

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 Innovation, Industry, and Technology

BILL: CS/SB 478

INTRODUCER: Innovation, Industry, and Technology Committee and Senator Perry

SUBJECT: Motor Vehicle Rentals

DATE: January 28, 2020

REVISED: 1/28/20

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Fav/CS
2.			BI	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 478 amends s. 212.0606, F.S., to extend the current surcharge on the lease or rental of a motor vehicle to peer-to-peer vehicle sharing programs.

The bill creates s. 627.7483, F.S., to establish insurance and operational requirements for peer-to-peer car-sharing programs. This includes establishing definitions and requirements for: insurance coverage requirements, insurable interest, liability, exclusions from liability, contribution against indemnification, construction, notification of implications of a lien, recordkeeping, and consumer protections including disclosures, driver license verification and retention, responsibility for equipment, and automobile safety recalls.

II. Present Situation:

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. 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.

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. The record must be open to inspection by any police officer, or officer or employee of the department.

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.

Section 324.021, F.S., provides minimum insurance requirements, including requirements applicable to rental vehicles. The lessor under an agreement to rent or lease a motor vehicle for a period of less than 1 year is deemed to be the owner for the purpose of determining liability for the operation of the vehicle or the acts of the operator only up to \$100,000 per person and up to \$300,000 per incident for bodily injury and up to \$50,000 for property damage. If the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined property damage and bodily injury liability, the lessor is liable for up to an additional \$500,000 in economic damages only arising out of the use of the motor vehicle. The additional specified liability of the lessor for economic damages is to be reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator.

III. Effect of Proposed Changes:

The bill amends s. 212.0606, F.S., which establishes a surcharge on the lease or rental of a motor vehicle. It defines the terms "car-sharing service," "motor vehicle rental company," and "peer-to-peer car-sharing program," and provides for application of the surcharge to all three types of arrangements.

The bill creates s. 627.7483, F.S., to establish insurance and operational requirements for peer-to-peer car sharing programs.

Definitions

The bill provides the following definitions:

- "Peer-to-peer car sharing" means the authorized use of a motor vehicle by an individual other than the vehicle's owner through a peer-to-peer car-sharing program. The term does not include ridesharing as defined in s. 341.031(9), F.S., a carpool as defined in s. 450.28(3), F.S., or the use of a motor vehicle under an agreement for a car-sharing service as defined in s. 212.0606(1), F.S.
- "Peer-to-peer car-sharing delivery period" means the period during which a shared vehicle is delivered to the location of the peer-to-peer car-sharing start time, if applicable, as documented by the governing peer-to-peer car sharing program agreement.

- “Peer-to-peer car-sharing period” means the period beginning either at the peer-to-peer car-sharing delivery period, or, if there is no peer-to-peer car-sharing delivery period, at the peer-to-peer car-sharing start time, and ending at the peer-to-peer car-sharing termination time.
- “Peer-to-peer car-sharing program” means a business platform that enables peer-to-peer car sharing by connecting motor vehicle owners with drivers for financial consideration. The term does not include a taxicab association or a transportation network company as defined in s. 627.748(1), F.S.
- “Peer-to-peer car-sharing program agreement” means the terms and conditions established by the peer-to-peer car-sharing program which are applicable to a shared vehicle owner and a shared vehicle driver and which govern the use of a shared vehicle through a peer-to-peer car-sharing program.
- “Peer-to-peer car-sharing start time” means the time when the shared vehicle is under the control of the shared vehicle driver, which occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the peer-to-peer car-sharing program agreement.
- “Peer-to-peer car-sharing termination time” means the earliest of the following:
 - The expiration of the agreed-upon period established for the use of a shared vehicle according to the terms of the peer to-peer car-sharing program agreement, if the shared vehicle is delivered to the location agreed upon in the peer-to-peer car sharing program agreement;
 - The time the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver, as communicated through a peer-to-peer car sharing program; or
 - The time the shared vehicle owner takes possession and control of the shared vehicle.
- “Shared vehicle” means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. The term does not include a motor vehicle used for ridesharing as defined in s. 341.031(9), F.S., or a motor vehicle used for a carpool as defined in s. 450.28(3), F.S.
- “Shared vehicle driver” means an individual who is authorized by the shared vehicle owner to drive the shared vehicle under the peer-to-peer car-sharing program agreement.
- “Shared vehicle owner” means 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.

Insurance Requirements, Liability

Insurance Coverage Requirements, Insurable Interest,

A peer-to-peer car-sharing program must have a motor vehicle insurance policy that provides the shared vehicle owner and the shared vehicle driver during each peer-to-peer car-sharing period all of the following:

- Property damage liability coverage that meets the minimum coverage amounts required under s. 324.022, F.S.;
- Bodily injury liability coverage limits as specified in s. 324.021(7)(a) and (b), F.S.;
- Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736, F.S.; and
- Uninsured and underinsured vehicle coverage as required under s. 627.727, F.S.

