

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Banking and Insurance

BILL: SB 1118

INTRODUCER: Senator Simmons

SUBJECT: Transportation Network Company Insurance

DATE: January 15, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Pre-meeting
2.			JU	
3.			AP	

I. Summary:

SB 1118 specifies minimum insurance requirements for ridesharing companies, also known as transportation network companies. Transportation network companies use smartphone technology to connect individuals who want to ride with private drivers for a fee. Most personal automobile insurance policies do not provide coverage when a vehicle is being used to transport passengers for a fee. This bill requires transportation network companies or drivers to maintain liability insurance to protect people in the event of accidents. It preempts any local ordinances imposing insurance requirements on transportation network companies.

The bill creates two time periods during which the insurance must provide coverage and provides different coverage requirements for each time period. The first time period is during a prearranged ride. This period begins when a driver accepts a request for a ride, continues while the driver transports the rider, and ends when the last rider departs from the vehicle. During this time period, the driver, or the transportation network company on the driver's behalf, must maintain liability coverage of at least \$1 million for death and bodily injury and \$50,000 for property damage.

The second time period is when a driver is logged on to the transportation network company's network and is available to receive transportation requests but is not engaged in a prearranged ride. During that time period, the following insurance requirements apply:

- Primary automobile insurance liability coverage of at least \$50,000 for death and bodily injury per person;
- Primary automobile insurance liability coverage of at least \$100,000 for death and bodily injury per incident;
- Property damage coverage of at least \$25,000; and
- Coverage that meets the requirements of the Florida Motor Vehicle No-Fault Law.

The insurance required by this bill may be offered by authorized insurers which are members of the Florida Insurance Guaranty Association or by eligible surplus lines insurers if the surplus lines insurer is rated “A-” or better by the A.M. Best Company.

The bill allows insurers that provide personal automobile insurance policies to exclude from coverage loss or injury when a driver is engaged in a prearranged ride or is not engaged in a prearranged ride but is logged on to the transportation network company network. Insurers are allowed to offer such coverage by contract or endorsement.

The bill requires drivers to carry proof of transportation network company insurance and provide information to law enforcement and other parties in the event of an accident. A transportation network company is required to assist in claims investigations by providing information relating to times a driver is logged on to the network.

This bill takes effect July 1, 2017.

II. Present Situation:

Technological advances have led to new methods for consumers to arrange and pay for transportation, including software applications that make use of mobile smartphone applications, Internet web pages, and email and text messages. Ridesharing companies, such as Lyft, Uber, and SideCar, describe themselves as “transportation network companies” (TNCs), rather than as vehicles for hire.

Transportation Network Companies

Ridesharing companies, or transportation network companies, use smartphone technology to connect individuals who want to ride with private drivers for a fee. A driver logs onto a phone application and indicates the driver is ready to accept passengers. Potential passengers log on, learn which drivers are nearby, see photographs, receive a fare estimate, and decide whether to accept a ride. If the passenger accepts a ride, the driver is notified and proceeds to pick up the passenger. Once at the destination, payment is made through the phone application.

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

Drivers generally use their personal vehicles and most personal automobile policies contain a “livery” exclusion that excludes coverage if the vehicle is carrying passengers for hire.² Consequently, most personal automobile insurance policies do not cover damage or loss when a car is being used for commercial ridesharing. Some ridesharing companies provide insurance for portions of the time when the driver is operating the vehicle. For example, Uber advertises that its policy provides from the moment a driver accepts a trip to its conclusion, \$1 million of liability per incident, \$1 million of uninsured/underinsured motorist coverage per incident, and comprehensive and collision insurance if the driver holds personal comprehensive and collision

¹See <http://www.pciaa.net/industry-issues/transportation-network-companies> (last accessed January 12, 2016).

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

coverage on the vehicle.³ Coverage provided by ridesharing companies is often secondary to a driver's personal insurance policy. Secondary coverage means that the ridesharing company policy provides coverage when the personal policy does not. This can lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In 2015, stakeholders agreed to model legislation called the TNC Insurance Compromise Model Bill and have sought passage of model legislation throughout the country.⁴

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.⁵

III. Effect of Proposed Changes:

Insurance Requirements

The bill provides uniform statewide minimum insurance requirements for TNCs and TNC drivers. Many of the provisions of this bill are found in the National Association of Insurance Commissioners TNC Insurance Compromise Model Bill.⁶ This bill defines a TNC as an entity which uses a digital network⁷ to connect TNC riders⁸ with TNC drivers⁹ who provide prearranged rides. A TNC does not include entities arranging nonemergency medical transportation for individuals qualifying for Medicare or Medicaid pursuant to a contract with a state or managed care organization.

The bill requires TNCs or TNC drivers to carry insurance. The coverage can be maintained by the TNC or by the TNC driver or by a combination of both. If the insurance maintained by the TNC driver does not provide the required coverage or if the coverage lapses, the TNC must maintain the required coverage beginning with the first dollar of the claim. The coverage must obligate the TNC to defend the claim. The coverage may not be contingent on the denial of the claim by the TNC driver's personal policy. That is, the insurance must be primary.

