

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 Rules

BILL: CS/CS/SB 340

INTRODUCER: Judiciary Committee; Banking and Insurance Committee; and Senator Brandes and others

SUBJECT: Transportation Network Companies

DATE: April 5, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 340 creates statewide requirements for transportation network companies (TNCs). TNCs use smartphone technology to connect individuals who want to ride with private drivers for a fee.

Preemption

This bill specifies that its provisions preempt any local ordinances or rules on TNCs, so that TNCs will be governed exclusively by state law. Therefore, local governments are prohibited from imposing taxes, licensing requirements, or other restrictions on TNCs.

Insurance Requirements

The bill provides minimum insurance requirements for TNCs and TNC drivers. Insurance may be purchased by the TNC, TNC driver, or a combination of the two.

When a TNC driver is logged onto the digital network but not engaged in a prearranged ride, the bill requires:

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage;

- Personal injury protection (PIP) benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law; and
- Uninsured and underinsured vehicle coverage as required by law.

When a TNC driver is engaged in a prearranged ride the bill requires:

- PIP coverage of at least \$1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine under Florida Motor Vehicle No-Fault Law; and
- Uninsured and underinsured vehicle coverage as required by law.

Limits on Insurance Coverage

The bill authorizes an automobile insurer to limit coverage provided to an owner or operator of a TNC vehicle to that afforded to the actual vehicle driven on a prearranged ride. Therefore, the coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

Background Checks on Drivers

The bill requires the TNC to conduct a local and national criminal background check on its drivers every 3 years, and a driving record check just once when the person applies as a TNC driver. Background checks may be conducted by the TNC or by a private third party. The bill prohibits the TNC from hiring a person as a TNC driver if he or she has been convicted of certain crimes or a certain number of moving violations. To ensure that the TNC has complied with the requirement of background checks, the bill requires the TNC to submit a procedures report prepared by an independent certified public accountant to the Department of Financial Services (DFS). If the DFS finds that the report indicates noncompliance, the DFS may impose fines on the TNC and seek injunctive relief.

Adoption of Policies by the TNC

The bill requires a TNC to implement a zero tolerance policy on the use of drugs and alcohol by its drivers, and to suspend a driver during the length of an investigation, if a rider registers a complaint of drug or alcohol use. Additionally, TNCs must adopt policies on nondiscrimination and disability access.

Miscellaneous

In addition, the bill:

- Requires a TNC to maintain an agent for service of process;
- Requires a TNC to disclose information on the collection of fares;
- Requires a TNC driver to carry proof of insurance;
- Requires a TNC's digital network to display a photograph of the TNC driver and the license plate number of the TNC vehicle;
- Provides that TNC drivers are independent contractors if certain conditions are met;

- Prohibits TNC drivers from accepting rides for compensation outside of the TNC’s digital network and from soliciting or accepting street hail; and
- Requires TNCs to maintain records on riders and TNC drivers.

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

TNCs 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 drives 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. Forty-five states have enacted legislation regarding transportation network companies.¹

Insurance Requirements

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 transporting passengers, but such insurance is not required. This could lead to situations where drivers and passengers are involved in accidents and there is no insurance coverage. In contrast, 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.³

Background Checks

Background checks may involve a search locally, at the state level, or nationally. The Florida Department of Law Enforcement (FDLE) conducts background checks through criminal history checks and criminal history records checks. These background checks may include a search of the following databases:

- The Florida Computerized Criminal History Central Repository for Florida arrests for state checks;

¹ PCI, *Transportation Network Companies*, available at: <http://www.pciaa.net/industry-issues/transportation-network-companies> (last visited March 24, 2017).

² The exclusion in Florida law is mentioned in s. 627.041(8), F.S.

³ Section 324.032(1)(a), F.S.

