁴⁰ The Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

⁴¹ 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.

- Uninsured/underinsured motorist coverage, as required by s. 627.727, F.S. 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. Therefore, such insurance is elective.

The program must also ensure that the insurance policy either recognizes the use of the vehicle in peer-to-peer car-sharing or does not exclude shared use. Compliant insurance coverage may be maintained by the vehicle owner, driver, the program, or any combination thereof, which will be the primary insurance coverage during periods the vehicle is shared. If a claim occurs during the car-sharing period in another state with higher minimum financial responsibility limits requiring under ch. 324, F.S., the minimum insurance requirements under the peer-to-peer car-sharing program satisfy the difference in minimum coverage amounts up to the applicable policy limits.

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.⁴²

Liabilities and Exclusions

If it is determined that the vehicle owner was in control⁴³ of the vehicle at the time of a loss, the owner must indemnify the program to the extent of the insurer's obligation.

During shared periods, the program assumes the liability of the vehicle owner for bodily injury and property damage to third parties, uninsured/underinsured motorists, and personal injury protection coverages in the amount specified in the car-sharing agreement, which must meet statutory minimums.⁴⁴ This shifting of liability is void if the owner makes an intentional or fraudulent material misrepresentation or omission to the program before the sharing period when the loss occurred or if the owner acts in concert with a vehicle driver who fails to return the vehicle as provided in the peer-to-peer car-sharing agreement.

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

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

Exemption from Vicarious Liability

The program and the shared vehicle owner are exempted from vicarious liability under any local or state law that imposes liability based on vehicle ownership.⁴⁵ This means that the actions and liabilities of the driver cannot be imputed to be those of the program or the vehicle owner.

⁴² Under the bill, 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.

⁴³ See Section III.C. Drafting Issues or Other Comments.

⁴⁴ This requirement seems to conflict with the requirements explained above in Peer-to-Peer Car-Sharing Insurance Requirements, whereby the car-sharing program provides coverage if the owner's or driver's policy lapses. See Section III. C. Drafting Issues or Other Comments.

⁴⁵ 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.

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 that 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 be provided on request to the vehicle owner, the owner's insurer, or the vehicle driver's insurer. The program must also keep the following records:⁴⁶

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

Consumer Protections

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

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

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

⁴⁶ See Section III.C. Drafting Issues or Other Comments.

owner for any damage to or theft of such equipment during share periods that is not caused by the owner; the program may seek indemnification from the driver for such damage.

Motor Vehicle Safety Recalls

The program must verify the recall and repair status of the vehicle when it is registered for use with the program. The owner must be notified by the program that: vehicles under recall cannot be shared until repaired; if the owner receives a recall notice while the vehicle is available for sharing, the vehicle must be removed from sharing as soon as practicable; and, if the vehicle is in the possession of a driver, the owner must notify the program as soon as practicable so that it can be repaired.⁴⁷

Construction

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

B. SECTION DIRECTORY:

Section 1. Amends s. 212.05, F.S., relating to sales, storage, and 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 January 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not estimated the potential revenue impacts of the bill. Staff estimates that the bill will have a recurring positive indeterminate impact on General Revenue and state trust fund revenues.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC has not estimated the potential revenue impacts of the bill. Staff estimates that the bill will have a recurring positive indeterminate impact on local government revenues.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁴⁷ *Id.*

Peer-to-peer car-sharing programs will be required to remit the rental car surcharge and appropriate sales taxes as well as comply with insurance regulations. Therefore, the bill may have both and positive and negative impacts on certain entities within the private sector.

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.⁴⁸ At present, the owner of the car is responsible for collecting and remitting the tax and surcharge amounts.⁴⁹ Compliance is relatively low.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue notes that the bill will require rulemaking to update both rules and forms. The bill does not provide specific authority for that rulemaking, but the statutory changes fall within chapters the department has standing rulemaking authority to administer. The department has also requested emergency rulemaking authority.⁵⁰

C. DRAFTING ISSUES OR OTHER COMMENTS:

Insurance and Liability Issues

The bill defines a “shared vehicle owner” as the registered owner, or a natural person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car-sharing program. The bill uses the term “shared vehicle owner” exclusively in the context of the role of the registered owner of the motor vehicle. It does not provide a separate context for when an individual or entity designated by the owner would act on behalf of the owner or limit the liability of the 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.

⁴⁸ Email from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: SB 1148 Questions (March 18, 2019), and subsequent email from same confirming that responses from that email are still accurate in the context of this bill (March 26, 2021).

⁴⁹ *Id.*

⁵⁰ Department of Revenue’s analysis of HB 365, dated February 15, 2021.

The bill requires the peer-to-peer car-sharing program to ensure that the owner and driver of a vehicle have uninsured/underinsured motorist coverage as required by law. The uninsured/underinsured motorist coverage statute is elective. However, on lines 404-413, 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.

General Drafting Issues

The definitions of “peer-to-peer car sharing” and related terms in lines 256-327 of the bill are inconsistent in describing what is excluded from each definition. For example, the definitions of “peer-to-peer car-sharing,” “peer-to-peer car-sharing program,” and “peer-to-peer car-sharing program agreement,” all exclude application to rental cars from rental car companies and for-hire vehicles, but ride-share vehicles are only excluded from the definitions of “peer-to-peer car-sharing” and “peer-to-peer car-sharing program.” This lack of consistency is confusing. Unless there is a specific reason not to exclude a type of vehicle sharing or driving arrangement from a particular definition, consideration should be given to making all of the exclusions from each definition consistent throughout these lines of the bill.

On lines 519-521, the bill requires designation of personnel capable of fielding calls for roadside assistance and other customer service inquiries. It is not clear to whom the term “personnel” refers to for this purpose or who will designate them (e.g. shared vehicle owner or program).

On lines 543-549, the bill specifies certain records that the program must keep. This occurs in a section titled “Consumer Protections” rather than in an earlier section titled “Recordkeeping.” The bill requires the retention of a non-exclusive list of specified records for a designated period. It is unclear if listing additional recordkeeping requirements in another portion of the bill is subject to the same retention period. It may avoid confusion to list all recordkeeping requirements in a single section of the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 8, 2021, the Ways & Means Committee adopted a strike-all amendment that:

- Reduces the daily rental car surcharge under s. 212.0606, F.S., from \$2 to \$1 for rentals through peer-to-peer car sharing programs.
- Requires that the peer-to-peer car-sharing program report surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time.
- Revises the definition of “car-sharing termination time” to require that if a car is returned to a location other than that originally agreed to, that the revised location must be incorporated into the peer-to-peer car-sharing program agreement, and to remove language stating that possession of the vehicle by the owner’s authorized designee constitutes a terminating event.
- Revises the definition of “peer-to-peer car-sharing program” to exclude services limited to hardware or software provided as a service when no payment is being made for use of the vehicle.
- Provides that Florida’s minimum insurance requirements for peer-to-peer car-sharing programs satisfy the difference in coverage requirements in another state with higher minimum insurance requirements.
- Requires the insurer, insurers, or peer-to-peer car-sharing program that satisfies the minimum insurance requirements to assuming primary liability for the claim under certain conditions.
- Preserves an insurer’s authority to underwrite, cancel, or nonrenew an insurance policy under current law.
- Removes “fees” from the required disclosure in a peer-to-peer car-sharing agreement.
- Moves the effective date of the bill to January 1, 2022.
- Makes additional technical and conforming changes.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.