The bill creates two time periods during which the insurance must provide coverage and provides different coverage requirements for each time period. The first time period is when a TNC driver is engaged in a "prearranged ride." A prearranged ride begins when the driver accepts a request for a ride by a rider through a digital network controlled by a TNC. It continues while the driver

³ See Uber, *Insurance for Uberx with Ridesharing*, (February 10, 2014) <http://blog.uber.com/ridesharinginsurance> (last accessed January 12, 2016).

⁴ See <https://newsroom.uber.com/introducing-the-tnc-insurance-compromise-model-bill/> (last accessed January 12, 2016).

⁵ See s. 324.032(1), F.S.

⁶ See http://www.naic.org/meetings1503/committees_c_sharing_econ_wg_2015_spring_nm_additional_materials.pdf (last accessed January 12, 2016).

⁷ The bill defines "digital network" as an online application, software, website, or system offered by or used by a TNC which enables rides with TNC drivers.

⁸ The bill defines TNC "rider" as an individual who directly or indirectly uses a TNC's digital network to connect with a TNC driver who provides transportation services in the TNC driver's personal vehicle.

⁹ The bill defines TNC "driver" as an individual who receives connections to potential riders and related services from a TNC in exchange for any form of compensation to the TNC and uses a personal vehicle to offer or provide a prearranged ride upon connection through a digital network controlled by a TNC in return for compensation.

transports the rider and ends when the last rider departs from the vehicle.¹⁰ During the time period while a TNC driver is engaged in a prearranged ride, the TNC driver, or the TNC on the driver's behalf, must maintain liability coverage of at least \$1 million for death and bodily injury and \$50,000 for property damage.

The second time period is when a TNC driver is logged on to the TNC digital network and is available to receive transportation requests but is not engaged in a prearranged ride. During that time period, the following insurance requirements apply:

- Primary automobile insurance liability coverage of at least \$50,000 for death and bodily injury per person;
- Primary automobile insurance liability coverage of at least \$100,000 for death and bodily injury per incident;
- Property damage coverage of at least \$25,000; and
- Coverage that meets the requirements of the Florida Motor Vehicle No-Fault Law.¹¹

If a driver carries insurance as required by this bill, the driver is deemed to meet the insurance requirements of ch. 324, F.S., and s. 627.733, F.S.

Responsibilities of the TNC and the TNC Driver

The bill requires a TNC to disclose to a TNC driver the type and limits of insurance coverage provided by the TNC and the type of automobile insurance coverage that the TNC driver must maintain before the TNC driver may accept a request for a prearranged ride. The TNC must inform the driver that the provision of rides for compensation not covered by the bill subjects the driver to the coverage requirements pursuant to s. 324.032(1), F.S. (relating to insurance coverage to taxis, limousines, jitneys and other for-hire vehicles) and that failure to comply with such requirements subjects the driver to penalties.

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

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

Insurer Exclusions

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

¹⁰ A prearranged ride does not include transportation provided by a taxi, jitney, limousine, for-hire vehicle as defined in s. 320.01(15), F.S., or street hail service.

¹¹ See ss. 627.730-627.7405, F.S.

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

If an insurer excludes such coverages, the insurer does not have the duty to defend or indemnify the excluded claim. The bill does not invalidate or limit exclusions contained in policies in use or approved before July 1, 2016. The insurer has a right of contribution against other insurers that provide automobile insurance to the same driver if the insurer defends or indemnifies a claim which is excluded under the terms of its policy.

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

A possible coverage cap could exist in a situation where the TNC driver has a personal automobile insurance policy that excludes coverage while the TNC driver is logged into the digital network, but not available to receive ride requests. The TNC coverage required by this bill applies when the driver is logged on the digital network and is available to receive transportation requests. Thus, coverage would be excluded under both policies if an accident occurs while the driver is logged in but not available to receive ride requests.

Claims Investigations

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

Preemption

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

Other Provisions

The insurance required under this bill must be provided by an insurer authorized to do business in Florida which is a member of the Florida Insurance Guaranty Association or by an eligible surplus lines insurer rated "A-" or higher by the A.M. Best Company.

The bill requires a TNC to determine whether an individual's personal vehicle is subject to a lien before allowing an individual to act as a driver on its digital network. If the vehicle is subject to a lien, the bill requires the TNC to verify that the insurance required by the bill provides coverage to the lienholder while the driver is providing a prearranged ride or logged into the TNC digital network.

The bill provides that a TNC is not deemed to control, direct, or manage the personal vehicles or TNC drivers who connect to the TNC's digital network.

The bill provides that the OIR may adopt rules to administer the provisions of the bill.

This bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill imposes insurance requirements on TNCs which do not currently exist in law. The cost of complying with insurance requirements is not known. If the cost of insurance mandated by the bill is significant, the bill may have a negative effect on the businesses that are unable to absorb the costs or pass the costs onto their customers.

C. Government Sector Impact:

There could be an indeterminate workload impact on the Office of Insurance Regulation dealing with form filings.

VI. Technical Deficiencies:

The bill provides that the Department of Financial Services rules will govern, in part, TNC insurance requirements. The bill does not provide rulemaking authority to the Department of Financial Services. The bill also provides that the Office of Insurance Regulation may adopt

rules to administer its provisions. The Financial Services Commission is the rulemaking agency for the Office of Insurance Regulation.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 627.748 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.