- The Florida Computerized Criminal History Central Repository for Florida arrests and the national criminal history database at the FBI for federal arrests and arrests from other states for state and national checks; and
- The Florida Crime Information Center for warrants and domestic violence injunctions.⁴

National criminal history record checks, as well as state checks, require the subject of the search to submit his or her fingerprints.⁵ Similarly, a check of the national criminal history at the FBI, initiated through an appropriate state agency (the FDLE in Florida), requires fingerprinting.⁶

Chapter 435, F.S., governs employment screening for government agencies. A Level 1 and a Level 2 background screening are available. Level 1 screening, which does not require fingerprinting, may include a search of criminal history databases, the National Sex Offender Public Website,⁷ and local criminal history checks through local law enforcement agencies. Level 1 screening is based on a state-only name search and an employment history check.⁸ Level 2 screening requires fingerprinting as a precursor to a statewide criminal history records checks through the FDLE, a national criminal history records check through the Federal Bureau of Investigation, and a local criminal records check through local law enforcement agencies.⁹

Private entities also perform background checks. These entities search available public records throughout the country and compile information from those sources to provide criminal history information. These searches are generally conducted without fingerprinting.¹⁰

Local Regulation of TNCs

TNCs are not expressly regulated under state law. However, some local jurisdictions have enacted ordinances with different requirements in different jurisdictions¹¹ and other Florida counties and cities have considered local ordinances. Representatives of TNCs express concern that differing regulations in different jurisdictions can lead to confusion among drivers and riders.

⁴ FDLE, *Criminal History Record Checks/Background Checks Fact Sheet*, available at: http://www.fdle.state.fl.us/cms/Criminal-History-Records/Documents/BackgroundChecks_FAQ.aspx (last visited March 24, 2017).

⁵ *Id.*

⁶ See Florida Department of Law Enforcement, *Criminal History Record Checks/Background Checks Fact Sheet* (Feb. 14, 2017), http://www.fdle.state.fl.us/cms/Criminal-History-Records/Documents/BackgroundChecks_FAQ.aspx (last accessed March 9, 2017).

⁷ The United States Department of Justice National Sex Offender Public Website (NSOPW); available at: <https://www.nsopw.gov/> (last visited March 24, 2017). The site contains information from sex offender registries for all 50 states, the District of Columbia, U.S. territories, and Indian Country.

⁸ Section 435.03(1), F.S.

⁹ Section 435.04(1)(a), F.S.

¹⁰ For a discussion of some of the problems involved with background checks performed by private entities, *see, i.e.*, Center for Community Change, National Employment Law Project, *"The 'Wild West' of Employment Background Checks"* (Aug. 2014); available at: <http://www.nelp.org/content/uploads/2015/03/Wild-West-Employment-Background-Checks-Reform-Agenda.pdf> (last visited March 24, 2017).

¹¹ For example, Miami-Dade, Broward, and Palm Beach counties require vehicle inspections. Uber website, available at: <https://www.uber.com/drive/miami/inspections/> (Last visited march 24, 2017). An ordinance in Miami-Dade County requires background checks. Miami Herald website, available at: <http://miami.cbslocal.com/2016/01/20/dade-takes-up-possible-restrictions-on-uber-lyft/> (last visited March 24, 2017).

III. Effect of Proposed Changes:

SB 340 creates s. 316.68, F.S., to govern transportation network companies (TNC), such as Lyft, Uber, and SideCar. A TNC is an entity that uses a digital network¹² to connect a rider¹³ to a TNC driver¹⁴ for a prearranged ride. A prearranged ride begins when a TNC driver accepts a ride requested by a rider through the digital network, continues while the TNC driver transports the rider, and ends when the last rider exits the TNC vehicle.¹⁵

The bill provides that a TNC does not own, control, operate, direct, or manage the TNC vehicles or TNC drivers except if a written contract provides otherwise.

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 (NAIC) TNC Insurance Compromise Model Bill.¹⁶ The NAIC Model Bill requires a TNC or TNC driver to maintain primary automobile insurance that:

- Recognizes that the TNC driver is a TNC driver or otherwise uses a vehicle to transport riders for compensation; and
- Covers the TNC driver while the TNC driver is logged on to the digital network of the TNC or while the TNC driver is engaged in a prearranged ride.

The bill also requires a TNC driver or TNC on behalf of the driver to maintain primary automobile insurance that covers the TNC driver while logged on the digital network or while engaged in a prearranged ride.

When a TNC driver is logged on the digital network but not engaged in a prearranged ride, the bill requires:

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage;
- PIP benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405, F.S.;¹⁷ and

¹² The bill defines “digital network” as any online-enabled technology application service, website, or system offered or used by a TNC which enables the prearrangement of rides with TNC drivers.

