

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 377 Motor Vehicle Rentals

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

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	11 Y, 2 N, As CS	Roth	Vickers
2) Ways & Means Committee	11 Y, 6 N, As CS	Berg	Langston
3) State Affairs Committee			

SUMMARY ANALYSIS

Under Florida law, sales tax of 6%, as well as any applicable local discretionary sales surtax, is imposed on the lease or rental of a motor vehicle from traditional motor vehicle rental companies or car-sharing services. In addition, a \$2 surcharge is imposed on the lease or rental of a motor vehicle in Florida. The surcharge is included in the lease or rental price on which sales tax is computed and must be listed separately on the invoice. Businesses that collect the sales tax and rental car surcharge are required to report collections according to the county to which the taxes and surcharge are attributed.

Recently, car owners interested in renting out their vehicles have been able to register as a host on peer-to-peer car-sharing websites. These sites require photos of the car and help the owner determine a rental fee based on the location and type of car. The host then specifies the car's availability. The host may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport. Tax and surcharges on these rentals have not consistently been collected and remitted across platforms.

The bill establishes statutory requirements for peer-to-peer car-sharing, including tax collection, liabilities, and insurance obligations among participants to a car-sharing agreement. 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.
- Clarifies that the current \$2 surcharge on the lease or rental of a motor vehicle applies to peer-to-peer car-sharing programs and requires peer-to-peer car-sharing programs to collect and remit the surtax.
- 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 car-sharing program and vehicle owner are not vicariously liable for the actions and damages of the driver during periods of car sharing use.
- Specifies recordkeeping requirements and retention periods, and includes requirements for consumer protection notifications.
- Addresses the repair, use, and non-use of motor vehicles under a safety recall notice.
- Provides that the bill does not limit the liability of the car-sharing program for its acts or omissions that cause bodily harm during car sharing; nor, the owner or driver to the car-sharing program for economic losses due to a breach of contract.

The bill is estimated to have a positive, but indeterminate impact on state and local government revenues. See Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

For-Hire Vehicles

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

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

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

Peer-to-Peer Car Sharing

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

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

One car-sharing website reports that its program has users in 56 countries in over 5,500 cities across the world. It also has over 850 makes and models of vehicles and offers up to \$1 million in liability insurance.⁸ In Florida, the same car-sharing program has over 611,000 residents signed up as guests

¹ Section 320.01(15)(a), F.S.

² Section 324.032(1), F.S.

³ Section 324.031, F.S.

⁴ Section 125.01(1)(n), F.S.

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

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

⁷ *Id.*

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

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

Car-Sharing Service

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

- Only at locations that are not staffed by car-sharing service personnel employed solely for the purpose of interacting with car-sharing service members;
- Twenty-four hours per day, seven days per week;
- Only through automated means, which may include, but are not limited to, smartphone applications or electronic membership cards;
- On hourly or shorter increments;
- Without a separate fee for refueling the motor vehicle;
- Without a separate fee for minimum financial responsibility liability insurance; and
- Owned or controlled by the car-sharing service or its affiliates.

Motor Vehicle Rentals

Section 322.38, F.S., provides driver license-related requirements for renting a motor vehicle to another person. A person may not rent a motor vehicle to any other person unless the other person is duly licensed in Florida or, if a nonresident, is licensed under the laws of the state or country of his or her residence, except a nonresident whose home state or country does not require that an operator be licensed.¹¹ Prior to the rental, the rentee must inspect the driver license of the person to whom the vehicle is to be rented and verify that the driver license is unexpired.¹²

Every person renting a motor vehicle to another is required to keep a record of the registration number of the motor vehicle, the name and address of the person to whom the vehicle is rented, the number of the license of the renter, and the place where the license was issued.¹³ The record must be open to inspection by any police officer, or officer or employee of the Department of Highway Safety and Motor Vehicles.¹⁴

If a rental car company rents a motor vehicle to a person through digital, electronic, or other means which allows the renter to obtain possession of the motor vehicle without direct contact with an agent or employee of the rental car company, or if the renter does not execute a rental contract at the time he or she takes possession of the vehicle, the rental car company is deemed to have met the above obligations when the rental car company, at the time the renter enrolls in a membership program, master agreement, or other means of establishing use of the rental car company’s services, or any time thereafter, requires the renter to verify that he or she is duly licensed and that the license is unexpired.¹⁵

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.¹⁶ 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 percent¹⁷ of the gross proceeds derived from the lease or rental.¹⁸ 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

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

¹⁰ *Id.*

¹¹ Section 322.38(1), F.S.

¹² Section 322.38(2), F.S.

¹³ Section 322.38(3), F.S.

¹⁴ *Id.*

¹⁵ Section 322.38(4), F.S.

¹⁶ Section 212.05(1), F.S.

¹⁷ Discretionary county sales surtax, if any, is also owed if the 6 percent Florida state sales tax applies. *See s. 212.054, F.S.*

¹⁸ Section 212.05(1)(c), F.S.

title.¹⁹ 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.²⁰

Florida law imposes a surcharge²¹ of \$2.00 per day, or any part of a day, upon the lease or rental of a “motor vehicle licensed for hire”²² and designed to carry less than nine passengers, regardless of whether such motor vehicle is licensed in Florida.²³ The surcharge applies to the first 30 days of the term of any lease or rental.²⁴ 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...”²⁵ 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.”²⁶

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 does not apply to rentals by a member of a car-sharing service when the motor vehicle is used for less than 24 hours.²⁷ 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.²⁸

Total rental car surcharge collections in FY 2018-19 were \$195 million. 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.

Motor Vehicle Insurance Requirements

Chapter 324, F.S., is the Financial Responsibility Law of 1955.²⁹ 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.³⁰ The owner or operator of a

¹⁹ Section 212.02(10)(g), F.S.

²⁰ Rule 12A-1.007(13)(a)1, F.A.C.

²¹ 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.

²² The term “for hire passenger motor vehicle” means any automobile designed to carry fewer than nine (9) 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.

²³ Section 212.0606(1), F.S.

²⁴ *Id.*

²⁵ Section 212.02(12), F.S.

²⁶ Section 212.02(2), F.S.

²⁷ Rule 12A-16.002(3), F.A.C.

²⁸ Section 212.0606(2), F.S.

²⁹ Section 324.251, F.S.

³⁰ Chapter 324, F.S.

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.³¹ At that time, a driver proves financial responsibility by furnishing an active motor vehicle liability policy, a certificate showing a qualifying security deposit with the Department of Highway Safety and Motor Vehicles (DHSMV), or proof of qualifying self-insurance.³²

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.³³ 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.³⁴ Some refer to these coverage amounts in a summary manner, i.e., \$10,000/\$20,000/\$10,000 or 10/20/10.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD coverage requirement.³⁵ One may obtain a driver's license and registration reinstatement by obtaining a liability policy and by paying a fee to DHSMV.³⁶

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

Florida's Motor Vehicle No-Fault Law (No-Fault Law)³⁷ 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.³⁸ However, motorcycles are excluded from this requirement.

Effect of Proposed Changes

The bill provides that peer-to-peer car-sharing programs are required to collect sales tax and the \$2 per day rental car surcharge from the customer and remit them to the state.

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

³¹ Sections 320.02 and 324.011, F.S.

³² Sections 324.031, 324.061, 324.161, and 324.171, F.S. Businesses that choose to self-insure the financial responsibility requirements must deposit \$30,000 per vehicle, up to a maximum of \$120,000, with DHSMV and maintain excess insurance with limits of \$125,000/\$250,000/\$300,000. Individuals that choose to self-insure must deposit \$30,000 with DHSMV. Individuals and businesses can also obtain a certificate of self-insurance to satisfy the financial responsibility requirements. Individuals must have an unencumbered net worth of \$40,000 and businesses must have either an unencumbered net worth of \$40,000 for the first vehicle and \$20,000 for each additional vehicle or a sufficient net worth determined by DHSMV by rule. Currently, the applicable rule provides that \$40,000 for the first vehicle and an amount less than \$20,000 for each additional vehicle is sufficient if the applicant carries excess insurance in the amounts of \$25,000/\$50,000/\$100,000. The amount applicable to each additional vehicle is determined annually under a "Manual of Financial Responsibility Rates" (Revised 05-89) adopted by rule by the Office of Insurance Regulation. Rule 15A-3.011, F.A.C.

³³ Section 324.021(7), F.S.

³⁴ Section 324.022(1), F.S.

³⁵ Section 324.0221(2), F.S. Failure to maintain PIP coverage will also result in suspension of the driver's license and vehicle registration.

³⁶ Section 324.0221(3), F.S.

³⁷ Sections 627.730-627.7405, F.S.

³⁸ Section 627.7275, F.S. Under Florida's Financial Responsibility Law (Ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for Bodily Injury and Property Damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires \$10,000, per person, and \$20,000, per incident, of Bodily Injury coverage, and \$10,000 of Property Damage liability coverage.

The bill creates a new section of the Florida Insurance Code³⁹ providing requirements for “peer-to-peer car sharing,” also called “car sharing” in the bill. Car sharing is the authorized use of a “shared vehicle” (vehicle or car) through a “peer-to-peer car-sharing program”⁴⁰ (program) by an individual, the “shared vehicle driver” (driver) that is not the “shared vehicle owner” (owner). The following terms relevant to the events and roles involved in car sharing are also defined:

- "Car-sharing delivery period";
- "Car-sharing period";
- "Car-sharing start time";
- "Car-sharing termination time";
- "Peer-to-peer car-sharing program";
- "Peer-to-peer car-sharing program agreement";
- "Shared vehicle";
- "Shared vehicle driver"; and
- "Shared vehicle owner"⁴¹

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

Peer-to-Peer Car-Sharing Insurance Requirements

The program is required to ensure that the owner and driver of the vehicle have the following motor vehicle insurance, which are the statutory minimums required for private passenger motor vehicles, during car-sharing periods:

- Property damage coverage of at least \$10,000;
- Bodily injury coverage of at least \$10,000 for injury to one person and \$20,000 for injury to two or more persons;
- Personal injury protection of \$10,000; and
- Uninsured/underinsured motorist coverage, as required by s. 627.727, F.S.⁴²

The program must also ensure that the insurance coverage above either recognizes the use of the vehicle in car sharing or does not exclude shared use. Compliant insurance coverage may be maintained by the vehicle owner, driver, the program, or any combination thereof, which will be the primary insurance coverage during periods the vehicle is shared. If the owner’s or driver’s insurance lapses or does not provide the required coverage, the program’s coverage must provide coverage as if it were primary from day one, i.e., provide coverage from the first dollar claimed. Further, the program’s coverage must not require that a claim be denied by another insurer. The program is authorized to maintain multiple insurance policies to meet its obligations.⁴³

³⁹ The Florida Insurance Code is chs. 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. S. 624.01, F.S.

⁴⁰ The bill defines "peer-to-peer car sharing program" as a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. It does not include a rental car company, taxicab association, the owner of a for-hire vehicle, or a car sharing service. A "for-hire vehicle" means any motor vehicle, when used for transporting persons or goods for compensation; let or rented to another for consideration; offered for rent or hire as a means of transportation for compensation; advertised in a newspaper or generally held out as being for rent or hire; used in connection with a travel bureau; or offered or used to provide transportation for persons solicited through personal contact or advertised on a "share-expense" basis. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire." S. 320.01(15), F.S.

⁴¹ The bill defines "shared vehicle owner" as the registered owner, or a person or entity designated by the registered owner, of a motor vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program. Therefore, an individual or a business may "stand in the shoes" of the registered owner for purpose of any responsibility or obligation of the owner under the bill.

⁴² While uninsured/underinsured motorist coverage is required to be offered to every purchaser of motor vehicle insurance in this state, the purchaser may reject such coverage in writing. S. 627.727(1), F.S. Therefore, such insurance is elective.

⁴³ 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.

Liabilities and Exclusions

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

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

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

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.⁴⁴ This means that the actions and liabilities of the driver cannot be imputed to be those of the program or the vehicle owner.

Motor Vehicle Insurance Policy Exclusions

The bill specifies that a motor vehicle insurer may exclude coverage and the duty to defend or indemnify any claim under an owner's policy, including, but not limited to, all types of motor vehicle coverage. The bill provides current insurance policies approved for use in Florida that exclude coverage of vehicles offered for rent, sharing, or hire or for any business use are not invalidated or limited.

Notification Regarding Liens

If the vehicle has a lien against it at the time it is registered for use within the program, the program must notify the owner that using the vehicle for car sharing may violate the terms of the contract with the lienholder.

Required Recordkeeping

The program must collect and verify records regarding vehicle use, including:

- The times used;
- Fees paid by the driver; and
- Revenues received by the owner.

These records must be retained for at least the duration of the statute of limitations for personal injuries and provided on request to the vehicle owner, the owner's insurer, or the vehicle driver's insurer. The following records must also be kept by the program:

⁴⁴ 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.

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

Consumer Protections

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

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

The program may not enter into an agreement with a driver, unless the driver:

- Holds a Florida driver license of the type required for the class of vehicle shared;
- Holds a driver license issued by the driver's state or country of the type required for the class of vehicle and the driver is the minimum age to operate a vehicle in Florida; or
- Is specifically authorized by DHSMV to drive vehicles of the class shared.

The program is solely responsible for program equipment installed in or on the vehicle for the purposes of allowing use of the vehicle in car sharing through the program. The program must indemnify the owner for any damage to or theft of such equipment during shared periods that is not caused by the owner; the program may seek indemnification from the driver for such damage.

Motor Vehicle Safety Recalls

The program must verify the recall and repair status of the vehicle when it is registered for use with the program. The owner must be notified by the program that: vehicles under recall cannot be shared until repaired; if the owner receives a recall notice while the vehicle is available for car sharing, the vehicle must be removed from car sharing as soon as practicable; and, if the vehicle is in the possession of a driver, the owner must notify the program as soon as practicable so that it can be repaired.⁴⁵

Construction

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

B. SECTION DIRECTORY:

Section 1: Amends s. 212.05, F.S., relating to sales, storage use tax.

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

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

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

⁴⁵ *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) met on February 7, 2020, and adopted a positive indeterminate impact for sales tax collections and rental car surcharge collections. To the extent that revenues increase, state General Revenue, the State Transportation Trust Fund, the Tourism Promotional Trust Fund, and the Florida International Trade and Promotion Trust Fund will be affected.

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) met on February 7, 2020, and adopted a positive indeterminate impact for sales tax collections and rental car surcharge collections. To the extent that revenues increase, local option sales taxes and sales tax revenue sharing programs will be affected.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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.

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.⁴⁶

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

⁴⁶ Email from Debra Longman, Director of the Office of Legislative and Cabinet Services, Department of Revenue, RE: SB 1148 Questions (March 18, 2019).

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

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Shared Vehicle Owner

The bill defines a "shared vehicle owner" as the registered owner, or a natural person or entity designated by the registered owner, of a motor vehicle made available for car sharing to drivers through a peer-to-peer car-sharing program. The bill uses the term "shared vehicle owner" exclusively in the context of the role of the registered owner of the motor vehicle. It does not provide a separate context for when an individual or entity designated by the owner would act on behalf of the owner or limit the liability of designated person or entity to only the liabilities that could arise from their actions performed in the interest of the owner. Therefore, all responsibilities, obligations, and liabilities that the bill places on the owner are shared by the designee, without limitation. This may create a situation where a person is designated only to facilitate delivery or return of a vehicle and they become liable for all of the owner's insurance obligations with respect to the vehicle and the program.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

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

On February 11, 2020, the Ways and Means Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Changed the effective date to January 1, 2021.

This analysis is written to the committee substitute as reported favorably by the Ways and Means Committee.