

# SENATE BILL REPORT

## SHB 2773

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As of February 26, 2020

**Title:** An act relating to transportation.

**Brief Description:** Concerning transportation.

**Sponsors:** House Committee on Consumer Protection & Business (originally sponsored by Representatives Kirby and Vick).

**Brief History:** Passed House: 2/19/20, 97-1.

**Committee Activity:** Financial Institutions, Economic Development & Trade: 2/25/20.

<p style="text-align: center;"><b>Brief Summary of Bill</b></p> <ul style="list-style-type: none"><li>• Prescribes regulations for peer-to-peer vehicle sharing programs.</li></ul>
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### SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, ECONOMIC DEVELOPMENT & TRADE

**Staff:** Clint McCarthy (786-7319)

**Background:** In 2012, the Legislature established a framework for personal vehicle sharing. The legislation made it possible to transfer liability from an automobile insurer to a personal vehicle sharing program when the vehicle is in a personal vehicle sharing program. 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;

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- 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; and
- 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.

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 coverages 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;
- the time period established for the vehicle sharing expires;
- 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 shall have 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, 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.

**Summary of Bill:** Definitions. A peer-to-peer vehicle sharing program (program) is a person or entity that connects peer-to-peer vehicle owners with peer-to-peer vehicle drivers to facilitate the sharing of peer-to-peer vehicles for consideration. The program is not a transportation network company.

Peer-to-peer vehicle (vehicle) is a personal motor vehicle that is available for use through a peer-to-peer vehicle sharing program for a sharing period of 30 days or less that is registered as a private passenger vehicle under the laws of this or another state.

Peer-to-peer vehicle sharing period (sharing period) is the period of time that commences with a peer-to-peer vehicle delivery period or, if there is no peer-to-peer vehicle delivery period, that commences with a peer-to-peer vehicle sharing start time and, in either case, ends at a peer-to-peer vehicle sharing termination time.

Insurance. A peer-to-peer car sharing program must ensure that, during each car sharing period, the shared vehicle owner and the shared vehicle driver are insured under a motor vehicle liability insurance policy that provides insurance coverage in amounts no less than

the required state minimum amounts. The insurance may be satisfied by motor vehicle liability insurance maintained by a shared vehicle owner, a shared vehicle driver, a peer-to-peer car sharing program, or both a shared vehicle owner, a shared vehicle driver, and a peer-to-peer car sharing program.

The program is not liable when an owner makes a material, intentional, or fraudulent misrepresentation, or material, intentional, or fraudulent omission, to the program before the sharing period in which the loss occurred; or acts in concert with the driver who fails to return the vehicle pursuant to the terms of the agreement.

The program must provide primary financial responsibility for a claim, when it is in whole or in part, providing the financial responsibility required under this section if a dispute exists regarding who was in control of the vehicle at the time of the loss, if the program does not have required records maintained. If insurance maintained by the owner or driver in accordance has lapsed or does not provide the required financial responsibility, the program, or its insurer, must provide the coverage required beginning with the first dollar of a claim and have the duty to defend such claim unless there is an express exemption.

The program will be indemnified by the owner's personal policy of motor vehicle liability insurance if it is determined that the owner was in control of the vehicle at the time of the loss. The program is not limited in seeking indemnification from an owner or driver for economic loss sustained by the program resulting from a breach of the terms and conditions of an agreement.

The program is responsible in the event insurance, which covers the owner or driver, has lapsed or does not provide the required financial responsibility.

An insurer that writes motor vehicle liability insurance in this state may exclude any and all coverage and the duty to defend or indemnify for any claim afforded under an owner's motor vehicle liability insurance policy. Programs must be provided an insurable interest in a vehicle during the sharing period.

Disclosure Requirements. The program's agreement includes disclosures related to insurance, including liability, indemnification, and a notice that additional insurance may be required, financial responsibility, rates and fees, emergency contact information for roadside assistance and inquiries, and notice that insurance may end when the sharing period has ended.

Notices and Record Keeping. Prior to making a vehicle available through the program, the program must notify the owner that participation may violate the terms of the owner's contract with a lienholder, if any.

The program is required to keep records for three years and abide by all state and federal privacy laws. The program must provide records to the owner or owner's insurer to facilitate claims processing in the event of any claims.

Additional Conditions. The program is responsible for any equipment, such as a global positioning system or other special equipment that is put in or on a vehicle to monitor or facilitate sharing and must agree to indemnify and hold harmless an owner for any damage to

or theft of such system or equipment during the sharing period not caused by an owner. The program has the right to seek indemnity from a driver for any loss or damage to such system or equipment that occurs during the sharing period.

If the shared vehicle owner has received an actual notice of a safety recall on the vehicle, a shared vehicle owner may not make a vehicle available as a shared vehicle on a peer-to-peer car sharing program until the safety recall repair has been made.

The program may not enter into an agreement with a driver unless the driver holds a driver's license authorizing the driver to operate vehicles of the class of the vehicle the driver will be using through the program.

Any violation is deemed an unfair or deceptive act in violation of the Consumer Protection Act. A person injured by a violation of this chapter has a cause of action and is entitled to the relief. A program is not liable for a violation of the Consumer Protection Act when the violation is the result of false, misleading, or inaccurate information provided to a program by an owner or driver, and the program reasonably relied on that information in good faith.

A program, owner using a program, or motor vehicle rental company may be required to enter into an agreement, which may be a concession agreement, prior to operating at an airport.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** The bill takes effect on January 1, 2021.

**Staff Summary of Public Testimony:** PRO: This bill started out as very contentious. This happens when you are legislating market disrupters. A brand new bill was dropped after the house deadline that allowed for the National Conference of Insurance Legislators (NCOIL) Model Act to be substituted. There is a glitch where the OIC wants to put the language in RCW 48, rather than RCW 46. Since 2012, there has been more innovation that that current statute is becoming outdated. Proponents are happy to work with the Office of Insurance Commissioner to help provide the needed consumer protections.

**OTHER:** Back in 2012, Washington became one of the first states in the country to have peer to peer car legislation. It has worked very well. NCOIL is supported by insurance, peer-to-peer vehicle sharing. The model language needs to be changed to the model—the current version is not a pure version of the model act. The model needs to be adjusted to reflect current law. The current framework in RCW 48 is much more protective of the peer to peer drivers and their vehicles than the model act is.

**Persons Testifying:** PRO: Representative Steve Kirby, Prime Sponsor; Jeff Gombosky, Enterprise Holdings; Justin Lisonbee, Enterprise Holdings.

OTHER: Brent Ludeman, Turo; Lonnie Johns-Brown, Office of the Insurance Commissioner.

**Persons Signed In To Testify But Not Testifying:** No one.