¹³ The bill defines rider as means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver’s TNC vehicle between points chosen by the rider.

¹⁴ The bill defines a TNC driver as an individual who receives connections to potential riders and related services from a TNC and uses a TNC vehicle to offer or provide prearranged rides for compensation to riders upon connection to a digital network.

¹⁵ The term does not include a taxicab, for-hire vehicle, or street hail service and does not include ridesharing as defined in s. 341.031, F.S., carpool as defined s. 450.28, F.S., or any other type of service in which the driver receives a fee that does not exceed the driver’s cost to provide the ride.

¹⁶ National Association of Insurance Commissioners (NAIC), http://www.naic.org/documents/committees_c_sharing_econ_wg_related_tnc_insurance_compromise_bill_package.pdf (last visited March 24, 2017).

¹⁷ These provisions, known as the No-Fault Law, require coverage for personal injury protection to the named insured, relatives residing in the same household, persons operating the insured motor vehicle, passengers in the motor vehicle, and other persons struck by the motor vehicle and suffering bodily injury while not an occupant to a limit of \$10,000 in medical and disability benefits and \$5,000 in death benefits.

- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.¹⁸

When a TNC driver is engaged in a prearranged ride, the following insurance requirements apply:

- Primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage;
- PIP benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405, F.S.; and
- Uninsured and underinsured vehicle coverage as required by s. 627.727, F.S.

Although the bill requires PIP coverage at the same amounts required of limousines, limousines are excluded from PIP requirements,¹⁹ so the effect of this provision is to require no PIP coverage when a driver is engaged in a prearranged ride.

The coverage requirements of this bill may be satisfied by any of the following:

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

If the TNC driver's insurance has lapsed or does not provide the required coverage, the insurance maintained by the TNC must provide coverage and defend against a claim. Coverage under an automobile insurance policy maintained by the TNC must not be dependent on a personal automobile insurer first denying a claim, and a personal automobile insurance policy is not required to first deny a claim. An insurer authorized to do business in Florida must provide the insurance required by the bill if it is a member of the Florida Insurance Guaranty Association or an eligible surplus lines insurer that has a superior, excellent, exceptional, or equivalent financial strength rating by a rating agency acceptable to the Office of Insurance Regulation. The bill provides that insurance required by the bill satisfies financial responsibility and security requirements for any period when the TNC driver is logged onto the digital network or engaged in a prearranged ride.

The bill requires a TNC driver to carry proof of insurance²⁰ and provide coverage information to parties directly involved in an accident, automobile insurers, and an investigating law enforcement officer at the scene of an accident. The TNC driver must also disclose to these parties whether he or she was logged on the application or engaged in a prearranged ride at the time of the accident.

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

¹⁸ Section 627.727(1), F.S.. requires uninsured motor vehicle coverage if a policy provides bodily injury coverage unless it is specifically rejected.

¹⁹ Section 627.733(1)(a), F.S.

²⁰ Proof of insurance may be presented through an electronic device such as a phone application.

Insurance Disclosures

The TNC must disclose to the TNC driver:

- Details of the insurance coverage provided by the TNC while the TNC driver uses a TNC vehicle in connection with the TNC's digital network;
- That the TNC driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the digital network or is engaged in a prearranged ride, depending on the terms of the TNC driver's own policy; and
- That the provision of rides for compensation which are not prearranged rides subjects the driver to coverage requirements imposed under s. 324.032(1), F.S., and that failure to meet such coverage requirements subjects the TNC driver to criminal penalties.

These disclosures must be made before the TNC driver accepts a request for a prearranged ride.

Insurance Exclusions

An insurer that provides a personal automobile liability insurance policy may exclude coverage afforded under the policy issued to an owner or operator of a TNC vehicle for loss or injury that occurs while the driver is driving the TNC vehicle, meaning that the driver is logged on to the digital network or providing a prearranged ride. Therefore, a coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

Exclusions may apply to any coverage included in an automobile insurance policy, including, but not limited to:

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

Exclusions are limited to coverage while a TNC driver is logged on to a digital network or while the TNC driver provides a prearranged ride. The exclusions do not affect or diminish coverage otherwise available for permissive drivers or resident relatives under the personal automobile policy of the TNC driver or owner who are not occupying the TNC vehicle at the time of the loss.

