

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: SB 478

INTRODUCER: Senator Perry

SUBJECT: Motor Vehicle Rentals

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Imhof	IT	Pre-meeting
2.			BI	
3.			AP	

I. Summary:

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. 627.747, F.S., to establish operational, financial responsibility, and insurance requirements for peer-to-peer vehicle sharing programs. This includes establishing definitions and requirements for: notification of implications of a lien on a vehicle which the owner plans to use as a peer-to-peer vehicle; removal of a vehicle from a peer-to-peer vehicle-sharing program until the safety recall repair has been made; verification of driver license and retention of related information; maintenance of records relating to the use of peer-to-peer vehicles; insurable interests in peer-to-peer vehicles; financial responsibility for bodily injury or property damage during the peer-to-peer vehicle-sharing period; permissible exclusions from insurance policy coverage and the duty to defend or indemnify; contributions against indemnification; consumer protection disclosures; and responsibility for peer-to-peer vehicle-sharing program equipment that is put in or on the peer-to-peer vehicle.

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, to extend the surcharge to peer-to-peer vehicle sharing programs and make technical changes.

The bill creates s. 627.747, F.S., to establish operational requirements for peer-to-peer vehicle sharing programs, including insurance requirements.

Definitions

The bill provides the following definitions:

- “Peer-to-peer vehicle” or “vehicle” means a vehicle made available for sharing through a peer-to-peer vehicle sharing program, used nonexclusively for peer-to-peer vehicle sharing, and used by the peer-to-peer vehicle owner for personal use outside of peer-to-peer vehicle sharing.
- “Peer-to-peer vehicle delivery period” or “delivery period” means the period of time during which a peer-to-peer vehicle is being delivered to the location where the peer-to-peer vehicle-sharing start time commences, if applicable, as documented by the governing peer-to-peer vehicle-sharing program agreement.
- “Peer-to-peer vehicle driver” or “driver” means an individual who has been authorized to drive the peer-to-peer vehicle by the peer-to-peer vehicle owner under a peer-to-peer vehicle-sharing program agreement.

- “Peer-to-peer vehicle owner” or “owner” means the registered owner of a peer-to-peer vehicle made available for sharing to peer-to-peer vehicle drivers through a peer-to-peer vehicle-sharing program.
- “Peer-to-peer vehicle sharing” or “sharing” means the authorized use of a peer-to-peer vehicle by an individual other than the peer-to-peer vehicle owner through a peer-to-peer vehicle-sharing program.
- “Peer-to-peer vehicle-sharing agreement” or “agreement” means the terms and conditions applicable to a peer-to-peer vehicle owner and a peer-to-peer vehicle driver which govern the use of a peer-to-peer vehicle through a peer-to-peer vehicle sharing program.
- “Peer-to-peer vehicle-sharing period” or “sharing period” means the period of time that commences with the peer to-peer vehicle delivery period or, if there is no peer-to-peer vehicle delivery period, that commences with the peer-to-peer vehicle-sharing start time and in either case ends at the peer to-peer vehicle-sharing termination time.
- “Peer-to-peer vehicle-sharing program” or “program” means a business platform that connects peer-to-peer vehicle owners with peer-to-peer vehicle drivers to enable the sharing of peer-to-peer vehicles for financial consideration.
- “Peer-to-peer vehicle-sharing start time” or “start time” means the time when the peer-to-peer vehicle becomes subject to the control of the peer-to-peer vehicle driver at or after the time the reservation of a peer-to-peer vehicle is scheduled to begin, as documented in the records of a peer-to-peer vehicle-sharing program.
- “Peer-to-peer vehicle-sharing termination time” or “termination time” means the earliest of the following events:
 - The expiration of the agreed-upon period of time established for the use of a peer-to-peer vehicle according to the terms of the vehicle-sharing program agreement, if the peer-to-peer vehicle is delivered to the location agreed upon in the peer-to-peer vehicle-sharing program agreement;
 - The expiration of the time period established for use of the peer-to-peer vehicle when the peer-to-peer vehicle is returned to an alternate location agreed upon by the peer-to-peer vehicle owner and the peer-to-peer vehicle driver as communicated through a peer-to-peer vehicle-sharing program; or
 - The peer-to-peer vehicle owner or the owner’s authorized designee takes possession and control of the peer-to-peer vehicle.

Operational Requirements

Notification of Implications of a Lien

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

Automobile Safety Recalls

If the peer-to-peer vehicle owner has received notice of a safety recall on the vehicle, he or she may not make the vehicle available for use through a peer-to-peer vehicle-sharing program until the safety recall repair has been made. Upon receiving notice of a safety recall on the vehicle

when it is available for use through the program, the owner shall remove the vehicle from availability as soon as practicable, but in no case more than 48 hours after receiving the notice of the safety recall, and until the safety recall repair has been made. Upon receiving notice of a safety recall on the vehicle, and in no case more than 48 hours after such receipt, when such vehicle is in the possession of the driver, the owner must notify the program of the safety recall so that the program may notify the driver and the vehicle can be removed from use until the owner effects the necessary safety recall repair.

At the time an owner registers a vehicle for use in the program, and before the owner makes the vehicle available for use, the peer-to-peer vehicle-sharing program must:

- Verify that the vehicle does not have any safety recalls for which repairs have not been made; and
- Notify the owner of the on-going owner recall requirements set out above.

The program must periodically, at least once in each 72-hour period, verify that any vehicle available for use through the program is not subject to an open safety recall for which repairs have not been made.

Driver License Verification and Retention

A peer-to-peer vehicle-sharing program may not enter into a peer-to-peer vehicle-sharing program agreement with a driver unless the driver who will operate the peer-to-peer vehicle:

- Holds an unexpired driver license in this state which authorizes the driver to operate vehicles of the class of the peer-to-peer vehicle; or
- Is a nonresident who:
 - Has an unexpired 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 peer-to-peer vehicle; and
 - Is at least the same age as that required of a resident to drive.

A peer-to-peer vehicle-sharing program may not rent a motor vehicle to another until the driver license of the peer-to-peer vehicle driver has been inspected and the program has verified that the driver license is unexpired.

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

- The registration number of the peer-to-peer vehicle;
- The name and address of the peer-to-peer vehicle driver;
- The driver license number of the peer-to-peer vehicle driver and the place where the license was issued; and
- Each other person, if any, who will operate the peer-to-peer vehicle.

Such record must be open to inspection by any police officer, or officer or employee of the Department of Law Enforcement.

If a peer-to-peer vehicle-sharing program rents a peer-to-peer vehicle to a driver through digital, electronic, or other means that allow the driver to obtain possession of the vehicle without direct contact with an agent, an employee of the peer-to-peer vehicle-sharing program, or the vehicle

owner, or if the driver does not execute a peer-to-peer vehicle-sharing program agreement at the time he or she takes possession of the vehicle, the peer-to-peer vehicle-sharing program is deemed to have met all these requirements when the program, at the time the driver enrolls in a membership program, master agreement, or other means of establishing use of the program's services, or any time thereafter, requires the driver to verify that he or she is duly licensed and that the license is unexpired.

Recordkeeping

A peer-to-peer vehicle-sharing program must collect and verify records pertaining to the use of peer-to-peer vehicles, including, but not limited to, times used, fees paid by the peer-to-peer vehicle driver, and revenues received by the peer-to-peer vehicle owner. Pursuant to all applicable federal and state privacy obligations, and after receiving the informed consent of the peer-to-peer vehicle owner and the peer-to-peer vehicle driver, a peer-to-peer vehicle-sharing program must provide this information, upon request, to the owner, the owner's insurer, and the driver's insurer to facilitate a claim investigation. The program must retain these records for not less than 3 years.

Insurance, Financial Responsibility, and Indemnification Requirements

Insurable Interest

The bill provides that a peer-to-peer vehicle-sharing program has an insurable interest in a vehicle during the sharing period, but that this provision does not impose liability on a peer-to-peer vehicle-sharing program to maintain the coverage mandated for a peer-to-peer vehicle. A peer-to-peer vehicle-sharing program may own and maintain as the named insured one or more policies of motor vehicle liability insurance which provide coverage for:

- Liabilities assumed by the peer-to-peer vehicle-sharing program under agreement;
- Liability of the peer-to-peer vehicle owner;
- Damage or loss to the vehicle; or
- Liability of the peer-to-peer vehicle driver.

Financial Responsibility

With the exceptions immediately following, a peer-to-peer vehicle-sharing program is required to assume the liability of a peer-to-peer 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 vehicle-sharing period in an amount stated in the peer-to-peer vehicle-sharing program. This assumption of liability does not apply to any peer-to-peer vehicle owner when:

- A peer-to-peer vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer vehicle-sharing program before the peer-to-peer vehicle-sharing period in which the loss occurred; or
- A peer-to-peer vehicle owner acts in concert with a peer-to-peer vehicle driver who fails to return the vehicle pursuant to the terms of the peer-to-peer vehicle-sharing program agreement.

The assumption of liability applies to bodily injury and property damage losses by damaged third parties.

A peer-to-peer vehicle-sharing program shall ensure that, during each peer-to-peer vehicle-sharing period, the peer-to-peer vehicle owner and the peer-to-peer vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than:

- In the amount of \$10,000 because of bodily injury to, or death of, one person in any one crash;
- Subject to such limits for one person, in the amount of \$20,000 because of bodily injury to, or death of, two or more persons in any one crash; and
- In the amount of \$10,000 because of injury to, or destruction of, property of others in any one crash.

Additionally the insurance policy must either:

- Recognize that the peer-to-peer vehicle insured under the policy is made available and used through a peer-to-peer vehicle-sharing program; or
- Not exclude use of a peer-to-peer vehicle by a peer-to-peer vehicle driver.

The insurance policy also must be primary during each peer-to-peer vehicle-sharing period.

This requirement may be satisfied by motor vehicle liability insurance maintained by a peer-to-peer vehicle owner; a peer-to-peer vehicle driver; a peer-to-peer vehicle-sharing program; or by a peer-to-peer vehicle owner, a peer-to-peer vehicle driver, and a peer-to-peer vehicle-sharing program.

The peer-to-peer vehicle-sharing program must assume primary liability for a claim when it is providing the required insurance policy, in whole or in part, and:

- A dispute exists as to who was in control of the peer-to-peer vehicle at the time of the loss; and
- The peer-to-peer vehicle-sharing program does not have available, did not retain, or fails to provide the identification information on the vehicle, the driver, the driver license, and each other person who will operate the vehicle.

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

If insurance maintained by a peer-to-peer vehicle owner or peer-to-peer vehicle driver lapses or does not provide the required coverage, insurance maintained by a peer-to-peer vehicle-sharing program shall provide the required coverage beginning with the first dollar of a claim and the insurer has the duty to defend such claim except under circumstances involving an intentional or fraudulent material misrepresentation or omission or coordinated failure to return the vehicle as required by the agreement.

Coverage under a motor vehicle insurance policy maintained by the peer-to-peer vehicle-sharing program may not be dependent on another motor vehicle insurer first denying a claim.

These financial responsibility provisions do not:

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

Exclusions in Motor Vehicle Liability Insurance Policies

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 under the peer-to-peer vehicle owner's motor vehicle liability 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.

The financial responsibility provisions do not invalidate or limit an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use which excludes coverage for motor vehicles made available for rent, hire, or for any business use, including peer-to-peer vehicle sharing.

Contribution against Indemnification

A motor vehicle insurer that defends or indemnifies a claim arising from the operation of a peer-to-peer vehicle that is excluded under the terms of its policy may seek contribution against the peer-to-peer vehicle-sharing program if the claim is made against the peer-to-peer vehicle owner or the peer-to-peer vehicle driver for loss or injury that occurs during the peer-to-peer vehicle sharing period.

Consumer Protections

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

- Any right of a program to seek indemnification from the owner or the driver for economic losses the program sustains which result from a breach of the terms and conditions of the agreement;
- That a motor vehicle liability insurance policy issued to the owner for the peer-to-peer vehicle or to the driver does not provide defense indemnity for any claim asserted by the program;
- That the program's financial responsibility afforded to the owner and driver is available only during the peer-to-peer vehicle-sharing period;

- That, for any use of the peer-to-peer vehicle by the driver after the peer-to-peer vehicle-sharing termination time, the driver and owner may not have coverage;
- The daily rate, fees, costs, and, if applicable, any insurance or protection package costs that are charged to the owner or driver; and
- That the peer-to-peer vehicle owner's motor vehicle liability insurance may not provide coverage for the vehicle.

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

- An emergency telephone number to contact personnel capable of fielding roadside assistance requests and other customer service inquiries; and
- Any conditions under which a driver must maintain a personal motor vehicle insurance policy, and any required coverage limits, on a primary basis in order to rent the peer-to-peer vehicle.

Responsibility for Equipment

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

The bill takes effect July 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:

None.

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.

As with Section 627.748, F.S., this bill in lines 347-53 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 627.747 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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