

By: Oliverson

H.B. No. 113

Substitute the following for H.B. No. 113:

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C.S.H.B. No. 113

A BILL TO BE ENTITLED

AN ACT

relating to peer-to-peer car sharing programs.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 113 to read as follows:

CHAPTER 113. PEER-TO-PEER CAR SHARING PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.0001. DEFINITIONS. In this chapter:

(1) "Agreement" means the terms and conditions applicable to an owner and driver that govern the use of a shared vehicle through a peer-to-peer car sharing program. The term does not include a rental agreement as defined by Section 91.001.

(2) "Car sharing period" means the period of time beginning with the delivery period or, if there is no delivery period, the start time and ending at the termination time.

(3) "Delivery period" means the period of time during which a shared vehicle is being delivered to the location of the start time, if applicable, under the agreement.

(4) "Driver" means an individual who has been authorized to drive the shared vehicle by the vehicle's owner under an agreement.

(5) "Owner" means the registered owner, or a person or entity designated by the registered owner, of a vehicle made available for sharing to drivers through a peer-to-peer car sharing

1 program.

2 (6) "Peer-to-peer car sharing" means the authorized
3 use of a vehicle by an individual other than the vehicle's owner
4 through a peer-to-peer car sharing program. The term does not
5 include the use of a private passenger vehicle from a rental company
6 under the terms of a rental agreement as those terms are defined by
7 Section 91.001.

8 (7) "Peer-to-peer car sharing program" means a
9 business platform that connects owners with drivers to enable
10 vehicle sharing for financial consideration. The term does not
11 include:

12 (A) a service provider who is solely providing
13 hardware or software as a service to a person or entity that is not
14 effectuating payment of financial consideration for use of a shared
15 vehicle; and

16 (B) a rental company as defined by Section
17 91.001.

18 (8) "Shared vehicle" means a vehicle that is available
19 for sharing through a peer-to-peer car sharing program. The term
20 does not include the use of a private passenger vehicle from a
21 rental company under the terms of a rental agreement as those terms
22 are defined by Section 91.001.

23 (9) "Start time" means the time when the shared
24 vehicle becomes subject to the control of the driver at or after the
25 time the reservation of a shared vehicle is scheduled to begin under
26 the agreement.

27 (10) "Termination time" means the earliest of:

1 (A) the expiration of the period of time
2 established for the use of a shared vehicle according to the
3 agreement if the shared vehicle is returned to the location
4 specified in the agreement;

5 (B) the time when the shared vehicle is returned
6 to a location as alternatively agreed on by the owner and driver as
7 communicated through a peer-to-peer car sharing program and
8 incorporated into the agreement; or

9 (C) the time when the owner or owner's authorized
10 designee takes possession and control of the shared vehicle.

11 Sec. 113.0002. APPLICABILITY OF CHAPTER. This chapter
12 applies to automobile insurance policies in this state, including
13 policies issued by a Lloyd's plan, a reciprocal or interinsurance
14 exchange, or a county mutual insurance company.

15 Sec. 113.0003. CONSTRUCTION OF CHAPTER. Nothing in this
16 chapter may be construed to:

17 (1) limit the liability of a peer-to-peer car sharing
18 program for any act or omission of the program itself that results
19 in injury to a person as a result of the use of a shared vehicle
20 through the program;

21 (2) limit the ability of a peer-to-peer car sharing
22 program to, by contract, seek indemnification from the owner or
23 driver for economic loss sustained by the program resulting from a
24 breach of the agreement;

25 (3) have implications affecting construction of
26 statutes outside this chapter, including statutes related to motor
27 vehicle regulation, airport regulation, or taxation; or

1 (4) invalidate or limit an exclusion contained in an
2 automobile insurance policy, including an insurance policy in use
3 or approved for use that excludes coverage for automobiles made
4 available for rent, sharing, hire, or any business use.

