

By: Oliverson

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 which
8 alternatively agreed on location is thereby incorporated into the
9 agreement; or

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

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

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

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

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

26 (3) have implications affecting construction of
27 statutes outside this chapter, including statutes related to motor

1 vehicle regulation, airport regulation, or taxation;

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

6 (5) invalidate, limit, or restrict an insurer's
7 ability under law to:

8 (A) underwrite any insurance policy; or

9 (B) cancel or decline to renew an insurance
10 policy.

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

13 SUBCHAPTER B. ASSUMPTION OF LIABILITY AND INSURANCE REQUIREMENTS

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

22 (1) provided by Subchapter D, Chapter 601,
23 Transportation Code;

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

26 (3) provided as the maximum amount of required
27 personal injury protection coverage under Section 1952.153,

1 Insurance Code.

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

4 (1) makes an intentional or fraudulent material
5 misrepresentation or omission to the program before the car sharing
6 period in which the loss occurred; or

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

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

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

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

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

23 (2) must be primary during each car sharing period;

24 and

25 (3) must:

26 (A) recognize that the shared vehicle insured
27 under the policy is made available and used through a peer-to-peer

1 car sharing program and specifically provide coverage for that use;
2 or
3 (B) not exclude the use of a shared vehicle by a
4 driver.

5 (c) The coverage requirements of this subchapter may be
6 satisfied by:

- 7 (1) automobile insurance maintained by the owner;
- 8 (2) automobile insurance maintained by the driver;
- 9 (3) automobile insurance maintained by the
10 peer-to-peer car sharing program; or
- 11 (4) a combination of Subdivisions (1), (2), and (3).

12 (d) If a claim occurs in another state with minimum
13 financial responsibility limits higher than the amounts described
14 by Section 601.072, Transportation Code, during the car sharing
15 period, the coverage maintained under Subsection (a) must satisfy
16 the difference in minimum coverage amounts to the applicable policy
17 limits.

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

- 23 (1) liability coverage for bodily injury and property
24 damage;
- 25 (2) personal injury protection coverage;
- 26 (3) uninsured and underinsured motorist coverage;
- 27 (4) medical payments coverage;

1 (5) comprehensive physical damage coverage; and

2 (6) collision physical damage coverage.

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

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

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

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

14 (b) If, at the time of a claim, the automobile insurance
15 maintained by an owner or driver has lapsed or does not provide the
16 coverage required under this subchapter, insurance maintained by a
17 peer-to-peer car sharing program shall provide the coverage
18 beginning with the first dollar of a claim and the program shall
19 defend the claim.

20 (c) Coverage under an automobile insurance policy
21 maintained by the peer-to-peer car sharing program may not be
22 dependent on another automobile insurer first denying a claim.
23 Another automobile insurance policy is not required to first deny a
24 claim.

25 Sec. 113.0055. VICARIOUS LIABILITY. Notwithstanding any
26 other law, a peer-to-peer car sharing program and an owner are not
27 liable under a theory of vicarious liability in accordance with 49

1 U.S.C. Section 30106 or under any state or local law that imposes
2 liability solely based on vehicle ownership.

3 Sec. 113.0056. CONTRIBUTION. An automobile insurer that
4 defends or indemnifies a claim against a shared vehicle that is
5 excluded under the terms of the insurer's policy may seek recovery
6 against the peer-to-peer car sharing program's automobile insurer
7 if the claim is:

8 (1) made against the shared vehicle's owner or the
9 shared vehicle's driver for loss or injury that occurs during the
10 car sharing period; and

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

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

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

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

21 (1) liability assumed by the program under an
22 agreement;

23 (2) liability of the owner;

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

25 (4) liability of the driver.

26 Sec. 113.0058. INSURANCE REQUIREMENTS. (a) An insurance
27 policy providing coverage described by Section 113.0057(c)(2) or

1 (4) must expressly provide liability coverage, without prior notice
2 to the insurer, for all shared vehicles during the car sharing
3 period, subject to any conditions or exclusions permitted by this
4 chapter.

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

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

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

15 (2) for the driver, the coverage is included without
16 an additional or itemized charge in the cost of the reservation of
17 the shared vehicle.

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

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

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

25 (2) that an automobile insurance policy issued to the
26 owner for the shared vehicle or to the driver does not provide a
27 defense or indemnification for any claim asserted by the

1 peer-to-peer car sharing program;

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

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

8 (5) the daily rate, fees, and, if applicable, any
9 insurance costs that are charged to the owner or driver;

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

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

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

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

26 Sec. 113.0102. AUTHORIZATION TO DRIVE REQUIRED. A
27 peer-to-peer car sharing program may not enter into an agreement

1 with a driver unless the driver who will operate the shared vehicle:

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

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

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

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

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

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

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

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

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

23 (1) the times the vehicle is used;

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

25 (3) money received by the owner; and

26 (4) fees paid by the driver.

27 (c) A peer-to-peer car sharing program shall provide

1 information collected under Subsection (b) on request to the owner,
2 the owner's insurer, or the driver's insurer to facilitate a claim
3 coverage investigation, settlement, negotiation, or litigation.

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

8 Sec. 113.0104. RESPONSIBILITY FOR CAR SHARING EQUIPMENT.

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

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

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

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

25 (2) notify the owner of the requirements under
26 Subsection (b).

27 (b) If an owner receives notice of a safety recall on a

1 shared vehicle:

2 (1) before the vehicle has been made available as a
3 shared vehicle on a peer-to-peer car sharing program, the owner may
4 not make the vehicle available as a shared vehicle on the program
5 until the safety recall repair has been made;

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

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

16 SECTION 2. (a) Chapter 113, Business & Commerce Code, as
17 added by this Act, applies only to an automobile insurance policy
18 delivered, issued for delivery, or renewed on or after January 1,
19 2022. An automobile insurance policy delivered, issued for
20 delivery, or renewed before January 1, 2022, is governed by the law
21 as it existed immediately before the effective date of this Act, and
22 that law is continued in effect for that purpose.

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

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