

BILL ANALYSIS

Senate Research Center

H.B. 113
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

It has been noted that peer-to-peer car sharing programs have become increasingly popular in Texas in recent years. The flexibility for car owners to provide their vehicles for rent to others not only provides for an efficient mode of transportation but also allows Texans to create new economic opportunities for themselves. However, concerns have been raised regarding the lack of uniform, statewide regulation for these services. There have been calls to implement consistent regulations to ensure proper insurance coverage for customers, car owners, and the peer-to-peer car sharing companies.

H.B. 113 seeks to address this issue by establishing insurance coverage requirements for peer-to-peer car sharing programs that are based on model legislation adopted by the National Council of Insurance Legislators after negotiation with peer-to-peer car sharing companies, insurance companies, and traditional car rental companies.

H.B. 113 amends current law relating to peer-to-peer car sharing programs.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 (Section 113.0004, Business & Commerce Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 5, Business & Commerce Code, by adding Chapter 113, as follows:

CHAPTER 113. PEER-TO-PEER CAR SHARING PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.0001. DEFINITIONS. Defines "agreement," "car sharing period," "delivery period," "driver," "owner," "peer-to-peer car sharing," "peer-to-peer car sharing program," "shared vehicle," "start time," and "termination time" in this chapter.

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

Sec. 113.0003. CONSTRUCTION OF CHAPTER. Provides that nothing in this chapter is authorized to be construed to:

- (1) limit the liability of a peer-to-peer car sharing program for any act or omission of the program itself that results in injury to a person as a result of the use of a shared vehicle through the program;
- (2) limit the ability of a peer-to-peer car sharing program to, by contract, seek indemnification from the owner or driver for economic loss sustained by the program resulting from a breach of the agreement;

- (3) have implications affecting construction of statutes outside this chapter, including statutes related to motor vehicle regulation, airport regulation, or taxation;
- (4) invalidate or limit an exclusion contained in an automobile insurance policy, including an insurance policy in use or approved for use that excludes coverage for automobiles made available for rent, sharing, hire, or any business use; or
- (5) invalidate, limit, or restrict an insurer's ability under law to underwrite any insurance policy or cancel or decline to renew an insurance policy.

Sec. 113.0004. RULES. Authorizes the commissioner of insurance to adopt rules necessary to implement this chapter.

SUBCHAPTER B. ASSUMPTION OF LIABILITY AND INSURANCE REQUIREMENTS

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

- (1) provided by Subchapter D (Establishment of Financial Responsibility Through Motor Vehicle Liability Insurance), Chapter 601 (Motor Vehicle Safety Responsibility Act), Transportation Code;
- (2) required for uninsured or underinsured motorist coverage under Section 1952.101 (Uninsured or Underinsured Motorist Coverage Required), Insurance Code; or
- (3) provided as the maximum amount of required personal injury protection coverage under Section 1952.153 (Maximum Required Amount of Personal Injury Protection), Insurance Code.

(b) Provides that a peer-to-peer car sharing program is not required to assume liability of an owner if the owner:

- (1) makes an intentional or fraudulent material misrepresentation or omission to the program before the car sharing period in which the loss occurred; or
- (2) acts in concert with a driver who fails to return the shared vehicle in accordance with the agreement.

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

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

(b) Provides that insurance maintained for purposes of this subchapter:

- (1) is required to provide coverage in amounts not less than the amounts described by Section 601.072 (Minimum Coverage Amounts; Exclusions), Transportation Code;

(2) is required to be primary during each car sharing period; and

(3) is required to:

(A) recognize that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program and specifically provide coverage for that use; or

(B) not exclude the use of a shared vehicle by a driver.

(c) Authorizes the coverage requirements of this subchapter to be satisfied by:

(1) automobile insurance maintained by the owner;

(2) automobile insurance maintained by the driver;

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

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

(d) Requires that the coverage maintained under Subsection (a), if a claim occurs in another state with minimum financial responsibility limits higher than the amounts described by Section 601.072, Transportation Code, during the car sharing period, satisfy the difference in minimum coverage amounts to the applicable policy limits.

Sec. 113.0053. **AUTOMOBILE INSURANCE POLICY EXCLUSIONS.** Authorizes an automobile insurer to exclude any coverage and the duty to defend or indemnify for any claim afforded under an owner's automobile insurance policy during a car sharing period, including an exclusion of 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.

Sec. 113.0054. **CLAIMS RELATED TO PEER-TO-PEER CAR SHARING.** (a) Requires an insurer or peer-to-peer car sharing program providing coverage under Section 113.0052(a) to assume primary liability for a claim when:

(1) a dispute exists as to who was in control of the shared vehicle at the time of the loss and the program does not have available, did not retain, or fails to provide the information required by Section 113.0103; or

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

(b) Requires that insurance maintained by a peer-to-peer car sharing program, if at the time of a claim, the automobile insurance maintained by an owner or driver has lapsed or does not provide the coverage required under this subchapter, provide the coverage beginning with the first dollar of a claim and requires that the program defend the claim.

(c) Prohibits coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program from being dependent on another automobile insurer first denying a claim. Provides that another automobile insurance policy is not required to first deny a claim.

