

SENATE BILL REPORT

ESHB 2384

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 21, 2012

Title: An act relating to personal vehicle sharing programs.

Brief Description: Regulating personal vehicle sharing programs.

Sponsors: House Committee on Business & Financial Services (originally sponsored by Representatives Hudgins, Bailey, Kirby, Condotta, Pedersen, Ryu, Fitzgibbon, Moscoso, Stanford, Upthegrove, Billig, Liias and Ladenburg).

Brief History: Passed House: 2/10/12, 73-23.

Committee Activity: Financial Institutions, Housing & Insurance: 2/21/12 [DP].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Hobbs, Chair; Prentice, Vice Chair; Benton, Ranking Minority Member; Fain, Haugen and Keiser.

Staff: Edward Redmond (786-7471)

Background: Every person in this state who operates a private passenger motor vehicle must be insured under an insurance liability policy, a liability bond, or a certificate of deposit or they must be self-insured. The minimum amounts of liability coverage required by the financial responsibility statutes are:

- \$10,000 of injury to or destruction of property of others in any one accident;
- \$25,000 of bodily injury or death of one person in any one accident; and
- \$50,000 of bodily injury or death of any two people in any one accident.

There are mandatory offerings of personal injury protection coverage and underinsured automobile coverage. There are a number of other types of coverage that may be offered by an automobile insurer. Insurers may offer any type of coverage in any amount that is filed with and approved by the Insurance Commissioner (Commissioner). Automobile insurance rates and forms are filed with the Commissioner and must be approved by the Commissioner prior to use by an insurer. If the Commissioner determines that filed rates are not excessive, inadequate, or unfairly discriminatory, then the Commissioner must approve them.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Automobile rates may be adjusted for any factor that is not prohibited by law. Rates are often adjusted according to factors including the driver's age; sex; marital status; miles driven; claims history; geographical area; credit history; and the make, model, and year of a vehicle.

An insurer may cancel, non-renew, or refuse to insure an insurance policy for any reason that is not prohibited by law.

Summary of Bill: Definitions. An owner's insurance policy is an automobile liability insurance policy that includes all coverage necessary to comply with statutory requirements and any optional coverage selected by the registered owner, including personal injury protection coverage, underinsured coverage, comprehensive property damage coverage, and collision property damage.

Personal vehicle sharing is the use of a private passenger motor vehicle by persons other than the vehicle's registered owner in connection with a personal vehicle sharing program.

Personal vehicle sharing program (program) is a legal entity qualified to do business in this state that facilitates the sharing of private passenger motor vehicles for noncommercial use by individuals within this state.

Insurance Requirements. For each vehicle used in personal vehicle sharing, a program must provide insurance coverage for the vehicle and all persons who, with the consent of the program, use the motor vehicle. The limits for coverage must be not less than three times the minimum statutorily-required limits. A program may not provide collision or comprehensive coverage that is less than the actual cash value of the vehicle. The owner must be given the option to buy underinsured motorist coverage and personal injury protection coverage.

Personal Vehicle Sharing Program Requirements. A program must:

- provide the vehicle's registered owner with a proof of compliance with all insurance requirements that includes the choices the owner made regarding optional coverages;
- not knowingly permit the vehicle to be operated as a commercial vehicle by a personal vehicle sharing user while engaged in personal vehicle sharing;
- ensure that the vehicle is a private passenger motor vehicle;
- facilitate the installation, operation, and maintenance of its own signage and any computer hardware and software requested by the owner that is necessary for the vehicle to be used in the program;
- indemnify and hold harmless the vehicle's registered owner for the cost of damage or theft of equipment installed by the program and any damage caused to the vehicle by the installation, operation, or maintenance of the equipment; and
- provide the vehicle's registered owner and any person operating the vehicle under the program with a full and clear disclosure of information explaining the legal requirements for a program.

Disclosure. A program must provide a vehicle's registered owner and any person operating the vehicle in a program with a notice that discloses:

- the legal requirements for a program;
- the coverage and coverage limits provided under the program's insurance policy;

- that the vehicle owner's insurer has no duty to defend or indemnify for any loss that occurs during use of the vehicle under the program; and
- that the vehicle owner or a person operating the vehicle under the program may have liability for claims that exceed the limits of the program insurance policy.

Recordkeeping. A program must collect and maintain records:

- when the vehicle is under the control of a person other than the vehicle's registered owner under the program. There are additional requirements if those records are electronic records; and
- when an insurance claim has been filed, any and all information concerning accidents, damages, or injuries arising out of personal vehicle sharing under the program.