5 Sec. 113.0004. RULES. The commissioner of insurance may
6 adopt rules necessary to implement this chapter.

7 SUBCHAPTER B. ASSUMPTION OF LIABILITY AND INSURANCE REQUIREMENTS

8 Sec. 113.0051. ASSUMPTION OF LIABILITY BY PEER-TO-PEER CAR
9 SHARING PROGRAM. (a) Except as provided by Subsection (b), a
10 peer-to-peer car sharing program shall assume liability of an owner
11 for bodily injury or property damage to third parties or uninsured
12 or underinsured motorist or personal injury protection losses by
13 damaged third parties during the car sharing period in an amount
14 stated in the agreement, which may not be less than, as applicable,
15 the amounts:

16 (1) provided by Subchapter D, Chapter 601,
17 Transportation Code;

18 (2) required for uninsured or underinsured motorist
19 coverage under Section 1952.101, Insurance Code; or

20 (3) provided as the maximum amount of required
21 personal injury protection coverage under Section 1952.153,
22 Insurance Code.

23 (b) A peer-to-peer car sharing program is not required to
24 assume liability of an owner if the owner:

25 (1) makes an intentional or fraudulent material
26 misrepresentation or omission to the program before the car sharing
27 period in which the loss occurred; or

1 (2) acts in concert with a driver who fails to return
2 the shared vehicle in accordance with the agreement.

3 (c) Notwithstanding the definition of "termination time"
4 under Section 113.0001 or this subchapter, the assumption of
5 liability under Subsection (a) applies to bodily injury, property
6 damage, uninsured and underinsured motorist, or personal injury
7 protection losses by damaged third parties as required by
8 Subchapter D, Chapter 601, Transportation Code, Section 1952.101,
9 Insurance Code, and Section 1952.153, Insurance Code.

10 Sec. 113.0052. INSURANCE REQUIRED. (a) A peer-to-peer car
11 sharing program shall ensure that, during each car sharing period,
12 the owner and the driver are insured under an automobile liability
13 insurance policy that meets the requirements of this subchapter.

14 (b) Insurance maintained for purposes of this subchapter:

15 (1) must provide coverage in amounts not less than the
16 amounts described by Section 601.072, Transportation Code;

17 (2) must recognize that the shared vehicle insured
18 under the policy is made available and used through a peer-to-peer
19 car sharing program;

20 (3) must provide primary coverage during the car
21 sharing period; and

22 (4) may not exclude the use of a shared vehicle by a
23 driver.

24 (c) The coverage requirements of this subchapter may be
25 satisfied by:

26 (1) automobile insurance maintained by the owner;

27 (2) automobile insurance maintained by the driver;

1 (3) automobile insurance maintained by the
2 peer-to-peer car sharing program; or

3 (4) a combination of Subdivisions (1), (2), and (3).

4 (d) If a claim occurs in another state with minimum
5 financial responsibility limits higher than the amounts described
6 by Section 601.072, Transportation Code, during the car sharing
7 period, the coverage maintained under Subsection (a) must satisfy
8 the difference in minimum coverage amounts to the applicable policy
9 limits.

10 Sec. 113.0053. AUTOMOBILE INSURANCE POLICY EXCLUSIONS. An
11 automobile insurer may exclude any coverage and the duty to defend
12 or indemnify for any claim afforded under an owner's automobile
13 insurance policy during a car sharing period, including an
14 exclusion of:

15 (1) liability coverage for bodily injury and property
16 damage;

17 (2) personal injury protection coverage;

18 (3) uninsured and underinsured motorist coverage;

19 (4) medical payments coverage;

20 (5) comprehensive physical damage coverage; and

21 (6) collision physical damage coverage.

22 Sec. 113.0054. CLAIMS RELATED TO PEER-TO-PEER CAR SHARING.

23 (a) An insurer or peer-to-peer car sharing program providing
24 coverage under Section 113.0052(a) shall assume primary liability
25 for a claim when:

26 (1) a dispute exists as to who was in control of the
27 shared vehicle at the time of the loss and the program does not have

1 available, did not retain, or fails to provide the information
2 required by Section 113.0103; or

3 (2) a dispute exists as to whether the shared vehicle
4 was returned to the alternatively agreed upon location described by
5 Section 113.0001(10)(B).

6 (b) If, at the time of a claim, the automobile insurance
7 maintained by an owner or driver has lapsed or does not provide the
8 coverage required under this subchapter, insurance maintained by a
9 peer-to-peer car sharing program shall provide the coverage
10 beginning with the first dollar of a claim and the program shall
11 defend the claim.

12 (c) Coverage under an automobile insurance policy
13 maintained by the peer-to-peer car sharing program may not be
14 dependent on another automobile insurer first denying a claim.
15 Another automobile insurance policy is not required to first deny a
16 claim.

17 Sec. 113.0055. VICARIOUS LIABILITY. Notwithstanding any
18 other law, a peer-to-peer car sharing program and an owner are not
19 liable under a theory of vicarious liability in accordance with 49
20 U.S.C. Section 30106 or under any state or local law that imposes
21 liability solely based on vehicle ownership.

22 Sec. 113.0056. CONTRIBUTION. An automobile insurer that
23 defends or indemnifies a claim against a shared vehicle that is
24 excluded under the terms of the insurer's policy may seek recovery
25 against the peer-to-peer car sharing program's automobile insurer
26 if the claim is:

27 (1) made against the shared vehicle's owner or the

1 shared vehicle's driver for loss or injury that occurs during the
2 car sharing period; and

3 (2) excluded under the terms of the insurer's policy.

4 Sec. 113.0057. INSURABLE INTEREST. (a) Notwithstanding
5 any other law, a peer-to-peer car sharing program has an insurable
6 interest in a shared vehicle during the car sharing period.

7 (b) Nothing in this section creates a duty on a peer-to-peer
8 car sharing program to maintain the coverage required under this
9 subchapter.

10 (c) A peer-to-peer car sharing program may own and maintain
11 as the named insured one or more policies of automobile insurance
12 that separately or in combination provide coverage for:

13 (1) liability assumed by the program under an
14 agreement;

15 (2) liability of the owner;

16 (3) damage to or loss of the shared vehicle; or

17 (4) liability of the driver.

18 Sec. 113.0058. INSURANCE REQUIREMENTS. (a) An insurance
19 policy providing coverage described by Section 113.0057(c)(2) or
20 (4) must expressly provide liability coverage, without prior notice
21 to the insurer, for all shared vehicles during the car sharing
22 period, subject to any conditions or exclusions permitted by this
23 chapter.

24 (b) An insurer authorized to engage in the business of
25 insurance in this state or an eligible surplus lines insurer may
26 issue an insurance policy described by Section 113.0057(c).

27 (c) A peer-to-peer car sharing program is not required to

1 itemize or charge the owner or driver the amount payable as premium
2 under a policy described by Section 113.0057(c) that is allocable
3 to coverage provided to the owner or driver if:

4 (1) for the owner, the coverage is included without an
5 additional or itemized charge in the fee charged by the program for
6 the applicable car share reservation; or

7 (2) for the driver, the coverage is included without
8 an additional or itemized charge in the cost of the reservation of
9 the shared vehicle.

10 SUBCHAPTER C. PEER-TO-PEER CAR SHARING PROGRAM RESPONSIBILITIES

11 Sec. 113.0101. REQUIRED DISCLOSURES AND NOTICE. (a) Each
12 agreement entered into in this state must disclose to the owner and
13 the driver:

14 (1) any right of the peer-to-peer car sharing program
15 to seek indemnification from the owner or driver for economic loss
16 sustained by the program resulting from a breach of the agreement;

17 (2) that an automobile insurance policy issued to the
18 owner for the shared vehicle or to the driver does not provide a
19 defense or indemnification for any claim asserted by the
20 peer-to-peer car sharing program;

21 (3) that the peer-to-peer car sharing program's
22 insurance coverage on the owner and the driver is in effect only
23 during each car sharing period;

24 (4) that, for any use of the shared vehicle by the
25 driver after the termination time, the owner and driver may not have
26 insurance coverage;

27 (5) the daily rate, fees, and, if applicable, any

1 insurance costs that are charged to the owner or driver;

2 (6) that the owner's automobile insurance may not
3 provide coverage for a shared vehicle;

4 (7) an emergency telephone number through which
5 personnel capable of fielding roadside assistance and other
6 customer service inquiries may be reached; and

7 (8) if applicable, any condition under which a driver
8 must maintain a personal automobile insurance policy with certain
9 applicable coverage limits on a primary basis to book a shared
10 vehicle.

11 (b) When a person registers as an owner on a peer-to-peer
12 car sharing program and before the owner makes a shared vehicle
13 available for car sharing on the program, the program shall provide
14 written notice to the owner that, if the shared vehicle has a lien
15 against it, the shared vehicle's use through the program, including
16 use without physical damage coverage, may violate the terms of the
17 contract with the lienholder.

