

SENATE BILL REPORT

SHB 1389

As Reported by Senate Committee On:
Transportation, February 17, 2022
Business, Financial Services & Trade, February 24, 2022

Title: An act relating to transportation.

Brief Description: Concerning transportation.

Sponsors: House Committee on Consumer Protection & Business (originally sponsored by Representatives Corry and Eslick).

Brief History: Passed House: 2/12/22, 96-2.

Committee Activity: Transportation: 2/17/22 [w/oRec-BFST].

Business, Financial Services & Trade: 2/22/22, 2/24/22 [DP, w/oRec].

Brief Summary of Bill

- Replaces vehicle sharing program requirements with a new peer-to-peer car sharing programs chapter based on model language used in other states.
- Outlines record keeping and disclosure requirements for the peer-to-peer car sharing program and vehicle owner.
- Reduces the the required limits for liability coverage from three times the minimum statutorily required limits to the minimum statutorily required limit.

SENATE COMMITTEE ON BUSINESS, FINANCIAL SERVICES & TRADE

Majority Report: Do pass.

Signed by Senators Mullet, Chair; Dozier, Ranking Member; Brown, Frockt, Lovick and Wilson, L.

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

Minority Report: That it be referred without recommendation.

Signed by Senator Hasegawa, Vice Chair.

Staff: Clinton McCarthy (786-7319)

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

- \$10,000 in coverage for damage to another's property;
- \$25,000 in coverage for injuries to any one other person; and
- \$50,000 in aggregate coverage for injuries to all other persons involved.

Automobile insurers must offer personal injury protection coverage and underinsured automobile coverage. Insurers also 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.

Personal Vehicle Sharing. Since 2012 Washington has regulated car sharing businesses. A personal vehicle sharing program is a business that facilitates sharing private passenger motor vehicles for noncommercial use by individuals within this state. Personal vehicle sharing program regulations include insurance requirements, legal requirements, liability, disclosures, and record-keeping.

When a vehicle is in a personal vehicle sharing program, liability may be transferred from an automobile insurer to the personal vehicle sharing program. For each vehicle used in personal vehicle sharing, a personal vehicle sharing program must provide insurance coverage for the vehicle and all persons who, with the consent of the program, use the motor vehicle. A personal vehicle sharing 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.

National Council of Insurance Legislators. The National Council of Insurance Legislators (NCOIL) is a legislative organization comprised principally of legislators serving on state insurance and financial institutions committees around the country. NCOIL writes model laws in insurance. In February 2020, NCOIL adopted its peer-to-peer car sharing program model act. As of February 2022, 19 states have adopted the model legislation.

Summary of Bill: Peer-to-Peer Car Sharing Program. Requirements for peer-to-peer car sharing programs are established, including insurance, disclosures, and record-keeping,

replacing requirements for personal vehicle sharing programs, which are repealed.

Definitions. A peer-to-peer car sharing program (program) is a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration.

A car sharing period (sharing period) is the period of time during which a shared vehicle is being delivered to a driver or that commences with a vehicle start time and, in either case, ends at a car sharing termination time.

A car sharing program agreement (program agreement) is the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver during the sharing period.

A shared vehicle (vehicle) is a vehicle available through a program.

Insurance. A program must ensure that, during each 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 not less than the required state minimum amounts. The insurance may be satisfied by motor vehicle liability insurance maintained by one, or any combination, of a shared vehicle owner, a shared vehicle driver, or a peer-to-peer vehicle sharing program, and such satisfying insurance must be primary during each car sharing period.

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 when an owner acts in concert with the driver who fails to return the vehicle pursuant to the terms of the program agreement.

The program must assume primary liability for a claim when it is in whole or in part providing the insurance required, if a dispute exists regarding who was in control of the vehicle at the time of the loss and the program does not have required records maintained. If insurance maintained by the owner or driver has lapsed or does not provide the required coverage, the program's insurance must provide the coverage required beginning with the first dollar of a claim and shall have the duty to defend such claim.

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 a program agreement.

An insurer that writes motor vehicle liability insurance in this state may exclude coverage and the duty to defend or indemnify for any claim afforded under an owner's motor vehicle liability insurance policy.

The program may own and maintain as the named insured one or more insurance policies that provide coverage for liabilities of the program, vehicle owner, or driver and any damages or losses to a vehicle.

Disclosure Requirements. The program's agreement must include disclosures related to:

- insurance, including liability and indemnification;
- 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 related to a vehicle, owner, and driver for three years. The program must provide records to the owner or owner's insurer to facilitate any claims processing.

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 in a 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 license authorizing the driver to operate vehicles of the class of the vehicle the driver will be using through the program.

Appropriation: None.

Fiscal Note: Not requested.

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

Effective Date: The bill takes effect on January 1, 2023.

Staff Summary of Public Testimony: PRO: The bill is focused on liability insurance

between a program and a vehicle owner. This language has been tailored to Washington State. The language is clear and fine where it is at. Now is the time to continue to lead in this space with the passage of this bill. This will clarify the obligations to all parties involved. This ensures that there are not gaps in insurance for drivers at any time. It will prevent cars from being used that are subject to a safety recall. This bill has been worked extensively in the House. This modernizes consumer protections, and the bill passed with bipartisan support. Peer to peer car sharing allows people to optimize one of their largest assets to provide a source of income. This modernizes the statute that was passed ten years ago. This bill provides greater protections for consumers. Various technology groups, insurers, and peer to peer car rental companies support this bill. Insurance is clarified by strengthening the regulatory infrastructure. Airports have the authority to impose rules and regulations. The Office of the Insurance Commissioner (OIC) amendments would revert to current law. The bill clarifies that this is not the business of car rental. This doesn't provide an avenue for commercial use. There is a three party platform. The owner and the platform are two different people. A car sharing program does not own the fleet.

CON: Because Washington has an existing statute to govern this issue, this bill isn't necessary. Because Washington has a law on this, taxes and airport rules are the more pressing issues. Now that peer to peer programs own their own fleet, there is no difference between brick and mortar rental companies and peer to peer car sharing.

OTHER: The OIC believes that the bill was created for states that didn't have peer-to-peer car sharing programs. OIC doesn't think the minimum protections will adequately protect Washingtonians and visitors to the state. Current state law requires three times the minimum, and this bill will require the bare minimum. This bill will also allow for the commercial use of peer to peer vehicles, which is currently not legal. Because Washington has a law on this, taxes and airport rules are the more pressing issues.

Persons Testifying: PRO: Representative Chris Corry, Prime Sponsor; Soledad Roybal, Getaround; