

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 566

INTRODUCER: Banking and Insurance Committee and Senator Perry

SUBJECT: Motor Vehicle Rentals

DATE: April 16, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Arnold</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Proctor</u>	<u>Vickers</u>	<u>TR</u>	<u>Favorable</u>
3.	<u>Bruno</u>	<u>Sadberry</u>	<u>AP</u>	<u>Pre-meeting</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 566 establishes insurance and operational requirements for peer-to-peer car-sharing programs (car-sharing programs). Under the bill, peer-to-peer car-sharing is the authorized use of a motor vehicle by an individual other than a shared vehicle's owner (vehicle owner) through a car-sharing program that connects motor vehicle owners with drivers for financial consideration.

The bill confirms that Florida's sales tax applies to car-sharing programs. The bill exempts a motor vehicle rental or lease with a duration of less than 24 hours and a peer program agreement from the existing rental car surcharge of \$2 per day. The bill imposes a reduced surcharge of \$1 per day on a motor vehicle rental or lease with a duration of less than 24 hours and on a car-sharing program agreement.

The bill requires that the car-sharing program ensure that during the car-sharing period, the vehicle owner and shared vehicle driver (driver) are insured to at least the minimum statutory requirements for property damage liability, bodily injury liability, personal injury protection, and uninsured motorist coverage. The car-sharing program must assume liability for damages that may occur during the car-sharing period in amounts that may not be less than the minimum statutory liability coverage requirements for bodily injury, property damage, personal injury protection, and uninsured motorist, with exceptions. The bill provides that car-sharing programs and vehicle owners are exempt from vicarious liability consistent with federal law.

The bill also requires a car-sharing program to:

- Keep and retain specified records;
- Provide notice to vehicle owners and drivers of the rates of the car-sharing program contract, the car-sharing programs' right to seek indemnification and make defenses, the fact that a vehicle owner's motor vehicle liability insurance may exclude coverage for a shared vehicle, conditions under which the driver must maintain insurance, and an emergency telephone number for roadside assistance and customer service inquiries;
- Require that drivers have a current, valid driver license or be otherwise authorized to drive;
- Have sole responsibility for equipment put in or on the shared vehicle to monitor or facilitate the peer-to-peer car-sharing transaction; and
- Verify shared vehicles have been repaired pursuant to any safety recalls, provide notice the vehicle owner of recalls, and remove vehicles from the car-sharing program that have not been repaired.

The Revenue Estimating Conference determined that the provisions of the bill that clarify that peer-to-peer car-sharing programs must collect sales tax will increase General Revenue Fund receipts, Trust Fund receipts, and local government receipts by an indeterminate amount in Fiscal Year 2021-2022 and each year thereafter. The provisions of the bill that reduce the rental car surcharge from \$2 to \$1 for motor vehicles that are rented for less than 24 hours will reduce General Revenue Fund receipts by an insignificant amount in Fiscal Year 2021-2022, with a \$100,000 recurring reduction, and will reduce trust fund receipts by \$300,000 in Fiscal Year 2021-2022, with an \$800,000 recurring reduction.

The bill takes effect January 1, 2022.

## **II. Present Situation:**

### **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. 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 Highway Safety and Motor Vehicles.

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.

### **Peer-to-Peer Car-sharing**

Car owners interested in sharing their vehicles can register as a vehicle owner on a car-sharing program's website.<sup>1</sup> Car-sharing programs require photos of the car and help the vehicle owner determine a rental fee based on the location and type of car. The vehicle owner then specifies the car's availability. The vehicle owner may choose to have the car picked up at his or her house, deliver the vehicle, or have it picked up at an airport. Vehicle owners typically receive between 65 and 75 percent of the fees. Payments are typically through direct deposit.<sup>2</sup>

Drivers also register with the car-sharing program. The car-sharing program will conduct a background check and review the drivers' 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 driver replaces any consumed fuel before returning the car to its pickup location.<sup>3</sup>

One car-sharing website reports that its car-sharing 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.<sup>4</sup>

### **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.

### **Minimum Insurance Requirements for Motor Vehicles**

Florida's Financial Responsibility Law of 1955<sup>5</sup> provides financial security requirements for motor vehicle owners and operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle.<sup>6</sup> In combination with the Florida

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<sup>1</sup> Turo, Getaround, and Avail are examples of peer-to-peer car-sharing programs.