18 Sec. 113.0102. AUTHORIZATION TO DRIVE REQUIRED. A
19 peer-to-peer car sharing program may not enter into an agreement
20 with a driver unless the driver who will operate the shared vehicle:

21 (1) is a resident of this state and holds a driver's
22 license issued by this state that authorizes the driver to operate
23 vehicles of the class of the shared vehicle;

24 (2) is a nonresident of this state and:

25 (A) holds a driver's license issued by the state
26 or country of the driver's residence that authorizes the driver to
27 operate vehicles of the class of the shared vehicle; and

1 (B) is at least the same age as that required of a
2 resident of this state to drive; or

3 (3) is otherwise specifically authorized by this state
4 to drive vehicles of the class of the shared vehicle.

5 Sec. 113.0103. RECORD RETENTION. (a) A peer-to-peer car
6 sharing program shall keep and maintain a record of:

7 (1) the name and address of each driver who has entered
8 into an agreement with the program; and

9 (2) the driver's license number and place of issuance
10 of each driver and individual who will operate a shared vehicle
11 under the program.

12 (b) A peer-to-peer car sharing program shall collect and
13 verify records related to use of a shared vehicle under the program,
14 including:

15 (1) the times the vehicle is used;

16 (2) car sharing period pick-up and drop-off locations;

17 (3) money received by the owner; and

18 (4) fees paid by the driver.

19 (c) A peer-to-peer car sharing program shall provide
20 information collected under Subsection (b) on request to the owner,
21 the owner's insurer, or the driver's insurer to facilitate a claim
22 coverage investigation, settlement, negotiation, or litigation.

23 (d) A peer-to-peer car sharing program shall retain
24 information collected under Subsection (b) for a period of not less
25 than the limitations period provided under Section 16.003, Civil
26 Practice and Remedies Code, for a personal injury suit.

27 Sec. 113.0104. RESPONSIBILITY FOR CAR SHARING EQUIPMENT.

1 (a) A peer-to-peer car sharing program is solely responsible for
2 any equipment, including a global positioning system device or
3 other special equipment, placed in or on a shared vehicle used under
4 the program to monitor or facilitate the car sharing transaction.
5 The program shall agree to indemnify and hold harmless the
6 vehicle's owner for any damage to or theft of such equipment during
7 the car sharing period not caused by the owner.

8 (b) A peer-to-peer car sharing program may seek indemnity
9 from a driver for any loss of or damage to equipment described by
10 Subsection (a) that occurs during the car sharing period.

11 Sec. 113.0105. AUTOMOBILE SAFETY RECALL. (a) When a person
12 registers as an owner on a peer-to-peer car sharing program and
13 before the owner makes a shared vehicle available for car sharing on
14 the program, the program shall:

15 (1) verify that the vehicle does not have a safety
16 recall for which repairs have not been made; and

17 (2) notify the owner of the requirements under
18 Subsection (b).

19 (b) If an owner receives notice of a safety recall on a
20 shared vehicle:

21 (1) before the vehicle has been made available as a
22 shared vehicle on a peer-to-peer car sharing program, the owner may
23 not make the vehicle available as a shared vehicle on the program
24 until the safety recall repair has been made;

25 (2) while the vehicle is available as a shared vehicle
26 on a peer-to-peer car sharing program, the owner shall remove the
27 vehicle from the program as soon as practicably possible after

1 receiving the safety recall notice and until the safety recall
2 repair has been made; or

3 (3) while the vehicle is being used in the possession
4 of a driver, the owner shall notify the peer-to-peer car sharing
5 program as soon as practicably possible after receiving the safety
6 recall notice to allow the owner to address the safety recall
7 repair.

8 SECTION 2. (a) Chapter 113, Business & Commerce Code, as
9 added by this Act, applies only to an automobile insurance policy
10 delivered, issued for delivery, or renewed on or after January 1,
11 2022. An automobile insurance policy delivered, issued for
12 delivery, or renewed before January 1, 2022, is governed by the law
13 as it existed immediately before the effective date of this Act, and
14 that law is continued in effect for that purpose.

15 (b) Chapter 113, Business & Commerce Code, as added by this
16 Act, applies only to a peer-to-peer car sharing agreement entered
17 into on or after January 1, 2022.

18 SECTION 3. This Act takes effect September 1, 2021.