The peer-to-peer car-sharing program must also ensure that the motor vehicle insurance policy:

- Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program; and
- Does not exclude the use of a shared vehicle by a shared vehicle driver.

These insurance requirements may be satisfied by a motor vehicle insurance policy maintained by:

- A shared vehicle owner;
- A shared vehicle driver;
- A peer-to-peer car-sharing program; or
- A combination of a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car-sharing program.

This insurance policy is primary during each peer-to-peer car-sharing period.

If insurance maintained by a shared vehicle owner or shared vehicle driver lapses or does not provide the required coverage, the insurance maintained by the peer-to-peer car-sharing program must provide the required coverage beginning with the first dollar of a claim and must defend such claim, with the exceptions discussed below. Coverage under a motor vehicle insurance policy maintained by the peer-to-peer car-sharing program may not be dependent on another motor vehicle insurer first denying a claim, and another motor vehicle insurance policy is not required to first deny a claim.

Notwithstanding any other law to the contrary, a peer-to-peer car-sharing program has an insurable interest in a shared vehicle during the peer-to-peer car-sharing period. This interest does not create liability for a network for maintaining the required coverage.

A peer-to-peer car-sharing program may own and maintain as the named insured one or more policies of motor vehicle insurance which provide coverage for:

- Liabilities assumed by the peer-to-peer car-sharing program under a peer-to-peer car-sharing program agreement;
- Liability of the shared vehicle owner;
- Liability of the shared vehicle driver;
- Damage or loss to the shared motor vehicle; or
- Damage, loss, or injury to persons or property to satisfy the personal injury protection and uninsured and underinsured motorist coverage requirements of this section.

When the required insurance is maintained by a peer-to-peer car-sharing program, the insurance may be provided by an insurer authorized to do business in this state which is a member of the Florida Insurance Guaranty Association or by 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 of the Financial Services Commission. A peer-to-peer car-sharing program is not transacting in insurance when it maintains this insurance.

Liability

A peer-to-peer car-sharing program assumes liability, with stated exclusions, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the peer-to-peer car-sharing period in amounts stated in the peer-to-peer car-sharing program agreement. Such amounts may not be less than those set forth in ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736, F.S., respectively.

This assumption of liability does not apply if a shared vehicle owner:

- Makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car-sharing program before the peer-to-peer car-sharing period in which the loss occurs; or
- Acts in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of the peer to-peer car-sharing program agreement.

A peer-to-peer car-sharing program assumes primary liability for a claim when it is providing, in whole or in part, the minimal insurance discussed above and:

- A dispute exists as to who was in control of the shared motor vehicle at the time of the loss; and
- The peer-to-peer car-sharing program does not have available, did not retain, or fails to provide the required rental information.

The shared vehicle owner's insurer must indemnify the peer-to-peer car-sharing program to the extent of the insurer's obligation, if any, under the applicable insurance policy, if it is determined that the shared vehicle owner was in control of the shared motor vehicle at the time of the loss.

Exclusions

An authorized insurer that writes motor vehicle liability insurance in this state may exclude any coverage and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle insurance policy, including, but not limited to:

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

This provision does not invalidate or limit any exclusion contained in a motor vehicle insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, sharing, hire, or for any business use.

Contribution against indemnification

A shared vehicle owner's motor vehicle insurer that defends or indemnifies a claim against a shared vehicle which is excluded under the terms of its policy has the right to seek contribution against the motor vehicle insurer of the peer-to-peer car-sharing program, if the claim is made

against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the peer-to-peer car-sharing period.

Construction

The bill does not limit:

- The liability of a peer-to-peer car-sharing program for any act or omission of the peer-to-peer car-sharing program which results in bodily injury to a person as a result of the use of a shared vehicle through peer-to-peer car sharing; or
- The ability of a peer-to-peer car-sharing program to seek, by contract, indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement.

Operational Requirements

Notification of Implications of a Lien

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car-sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

Recordkeeping

A peer-to-peer car-sharing program must:

- Collect and verify records pertaining to the use of a shared vehicle, including, but not limited to, the times used, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner.
- Retain these records for a period of not less than the applicable personal injury statute of limitations.
- Provide the information contained in the records upon request to the shared vehicle owner, the shared vehicle owner's insurer, or the shared vehicle driver's insurer to facilitate a claim coverage investigation.