<sup>2</sup> Russ Heaps, *The Good, Bad and Ugly of Peer-to-Peer Car-sharing*, Autotrader, (February 9, 2015), available at <https://www.autotrader.com/car-shopping/good-bad-and-ugly-peer-peer-car-sharing-234961> (last visited April 14, 2021).

<sup>3</sup> *Id.*

<sup>4</sup> Turo, *About Turo*, available at <https://turo.com/us/en/about> (last visited April 14, 2021).

<sup>5</sup> Chapter 324, F.S.

<sup>6</sup> Section 324.011, F.S.

Motor Vehicle No-Fault Law,<sup>7</sup> operators of motor vehicles with four or more wheels are required to purchase minimum insurance coverages for property damage liability<sup>8</sup> and personal injury protection.<sup>9</sup>

Property damage liability (PD) coverage pays damages to the third-party's property caused by the insured or member of the insured's household up to policy limits. Florida law currently requires minimum PD coverage limits in the amount of \$10,000, or \$30,000 for a combined PD and bodily injury liability policy.<sup>10</sup>

Personal injury protection (PIP) coverage pays the reasonable expenses for necessary medical services, lost wages, replacement services, and a death benefit to the insured for damages incurred in an accident regardless of fault. PIP coverage extends beyond the insured to include household relatives, pedestrians, and passengers without PIP coverage. Florida law currently requires minimum PIP coverage limits in the amount of \$10,000 in the event of bodily injury to any one person who sustains an emergency medical condition,<sup>11</sup> which is reduced to a \$2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.<sup>12</sup> PIP coverage provides reimbursement for 80 percent of reasonable medical expenses, 60 percent of loss of income, and 100 of replacement services, for bodily injuries sustained in a motor vehicle accident, without regard to fault. PIP coverage also provides a \$5,000 death benefit.<sup>13</sup>

#### ***Liability for Motor Vehicle Lessors***

Florida's Financial Responsibility Law of 1955 also provides liability limits applicable to rented and leased vehicles. Under a motor vehicle rental or lease agreement with a term of less than one year, the lessor is deemed the owner for the purpose of determining liability for the operation of the vehicle or the acts of the operator in connection therewith up to \$100,000 per person and \$300,000 per incident for bodily injury.<sup>14</sup> The lessor is liable for property damage up to \$50,000.<sup>15</sup>

However, if the lessee or the operator of the motor vehicle is uninsured or has any insurance with limits less than \$500,000 combined PD and BI, the lessor is liable up to an additional \$500,000 in economic damages arising from the operation of the motor vehicle.<sup>16</sup> This additional specified liability of the lessor for economic damages is reduced by amounts actually recovered from the lessee, from the operator, and from any insurance or self-insurance covering the lessee or operator.<sup>17</sup>

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<sup>7</sup> Sections 627.730 – 627.7405, F.S.

<sup>8</sup> Section 324.022, F.S.

<sup>9</sup> Section 627.733, F.S.

<sup>10</sup> Section 324.022(1), F.S.

<sup>11</sup> Section 627.736(1), F.S.

<sup>12</sup> Section 627.736(1)(a)(4), F.S.

<sup>13</sup> Section 627.736(1)(c), F.S.

<sup>14</sup> Section 324.021(9)(b)1, F.S.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

### ***Additional Optional Insurance Coverages for Motor Vehicles***

Bodily injury liability (BI) coverage pays for bodily injury expenses caused by the insured or members of the insured's household to third-party in an accident. This coverage pays economic damages, such as medical bills and lost wages, and non-economic damages, such as pain and suffering of the third-party, up to policy limits. This coverage also provides legal representation and attorney fees to the insured in the event of a lawsuit. A driver in compliance with the requirement to carry PIP coverage is not required to maintain BI, except that Florida law requires proof of ability to pay monetary damages in the amount of \$10,000 because of bodily injury to, or death of, one person in any one crash, and \$20,000 for bodily injury to, or death of, two or more persons in any one crash.<sup>18</sup> Additionally, motor vehicle insurance policies providing BI must also provide uninsured motor coverage.<sup>19</sup>

Uninsured motorist (UM) coverage pays the insured and passengers if injured by an uninsured or underinsured at-fault party. The coverage pays medical benefits and lost wages, and also covers pain and suffering damages. In Florida, UM is an optional coverage but must be offered up to the same limits as the insured has for BI.<sup>20</sup>

### **Florida Sales and Use Tax and Motor Vehicle Rental Surcharges**

The lease or rental of tangible personal property, including vehicles, is taxable.<sup>21</sup> 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 six percent<sup>22</sup> of the gross proceeds derived from the lease or rental.<sup>23</sup> 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 title.<sup>24</sup> 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.<sup>25</sup>

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.

Florida law imposes a surcharge<sup>26</sup> of \$2.00 per day, or any part of a day, upon the lease or rental of a "motor vehicle licensed for hire"<sup>27</sup> and designed to carry less than nine passengers,

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<sup>18</sup> Section 324.022, F.S.

<sup>19</sup> Section 627.727(1), F.S.

<sup>20</sup> Section 627.727(2), F.S.

<sup>21</sup> Section 212.05(1), F.S.

<sup>22</sup> Discretionary county sales surtax, if any, is also owed if the six percent Florida state sales tax applies. *See* s. 212.054, F.S.

<sup>23</sup> Section 212.05(1)(c), F.S.

<sup>24</sup> Section 212.02(10)(g), F.S.

<sup>25</sup> Rule 12A-1.007(13)(a)1, F.A.C.

<sup>26</sup> 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.

<sup>27</sup> 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,

regardless of whether such motor vehicle is licensed in Florida.<sup>28</sup> The surcharge applies to the first 30 days of the term of any lease or rental.<sup>29</sup> 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...”<sup>30</sup> 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.”<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

80 percent of the proceeds of this surcharge are deposited in the State Transportation Trust Fund, 15.75 percent of the proceeds of this surcharge are deposited in the Tourism Promotional Trust Fund, and 4.25 percent of the proceeds of this surcharge are deposited in the Florida International Trade and Promotion Trust Fund.

The surcharge deposited in the State Transportation Trust Fund is allocated on an annual basis in the Department of Transportation’s work program to each department district, except the Turnpike District. The amount allocated to each district must be based on the amount of surcharge attributed to the counties within each respective district.<sup>35</sup>

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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.

<sup>28</sup> Section 212.0606(1), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Section 212.02(12), F.S.

<sup>31</sup> Section 212.02(2), F.S.

<sup>32</sup> Rule 12A-16.002(3), F.A.C.

<sup>33</sup> Section 212.0606(2), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

The surcharge deposited in the Tourism Promotional Trust Fund must be used to support the authorized activities and operations and the tourism promotion and marketing activities, services, functions, and programs administered by Enterprise Florida, Inc.,<sup>36</sup> and the surcharge deposited into the Florida International Trade and Promotion Trust Fund must be used for the operation of Enterprise Florida, Inc.<sup>37</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.05, F.S., to subject the lease or rental of a motor vehicle by a peer-to-peer car-sharing program to the six percent sales tax on of the gross proceeds derived from the lease or rental of a motor vehicle.

**Section 2** amends s. 212.0606, F.S., to exempt a motor vehicle rental or lease with a duration of less than 24 hours and a peer-to-peer car-sharing program agreement from the existing rental car surcharge of \$2 per day.

The bill moves the existing definition for “car-sharing service” to the definitions subsection and provides the following definitions.

- “Motor vehicle rental company” means an entity that is in the business of providing, for financial consideration, motor vehicles to the public under a rental agreement.
- “Peer-to-peer car-sharing program” has the same meaning as in s. 627.7483(1), F.S.

These entities or business platforms are required to collect the rental car surcharge.

The bill requires a peer-to-peer car-sharing program to report to the Department of Revenue surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time.

**Section 3** 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:

- “Car-sharing delivery period” means the period of time during which a shared vehicle is being delivered to the location of the car-sharing start time, if applicable, as documented by the governing peer-to-peer car-sharing program agreement.
- “Car-sharing period” means the period of time that commences either at the car-sharing delivery period or, if there is no car-sharing delivery period, at the car-sharing start time and that ends at the car-sharing termination time.
- “Car-sharing start time” means the time when the shared vehicle is under the control of the shared vehicle driver, which time occurs at or after the time the reservation of the shared vehicle is scheduled to begin, as documented in the records of a peer-to-peer car-sharing program.
- “Car-sharing termination time” means the earliest of the following:

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<sup>36</sup> Section 288.122, F.S.

<sup>37</sup> Section 288.826, F.S.

- 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, which alternatively agreed-upon location must be incorporated into the peer-to-peer car-sharing program agreement; or
- The time the shared vehicle owner takes possession and control of the shared vehicle.
- “Peer-to-peer car-sharing” or “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 the use of a for-hire vehicle as defined in s. 320.01(15), F.S., 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 program” means a business platform that enables peer-to-peer car-sharing by connecting motor vehicle owners with drivers for financial consideration. For the purposes of this section, the term does not include a rental car company, a car-sharing service as defined in s. 212.0606(1), F.S., a taxicab association, the owner of a for-hire vehicle as defined in s. 320.01(15), F.S., or a service provider that is solely providing hardware or software as a service to a person or an entity that is not effectuating payment of financial consideration for use of a shared vehicle.
- “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. For the purposes of this section, the term does not include a rental agreement or an agreement for a for-hire vehicle as defined in s. 320.01(15), F.S., or for a car-sharing service as defined in s. 212.0606(1), F.S.
- “Shared vehicle” means a motor vehicle that is available for sharing through a peer-to-peer car-sharing program. For the purposes of this section, the term does not include a rental car, a for-hire vehicle as defined in s. 320.01(15), F.S., or a motor vehicle used for ridesharing as defined in s. 341.031(9), F.S., for carpool as defined in s. 450.28(3), F.S., or for car-sharing service as defined in s. 212.0606(1), 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 driver” means an individual who has been 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 natural person or an 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. For the purposes of this section, the term does not include an owner of a for-hire vehicle as defined in s. 320.01(15), F.S.



## **Insurance Requirements, Liability**

### ***Insurance Coverage Requirements***

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

- Property damage liability coverage in the amount of at least \$10,000 as required under s. 324.022, F.S.;
- Bodily injury liability coverage in the amount of at least \$10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least \$20,000 for bodily injury to, or death of, two or more persons in any one crash as specified in s. 324.021(7)(a) and (b), F.S.;
- Personal injury protection benefits in the amount of at least \$10,000<sup>38</sup> for medical and disability benefits and in the amount of at least \$5,000 for death benefits required under s. 627.736, F.S.; and
- Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits 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.

A motor vehicle insurance policy maintained by a shared vehicle owner, shared vehicle driver, peer-to-peer car-sharing program, or a combination of a shared vehicle owner, shared vehicle driver, and peer-to-peer car-sharing program, is primary during each peer-to-peer car-sharing period.

If a claim occurs during the car-sharing period in another state with higher minimum financial responsibility limits requiring under ch. 324, F.S., the minimum insurance requirements under the peer-to-peer car-sharing program satisfy the difference in minimum coverage amounts up to the applicable policy limits.

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

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<sup>38</sup> Personal injury protection reimbursement medical benefits are limited to \$2,500 if specified medical providers determine the injured person did not have an emergency medical condition.

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 motor vehicle insurance policy 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:

- Section 324.021(7)(a) and (b), F.S.: Bodily injury liability coverage in the amount of at least \$10,000 for bodily injury to, or death of, one person in any one crash or in the amount of at least \$20,000 for bodily injury to, or death of, two or more persons in any one crash;
- Section 324.022, F.S.: Property damage liability coverage in the amount of at least \$10,000;
- Section 627.727, F.S.: Uninsured and underinsured vehicle coverage in the amount equal to bodily injury limits; and
- Section 627.736, F.S.: Personal injury protection benefits in the amount of at least \$10,000 for medical and disability benefits and in the amount of at least \$5,000 for death benefits.

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.

The insurer, insurers, or 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; or
- A dispute exists over whether the shared vehicle was returned to the alternatively agreed-upon location as required in the peer-to-peer car-sharing program agreement.

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.

### ***Vicarious Liability***

A peer-to-peer car-sharing program and a shared vehicle owner are exempt from vicarious liability consistent with 49 U.S.C. s. 30106 (2005) under any state or local law that imposes liability solely based on vehicle ownership.

### ***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. This provision also does not invalidate, limit, or restrict an insurer from underwriting, canceling, or nonrenewing an insurance policy as available under existing law.

### ***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 and excluded under the terms of its policy.

### **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 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 valid driver license 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***

The bill provides that 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.

### ***Motor Vehicle 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:
  - A shared vehicle may not be made available on the peer-to-peer car-sharing program if the vehicle is subject to a safety recall and the required repairs have not been made.
  - If the shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is in the possession of a shared vehicle driver, the owner must notify the peer-to-peer car-sharing program about the safety recall as soon as practicably possible so that the owner may address the safety recall repair.

### **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.

**Section 4** provides an effective date of January 1, 2022.

**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:

The bill does not impose or raise a state tax or fee in violation of Article VII, section 19 of the Florida Constitution, as leases or rented motor vehicles licensed for hire are currently subject to sales tax under s. 212.05, F.S., and a rental car surcharge under s. 212.0606, F.S.

The bill's inclusion of motor vehicle rental companies and peer-to-peer car-sharing programs as subcategories of motor vehicle lease or rental arrangements currently subject to state sales tax and rental car surcharges neither imposes a fee on an industry not currently subject to state sales tax or rental car surcharges under the section nor raises a fee on an industry currently subject to state sales tax or rental car surcharges under the section. Accordingly, the bill does not appear to trigger the requirement for a separate bill for the consideration of the rental surcharge provision subject to a 2/3 vote by each chamber of the Legislature.<sup>39</sup>

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that the provisions of the bill that clarify that peer programs must collect sales tax will increase General Revenue Fund receipts, Trust Fund receipts, and local government receipts by an indeterminate amount in Fiscal Year 2021-2022 and each year thereafter. The provisions of the bill that reduce the rental car surcharge from \$2 to \$1 for motor vehicles that are rented for less than 24 hours will reduce General Revenue Fund receipts by an insignificant amount in Fiscal Year 2021-

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<sup>39</sup> See Fla. Const. art. VII, s. 19(a),(b) (2019).

2022, with a \$100,000 recurring reduction, and will reduce trust fund receipts by \$300,000 in Fiscal Year 2021-2022, with an \$800,000 recurring reduction.

**B. Private Sector Impact:**

Peer-to-peer car-sharing programs will be responsible for collecting and remitting the six percent sales tax on motor vehicle rentals under s. 212.05, F.S., and collecting the \$1 per day rental car surcharge under s. 212.0606, F.S.

Motor vehicle rental companies will be responsible for collecting the \$1 per day rental car surcharge on rentals and leases with a duration of less than 24 hours.

Peer-to-peer car-sharing programs will be responsible for reporting surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

The bill indicates that the primary insurance policy is a shared vehicle owner, a shared vehicle driver, a peer-to-peer car-sharing program, and any combination of those. A plain language reading suggests that this language is contradictory indicating all of the above are primary without establishing a preferential order.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 212.05 and 212.0606.

This bill creates section 627.7483 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.)

**CS by Banking and Insurance on March 24, 2021:**

The committee substitute makes the following changes to the underlying bill:

- Exempts all peer-to-per car-sharing programs and those motor vehicle leases and rentals with a duration of less than 24 hours from the existing \$2 per day surcharge;
- Imposes a reduced \$1 per day surcharge on all peer-to-per car-sharing programs and those motor vehicle leases and rentals with a duration of less than 24 hours;

- Requires that the peer-to-peer car-sharing program report surcharge collections and surcharge revenues as attributable to the county corresponding to the car-sharing start time;
- Requires the alternatively agreed-upon location for returning the vehicle to be incorporated into the peer-to-peer car-sharing agreement;
- Provides that Florida's minimum insurance requirements for peer-to-peer car-sharing programs satisfy the difference in coverage requirements in another state with higher minimum insurance requirements;
- Requires the insurer, insurers, or peer-to-peer car-sharing program that satisfies the minimum insurance requirements to assuming primary liability for the claim under certain conditions;
- Preserves an insurer's authority to underwrite, cancel, or nonrenew an insurance policy under current law;
- Removes applicable fees as a requirements disclosure items in a peer-to-peer car-sharing program agreement; and
- Additional technical and conforming changes.

B. Amendments:

None.