These records must be made available to the vehicle's registered owner, the vehicle's registered owner's primary automobile liability insurer, and any government agency as required by law.

Liability. Notwithstanding an owner's insurance policy or the financial responsibility laws, a program assumes all liability of the vehicle owner for any loss or injury that occurs when the vehicle is under a program and is considered the vehicle owner for all purposes.

The provisions of the bill do not limit:

- the liability of a program for any acts or omissions by the program that result in injury to any persons as a result of the use or operation of the program; or
- the ability of the program to, by contract, seek indemnification from the vehicle's registered owner for any claims paid by the program for any loss or injury resulting from fraud or material intentional misrepresentation in the maintenance of the vehicle by the vehicle's registered owner except in specific circumstances.

A program continues to be liable until:

- the vehicle is returned to a location designated by the program; and
- the time period established for the vehicle sharing expires; or
- the intent to terminate the use of the vehicle in the program is verifiably communicated to the program; or
- the vehicle's registered owner takes possession and control of the vehicle.

A program must assume liability for a claim in which a dispute exists as to who was in control of a private passenger motor vehicle when the loss giving rise to the claim occurred.

If a vehicle's registered owner was in control of the vehicle at the time of the loss, the insurer of the vehicle must indemnify the program to the extent of the insurer's obligation under the owner's insurance policy.

If a private passenger motor vehicle's registered owner is named as a defendant in a civil action for any loss or injury that occurs at any time when the vehicle is under the operation or control of a person, other than the vehicle's registered owner, pursuant to a program, or is otherwise under the control of a program, the program has the duty to defend and indemnify the vehicle's registered owner.

Notwithstanding any provision in the owner's insurance policy, while the vehicle is under the operation or control of a person, other than the vehicle's registered owner, under a program, or is otherwise under the control of a program:

- the insurer providing coverage to the owner of a private passenger motor vehicle may exclude coverage afforded under the owner's insurance policy; and
- a primary or excess insurer of the owners, operators, or maintainers of the vehicle may notify an insured that the insurer has no duty to defend or indemnify any person or organization for liability for any loss that occurs during use of the vehicle pursuant to a program.

Provisions Impacting the Owner and the Owner's Insurer. An owner's insurance policy may not be canceled, rescinded, or non-renewed solely because an owner's vehicle has been in a program.

A private passenger motor vehicle may not be classified by an insurer as a commercial or a for-hire motor vehicle solely because the vehicle's registered owner allows the vehicle to be used for personal vehicle sharing if:

- the personal vehicle sharing is conducted under a program; and
- the annual revenue received by the vehicle's registered owner generated by the personal vehicle sharing does not exceed the annual cost of owning and operating the vehicle.

The provisions of the bill apply to automobile liability insurance policies issued or renewed on or after January 1, 2013.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill represents negotiations that have taken place between the insurance companies and car sharing companies. The changes in this bill represent a very good balance struck between the stakeholders. The bill provides certainty in the marketplace for insurance companies, brings businesses into the state, helps the environment, reduces the pressure for more transportation investments, and puts money into people's pockets. There are numerous transportation, land use, environmental, and social benefits that will result from this type of system. Similar legislation has passed in Oregon and California. There is an opportunity to lessen emissions and reduce fuel costs. Most cars are only used an hour a day. These types of systems seem to reduce miles driven. All of society is helped when people have more choices and more efficient use of resources. This may result in an incremental improvement for the environment. The business model is essentially a marketplace that matches screened drivers with cars. The companies take a commission for the match. There are all types of cars in the system. Car sharing can take place anywhere in the state. Vehicle sharing helps show a per-mile cost to obtain and use a vehicle. It provides an incentive to reduce the use of a vehicle.

OTHER: We have worked very closely with the prime sponsor of the bill and advocates to address the liability issues in the bill. We have fundamentally found common ground on an approach that satisfactorily address our previous concerns. This issue plus the additional consumer disclosures puts us in a position where we will not object to the legislation moving forward.

Persons Testifying: PRO: Carrie Dolwick, Transportation Choices; John Atcheson, Getaround; Todd Myers, WA Policy Center; Alan Durning, Sightline Institute; Roel Hammerschlag, Commerce.

OTHER: Mel Sorensen, Property Casualty Insurance Assn. of America.