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

Sec. 113.0056. CONTRIBUTION. Authorizes an automobile insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of the insurer's policy to seek recovery against the peer-to-peer car sharing program's automobile insurer if the claim is:

- (1) made against the shared vehicle's owner or the shared vehicle's driver for loss or injury that occurs during the car sharing period; and
- (2) excluded under the terms of the insurer's policy.

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

(b) Provides that nothing in this section creates a duty on a peer-to-peer car sharing program to maintain the coverage required under this subchapter.

(c) Authorizes a peer-to-peer car sharing program to own and maintain as the named insured one or more policies of automobile insurance that separately or in combination provide coverage for liability assumed by the program under an agreement, liability of the owner, damage to or loss of the shared vehicle, or liability of the driver.

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

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

(c) Provides that a peer-to-peer car sharing program is not required to itemize or charge the owner or driver the amount payable as premium under a policy described by Section 113.0057(c) that is allocable to coverage provided to the owner or driver if:

- (1) for the owner, the coverage is included without an additional or itemized charge in the fee charged by the program for the applicable car share reservation; or
- (2) for the driver, the coverage is included without an additional or itemized charge in the cost of the reservation of the shared vehicle.

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

Sec. 113.0101. REQUIRED DISCLOSURES AND NOTICE. (a) Requires that each agreement entered into in this state disclose to the owner and the driver:

- (1) any right of the peer-to-peer car sharing program to seek indemnification from the owner or driver for economic loss sustained by the program resulting from a breach of the agreement;
- (2) that an automobile insurance policy issued to the owner for the shared vehicle or to the driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car sharing program;
- (3) that the peer-to-peer car sharing program's insurance coverage on the owner and the driver is in effect only during each car sharing period;

- (4) that, for any use of the shared vehicle by the driver after the termination time, the owner and driver may not have insurance coverage;
- (5) the daily rate, fees, and, if applicable, any insurance costs that are charged to the owner or driver;
- (6) that the owner's automobile insurance may not provide coverage for a shared vehicle;
- (7) an emergency telephone number through which personnel capable of fielding roadside assistance and other customer service inquiries may be reached; and
- (8) if applicable, any condition under which a driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis to book a shared vehicle.

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

Sec. 113.0102. **AUTHORIZATION TO DRIVE REQUIRED.** Prohibits a peer-to-peer car sharing program from entering into an agreement with a driver unless the driver who will operate the shared vehicle:

- (1) is a resident of this state and holds a driver's license issued by this state that authorizes the driver to operate vehicles of the class of the shared vehicle;
- (2) is a nonresident of this state and:
 - (A) holds a driver's license issued by the state or country of the driver's residence that authorizes the driver to operate vehicles of the class of the shared vehicle; and
 - (B) is at least the same age as that required of a resident of this state to drive; or
- (3) is otherwise specifically authorized by this state to drive vehicles of the class of the shared vehicle.

Sec. 113.0103. **RECORD RETENTION.** (a) Requires that a peer-to-peer car sharing program keep and maintain a record of the name and address of each driver who has entered into an agreement with the program and the driver's license number and place of issuance of each driver and individual who will operate a shared vehicle under the program.

- (b) Requires that a peer-to-peer car sharing program collect and verify records related to use of a shared vehicle under the program, including the times the vehicle is used, car sharing period pick-up and drop-off locations, money received by the owner, and fees paid by the driver.
- (c) Requires that a peer-to-peer car sharing program provide information collected under Subsection (b) on request to the owner, the owner's insurer, or the driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation.
- (d) Requires a peer-to-peer car sharing program to retain information collected under Subsection (b) for a period of not less than the limitations period provided

under Section 16.003 (Two-Year Limitations Period), Civil Practice and Remedies Code, for a personal injury suit.

Sec. 113.0104. RESPONSIBILITY FOR CAR SHARING EQUIPMENT. (a) Provides that a peer-to-peer car sharing program is solely responsible for any equipment, including a global positioning system device or other special equipment, placed in or on a shared vehicle used under the program to monitor or facilitate the car sharing transaction. Requires that the program agree to indemnify and hold harmless the vehicle's owner for any damage to or theft of such equipment during the car sharing period not caused by the owner.

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

Sec. 113.0105. AUTOMOBILE SAFETY RECALL. (a) Requires the program, when a person registers as an owner on a peer-to-peer car sharing program and before the owner makes a shared vehicle available for car sharing on the program, to verify that the vehicle does not have a safety recall for which repairs have not been made and notify the owner of the requirements under Subsection (b).

(b) Provides that if an owner receives notice of a safety recall on a shared vehicle:

(1) before the vehicle has been made available as a shared vehicle on a peer-to-peer car sharing program, the owner is prohibited from making the vehicle available as a shared vehicle on the program until the safety recall repair has been made;

(2) while the vehicle is available as a shared vehicle on a peer-to-peer car sharing program, the owner is required to remove the vehicle from the program as soon as practicably possible after receiving the safety recall notice and until the safety recall repair has been made; or

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

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

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

SECTION 3. Effective date: September 1, 2021.