Consumer Protections

Disclosures

Each peer-to-peer car-sharing program agreement made in this state must disclose to the shared vehicle owner and the shared vehicle driver:

- Any right of the peer-to-peer car-sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss resulting from a breach of the terms and conditions of the peer-to-peer car-sharing program agreement;
- That a motor vehicle insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car-sharing program;

- That the peer-to-peer car-sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each peer-to-peer car-sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the peer-to-peer car-sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage;
- The daily rate, fees, and, if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver;
- That the shared vehicle owner's motor vehicle liability insurance may exclude coverage for a shared 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 shared vehicle driver must maintain a personal motor vehicle insurance policy with certain applicable coverage limits on a primary basis in order to book a shared vehicle.

Driver License Verification and Retention

A peer-to-peer car-sharing program may not enter into a peer-to-peer car-sharing program agreement with a driver unless the driver:

- Holds a driver license issued under ch. 322, F.S., which authorizes the driver to drive vehicles of the class of the shared vehicle;
- Is a nonresident who:
 - Holds a driver license issued by the state or country of the driver's residence which authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle; and
 - Is at least the same age as that required of a resident to drive; or
- Is otherwise specifically authorized by the Department of Highway Safety and Motor Vehicles to drive vehicles of the class of the shared vehicle.

A peer-to-peer car-sharing program must keep a record of:

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

Responsibility for Equipment

A peer-to-peer car sharing program has sole responsibility for any equipment that is put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction, including a GPS system. The peer-to-peer car-sharing program must indemnify and hold harmless the shared vehicle owner for any damage to or theft of such equipment during the peer-to-peer car-sharing period which is not caused by the shared vehicle owner. The peer-to-peer car-sharing program may seek indemnity from the shared vehicle driver for any damage to or loss of such equipment which occurs outside of the peer-to-peer car-sharing period.

Automobile Safety Recalls

At the time a motor vehicle owner registers as a shared vehicle owner on a peer-to-peer car-sharing program and before the shared vehicle owner may make a shared vehicle available for peer-to-peer car sharing on the peer-to-peer car-sharing program, the peer-to-peer car-sharing program must:

- Verify that the shared vehicle does not have any safety recalls on the vehicle for which the repairs have not been made; and
- Notify the shared vehicle owner that if the shared vehicle owner:
- Has received an actual notice of a safety recall on the vehicle, he or she may not make a vehicle available as a shared vehicle on the peer-to-peer car-sharing program until the safety recall repair has been made;
- Receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car-sharing program, he or she must remove the shared vehicle's availability on the peer-to-peer car-sharing program as soon as practicable after receiving the notice of the safety recall and until the safety recall repair has been made; or
- Receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, he or she must notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall so that he or she may address the safety recall repair.

The bill takes effect October 1, 2020.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19, Art. VII of the State Constitution limits the authority of the legislature to enact legislation that imposes or raises a state tax or fee by requiring such legislation to be approved by a 2/3 vote of each chamber of the legislature. Such state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject.

For purposes of this limitation, the term "raise" is defined to mean:

- To increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;

- To increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- To decrease or eliminate a state tax or fee exemption or credit.

Section 212.0606, F.S., currently requires payment of a rental car surcharge as provided. Under subsection (1), except as provided for a car-sharing service, a surcharge of \$2 per day or any part of a day is imposed upon the lease or rental of a motor vehicle licensed for hire and designed to carry fewer than nine passengers regardless of whether the motor vehicle is licensed in this state.

Under subsection (2), a surcharge of \$1 per usage is imposed on a member of a car-sharing service who uses a motor vehicle as described in subsection (1) for less than 24 hours pursuant to an agreement with the car-sharing service. A surcharge of \$2 per day or any part of a day is imposed on a member of a car-sharing service who uses the same motor vehicle for 24 hours or more. For purposes of subsection (2), the term “car-sharing service” means a membership-based organization or business, or division thereof, which 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, 7 days per week;
- Only through automated means, including, but not limited to, smartphone applications or electronic membership cards;
- On an hourly basis or for a shorter increment of time;
- 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.

Section 212.02, F.S., provides definitions, including, in pertinent part:

- “Lease,” “let,” or “rental” means the leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without transfer of the title of such property (s. 212.02(10)(g), F.S.); and
- “Tangible personal property” means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including motor vehicles (s. 212.02(19), F.S.).

The bill amends section 212.02, F.S., by creating definitions for “motor vehicle rental company” and “peer-to-peer car-sharing program” and imposing the current surcharge of \$2 per day or any part of a day upon the lease or rental of a motor vehicle by either entity. The bill retains the current surcharge provisions for a car-sharing service.

