

By: Schwertner

S.B. No. 2106

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 a rental company as defined by Section 91.001.

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

17 (9) "Start time" means the time when the shared
18 vehicle becomes subject to the control of the driver at or after the
19 time the reservation of a shared vehicle is scheduled to begin under
20 the agreement.

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

22 (A) the expiration of the period of time
23 established for the use of a shared vehicle according to the
24 agreement if the shared vehicle is returned to the location
25 specified in the agreement;

26 (B) the time when the shared vehicle is returned
27 to a location as alternatively agreed on by the owner and driver as

1 communicated through a peer-to-peer car sharing program; or

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

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

8 Sec. 113.0003. CONSTRUCTION OF CHAPTER. Nothing in this
9 chapter may be construed to:

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

14 (2) limit the ability of a peer-to-peer car sharing
15 program to, by contract, seek indemnification from the owner or
16 driver for economic loss sustained by the program resulting from a
17 breach of the agreement;

18 (3) have implications affecting construction of
19 statutes outside this chapter, including statutes related to motor
20 vehicle regulation, airport regulation, or taxation; or

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

25 SUBCHAPTER B. ASSUMPTION OF LIABILITY AND INSURANCE REQUIREMENTS

26 Sec. 113.0051. ASSUMPTION OF LIABILITY BY PEER-TO-PEER CAR
27 SHARING PROGRAM. (a) Except as provided by Subsection (b), a

1 peer-to-peer car sharing program shall assume liability of an owner
2 for bodily injury or property damage to third parties or uninsured
3 or underinsured motorist or personal injury protection losses by
4 damaged third parties during the car sharing period in an amount
5 stated in the agreement, which may not be less than the amounts
6 provided by Subchapter D, Chapter 601, Transportation Code.

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

9 (1) makes an intentional or fraudulent material
10 misrepresentation or omission to the program before the car sharing
11 period in which the loss occurred; or

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

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

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

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

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

24 (3) must provide primary coverage during the car
25 sharing period; and

26 (4) may not exclude the use of a shared vehicle by a
27 driver.

1 (c) The coverage requirements of this subchapter may be
2 satisfied by:

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

8 Sec. 113.0053. AUTOMOBILE INSURANCE POLICY EXCLUSIONS. An
9 automobile insurer may exclude any coverage and the duty to defend
10 or indemnify for any claim afforded under an owner's automobile
11 insurance policy, including an exclusion of:

- 12 (1) liability coverage for bodily injury and property
13 damage;
14 (2) personal injury protection coverage;
15 (3) uninsured and underinsured motorist coverage;
16 (4) medical payments coverage;
17 (5) comprehensive physical damage coverage; and
18 (6) collision physical damage coverage.

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

20 (a) A peer-to-peer car sharing program shall assume primary
21 liability for a claim when the program is wholly or partly providing
22 the insurance required under this subchapter and:

23 (1) a dispute exists as to who was in control of the
24 shared vehicle at the time of the loss; and

25 (2) the program does not have available, did not
26 retain, or fails to provide the information required by
27 Section 113.0103.

1 (b) A shared vehicle's insurer shall indemnify the
2 peer-to-peer car sharing program to the extent of its obligation,
3 if any, under the applicable insurance policy if it is determined
4 that the vehicle's owner was in control of the vehicle at the time
5 of the loss.

6 (c) 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 (d) 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
25 contribution against the peer-to-peer car sharing program's
26 automobile insurer 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 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 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 or protection package costs that are charged to the owner
10 or driver;

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

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

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

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

27 Sec. 113.0102. AUTHORIZATION TO DRIVE REQUIRED. A

1 peer-to-peer car sharing program may not enter into an agreement
2 with a driver unless the driver who will operate the shared vehicle:

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

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

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

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

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

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

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

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

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

24 (1) the times the vehicle is used;

25 (2) money received by the owner; and

26 (3) fees paid by the driver.

27 (c) On request, a peer-to-peer car sharing program shall

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

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.