The bill does not require coverage under a personal automobile insurance policy while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation. However, an insurer may provide primary or excess coverage for the TNC driver's vehicle by contract or endorsement.

If an automobile insurer excludes coverage when a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride, the insurer does not have a duty to defend or

indemnify any claim expressly excluded. The bill does not invalidate or limit an exclusion contained in a policy, including a policy in use or approved for use in this state before July 1, 2017, which excludes coverage for vehicles used to carry persons or property for a charge or available for hire by the public. If an automobile insurer defends or indemnifies a claim against a TNC driver which is excluded under the terms of its policy, the insurer has a right of contribution against other insurers that provide automobile insurance to the same TNC driver in satisfaction of the coverage requirements at the time of loss.

In a claims coverage investigation, a TNC must immediately provide, upon request by a directly involved party or any insurer of the TNC driver, the precise times that the TNC driver logged on and off the digital network in the 12-hour period immediately preceding and in the 12-hour period immediately following the accident. An insurer must disclose upon request by any other insurer involved in the particular claim, the applicable coverages, exclusions, and limits provided under any automobile insurance maintained in order to satisfy the bill requirements.

TNC Driver is an Independent Contractor

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

- The TNC does not unilaterally prescribe specific hours during which the TNC driver must be logged on to the TNC's digital network;
- The TNC does not prohibit the TNC driver from using digital networks from other TNCs;
- The TNC does not restrict the TNC driver from engaging in any other occupation or business; and
- The TNC and TNC driver agree in writing that the TNC driver is an independent contractor of the TNC.

Although the status as an independent contractor is relevant in the area of who pays employment taxes, other issues may be affected. For example, the general rule is that an employer is liable for the torts of its employees but not liable for the torts of independent contractors. This rule is subject to an exception, which is that an employer may be held liable for negligent selecting, instructing, or supervising of an independent contractor, may be subject to a non-delegable duty arising out of a special relationship to the plaintiff or the public, or may be liable on the basis of work that is specially, peculiarly, or inherently dangerous.²¹ Independent contractor status is important in unemployment compensation cases²² and workers compensation cases. The bill does not address issues such as tort liability, workers compensation, or unemployment compensation.

Zero Tolerance for Drug and Alcohol Use

The bill requires a TNC to implement a zero-tolerance policy on the use of drugs and alcohol by a TNC driver while he or she provides a prearranged ride or is logged on to the digital network. The bill requires the TNC to provide notice of the policy on its website, as well as procedures to

²¹ *McCall v. Alabama Bruno's Inc.*, 647 So. 2d 175, 177 (Fla. 1st DCA 1994).

²² *McGillis v. Dept. of Econ. Opportunity*, 2017 Fla. App. Lexis 1114, 14 (Fla. 3d DCA 2017) (holding that a TNC driver is not an employee for purposes of reemployment assistance pursuant to ch. 443, F.S.).

report a complaint about a TNC driver whom a rider reasonably suspects was under the influence of drugs or alcohol during the course of the ride. Upon receipt of a rider's complaint alleging a violation of the zero-tolerance policy, the TNC must suspend a TNC driver's ability to accept any ride request through the TNC's digital network as soon as possible and investigate the incident. The suspension must last the duration of the investigation.

TNC Driver Background Check Requirements

The bill requires the TNC to do a criminal background check on its drivers. Before an individual may accept a ride request through a digital network:

- He or she must submit an application to the TNC which includes his or her address, age, driver license, motor vehicle registration, and other information required by the TNC; and
- The TNC must conduct or have a third party conduct a local and national criminal background check.

The local and national criminal background check must include:

- A search of the Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation of any records through a primary source search; and
- A search of the National Sex Offender Public Website maintained by the United States Department of Justice.

The TNC must conduct the required background check every 3 years. The background check required by this bill does not require fingerprinting. The bill allows the TNC or a third party to conduct a background check through private companies and does not require that the FDLE conduct the background check. Accordingly, the background check will not access the national criminal history records held by the FBI.

In addition, the bill requires the TNC to obtain and review, or have a third party obtain and review, a driving history research report for the applicant. The TNC may not authorize an individual to act as a TNC driver on its digital network if the report reveals that the individual has had more than three moving violations in the prior 3-year period. The bill does not require the TNC to obtain additional driving history research reports after the initial one.

The TNC may not authorize an individual to act as a TNC driver on its digital network if the background check conducted when the individual first seeks access to the digital network or any subsequent background check reveals that the individual has been convicted, within the past 5 years, of:

- A felony;
- A misdemeanor for driving under the influence of drugs or alcohol, for reckless driving, for hit and run, or for fleeing or attempting to elude a law enforcement officer;
- A misdemeanor for a violent offense²³ or sexual battery;²⁴ or
- A crime of lewdness or indecent exposure under chapter 800.

²³ The bill does not specify which misdemeanors would qualify as "violent offenses."

²⁴ There does not appear to be a misdemeanor for sexual battery in Florida law. Other states might have such a crime.

The TNC may not authorize an individual to act as a TNC driver on its digital network if the background check conducted when the individual first seeks access to the digital network or any subsequent background check reveals that the individual has been convicted in the past 3 years of driving with a suspended or revoked license.

The TNC may not authorize an individual to act as a TNC driver on its digital network if a background check reveals that the individual:

- Is a match in the National Sex Offender Public Website maintained by the United States Department of Justice;
- Does not possess a valid driver license; or
- Does not possess proof of registration for the motor vehicle used to provide prearranged rides.

The bill provides that no more than once every 2 years, the Department of Financial Services (DFS) shall direct a TNC to submit to the DFS an agreed-upon procedures report prepared by an independent certified public accountant for the sole purpose of verifying that the TNC is in compliance with the background check provisions of the bill. The report must be prepared in accordance with applicable attestation standards established by the American Institute of Certified Public Accountants. The TNC shall pay for the preparation and submission of the report.

Upon receipt of the report, the DFS may impose a fine of up to \$250 for each violation of the background provisions of the bill and \$500 for each repeat violation. The DFS may direct a TNC to address noncompliance with the background provisions of the bill identified in the report within a specified timeframe. The DFS may seek injunctive relief against a TNC that fails to comply with the DFS's direction and that poses an imminent threat to public safety. The bill does not extinguish any claim otherwise available under common law or another statute.

Preemption

The bill provides that it is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, and TNC vehicles. TNCs, TNC drivers, and TNC vehicles will be governed exclusively by state law, including jurisdictions that enacted a law or created rules governing TNCs, TNC drivers, or TNC vehicles before July 1, 2017.

The bill specifically provides that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on, or require a license for, a TNC, a TNC driver, or a TNC vehicle if such tax or license relates to providing prearranged rides or subject a TNC, a TNC driver, or a TNC vehicle to any rate, entry, operational, or other requirement; or
- Require a TNC or a TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

The bill does not prohibit an airport from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport for their use of the airport's facilities or prohibit the airport from designating locations for staging, pickup, and other similar operations at the airport.

Other Provisions of the Bill

The bill provides that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. A TNC driver is not required to register the vehicle that the driver uses to provide prearranged rides as a commercial motor vehicle or a for-hire vehicle.

The bill requires a TNC to designate and maintain an agent for service of process.

The bill requires the TNC to disclose to the rider the fare or fare calculation method on its website or within the online-enabled technology application service before the beginning of the prearranged ride. If the fare is not disclosed to the rider before the beginning of the prearranged ride, the bill requires the TNC to provide an estimated fare.

The bill requires a TNC's digital network to display a photograph of the TNC driver and the license plate number of the TNC vehicle used for providing the prearranged ride before the rider enters the TNC driver's vehicle.

Within a reasonable period after the completion of a ride, the bill requires the TNC to transmit an electronic receipt to the rider on behalf of the TNC driver which lists:

- The origin and destination of the ride;
- The total time and distance of the ride; and
- The total fare paid.

The bill provides that a TNC driver may not accept a ride for compensation other than a ride arranged through a digital network and may not solicit or accept street hails.

The bill requires a TNC to adopt and notify drivers of a policy of nondiscrimination. The TNC driver must also comply with all applicable laws relating to accommodation of service animals.

The bill provides that a TNC may not impose additional charges for providing services to a person who has a physical disability because of the person's disability. A TNC that contracts with a governmental entity to provide paratransit services must comply with all applicable state and federal laws related to individuals with disabilities.

The bill requires a TNC to reevaluate a decision to remove a TNC driver's authorization to access to its digital network due to a low quality rating by riders if the TNC driver alleges, and proof exists, that the low rating was motivated by discrimination.

The bill requires the TNC to maintain individual ride records for at least 1 year after the date each ride is provided and individual records of TNC drivers for at least 1 year after the date the TNC leaves the TNC.

The bill takes effect July 1, 2017.

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

To the extent that this bill reduces the ability of a county or municipality to raise revenue, the mandates provision of Art. VII, s. 18 of the Florida Constitution may apply. However, as a mandate analysis is based on revenue reduced in the aggregate, any fiscal impact is expected to be insignificant.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

To the extent that local governments currently collect fees from TNCs, these local governments will lose this source of revenue. However, fiscal impact is unknown as this bill has not been reviewed by the Revenue Estimating Conference.

B. Private Sector Impact:

The bill will create uniform statewide requirements for TNCs. TNCs might see reductions in costs incurred from complying with different ordinances in different jurisdictions.

The TNCs will incur costs from establishing and implementing policies on drugs and alcohol, antidiscrimination, and accessibility. The TNC will also have to bear the cost of producing the report on background checks to the DFS, as well as the cost of conducting the background check, unless this is borne by the individual drivers.

Whether the TNCs will incur additional costs for complying with insurance requirements is unknown, as some TNCs already maintain insurance coverage on drivers.

C. Government Sector Impact:

The fiscal impact on the DFS is indeterminate. How many TNCs will be required to submit procedures reports is unknown. Also unknown is the volume of litigation the DFS will have to pursue based on noncompliance. Pursuant to Florida Rule of Civil Procedure 1.610(b), the DFS could be required to post a bond when seeking injunctive relief. The bond could be significant. If the DFS is not required to post a bond, the DFS could be

liable for damages to a TNC if courts ultimately determine the injunction should not have been issued.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill authorizes the TNC to order a criminal history record check through a third party company. However, the Department of Law Enforcement (FDLE) notes that in doing so, the TNCs runs the risk of receiving outdated criminal history information. The FDLE recommends that the sponsor may wish to revise the bill to require a Level 2 screening based on fingerprints, to provide the most accurate record check possible. Were the sponsor to amend the bill, a fiscal impact on the private sector would accrue at the rate of \$36 per background check.²⁶ How much a third party would charge for a background check is unknown.

VIII. Statutes Affected:

This bill creates section 627.748, Florida Statutes.

IX. Additional Information:

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

CS/CS by Judiciary on March 28, 2017:

The CS authorizes an automobile insurer to limit coverage provided to an owner or operator of a TNC vehicle to that afforded to the actual vehicle driven on a prearranged ride. Therefore, a coverage exclusion may not apply to other insurance policies that might otherwise provide coverage to the TNC driver, such as an umbrella policy or any stacking uninsured/underinsured motorist coverage on other vehicles in the TNC driver's household.

CS by Banking and Insurance on March 14, 2017:

The CS:

- Authorizes seaports to collect pickup fees as long as they do not exceed what a seaport charges taxis;
- Requires TNCs to contract with an independent auditor to review their background check process. The DFS is established as the enforcement mechanism for compliance with the insurance and background screening requirements of the bill;
- Strikes retroactivity of the independent contractor language;
- Modifies the definition of prearranged ride in a way that will extend insurance coverage to any time that any rider is in the vehicle and not limited to the person who requested the ride;

²⁵ Department of Financial Services, *Analysis of CS/SB 340* (March 14, 2017)(on file with the Senate Judiciary Committee).

²⁶ Florida Department of Law Enforcement, *2017 FDLE Legislative Bill Analysis* (Jan. 29, 2017) (on file with the Senate Judiciary Committee).

- Requires uninsured or underinsured vehicle coverage as required by s. 627.727, F.S.;
- Provides coverage for other insureds and resident relatives under a TNC driver's personal auto policy are unaffected by exclusions for TNC use; and
- Provides that TNCs are not granted immunity from civil liability through compliance with background check requirements.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