There are two possible interpretations of the effect of these provisions, and two possible applications of the constitutional limitation. The bill could be interpreted as applying an existing surcharge on all car rentals to a new type of method of or process for renting a car, with no raise in a tax or fee and the constitutional limitation arguably inapplicable. Alternatively, the bill could be interpreted as applying a surcharge to an industry not

currently subject to the surcharge, and not currently paying the surcharge, with the constitutional limitation arguably applicable.

E. **Other Constitutional Issues:**

None.

V. **Fiscal Impact Statement:**

A. **Tax/Fee Issues:**

None.

B. **Private Sector Impact:**

None.

C. **Government Sector Impact:**

None.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The Office of Insurance Regulation noted some issues regarding some of the insurance provisions in the bill. The office stated:

It is unclear from the language of Section 2 of the bill which party's insurance policy would have primary responsibility in an accident, in what amounts, and during which phases of the program. This should be clarified in order to avoid unnecessary litigation between the peer-to-peer vehicle driver, owner, and program and to ensure that appropriate coverage is available for injured Floridians. It may be desirable to consider a structure similar to that provided in s. 627.748, which governs insurance requirements for transportation network companies, such as Uber.

This bill is attempting to allow exclusions of coverage in all coverage parts for the peer-to-peer vehicle owner. These exclusions would be acceptable if some other party had responsibility for the excluded coverage, i.e., if the language of the bill clearly required that the program provide this coverage instead. However, it is not clear whether this requirement is imposed by the bill's language as it is currently written.

If no other party is required to have the coverage excluded from the peer-to-peer vehicle owner's policy, other issues will arise as follows: The bill allows for the exclusion of bodily injury liability and physical damage liability coverage from the vehicle owner's policy. These coverages represent the minimum financial responsibility requirement that an individual must demonstrate for protection of other drivers in order to register a

vehicle in Florida. Allowing these coverages to be excluded from the owner's policy without providing for the coverage from some other party's policy (e.g., the program's policy) represents a significant shift from the public policy decision that all vehicles must be accountable for the minimums required by the Florida Financial Responsibility Law in the event of an accident, thereby greatly increasing the number of accidents in which the at-fault driver is effectively uninsured. In addition, allowing the exclusion of uninsured motorist coverage from the owner's policy without providing for this coverage from some other party means the owner may no longer have uninsured motorist coverage—the only coverage available in an accident with an uninsured motorist—for any physical damage to the vehicle or for any bodily injuries caused by the uninsured motorist. The same would be true for the other excluded coverage parts: the owner would no longer have coverage for the excluded coverage parts and the bill is not clear as to whether any other party is required to provide that excluded coverage. Under the current version of the bill, these would be the results even when the vehicle is not being used as a peer-to-peer vehicle (because the current language allows for the exclusions without specifying that the exclusions only apply when the vehicle is being used as a peer-to-peer vehicle).¹

VIII. Statutes Affected:

This bill substantially amends section 212.0606 of the Florida Statutes.

This bill creates section 627.7483 of the 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 by Innovation, Industry, and Technology on January 27, 2020:

The committee substitute:

- Revises the provisions relating to the car rental surcharge;
- Provides that the car-sharing service shall collect the surcharge; and
- Revises and deletes several definitions including revising the definition of peer-to-peer car sharing program.

The committee substitute also revises the insurance coverage requirements. As filed, the bill required the program to insure third parties, vehicle owners, and drivers in the minimum amounts in s. 324.021(7), F.S., which are: in the amount of \$10,000 because of bodily injury to, or death of, one person in one crash; in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in one crash; and in the amount of \$10,000 because of injury to, or destruction of, property of others in any one crash. The committee substitute replaces these requirements with:

- Property damage liability coverage in the minimum coverage amounts in s. 324.022, F.S., which are:
 - At least \$10,000 in one accident; or
 - At least \$30,000 for combined property and bodily injury liability for one crash;

¹ 2020 Agency Legislative Bill Analysis for SB 478, Office of Insurance Regulation, November 1, 2019 at page 5.

- Bodily injury liability coverage limits under s. 324.021(7)(a) and (b). F.S., which are:
 - In the amount of \$10,000 for bodily injury to, or death of, one person in any one crash; and
 - In the amount of \$20,000 for bodily injury to, or death of, two or more persons in any one crash;
- Personal injury protection benefits that meet the minimum coverage amounts required under s. 627.736, F.S., which are a limit of \$10,000 in medical and disability benefits and \$5,000 in death benefits resulting from bodily injury, sickness, disease, or death; and
- Uninsured and underinsured vehicle coverage under s. 627.727, F.S., which is not less than the limits of bodily injury liability insurance purchased by the named insured, or such lower limit complying with the rating plan of the company as may be selected by the named insured.

B. Amendments:

None.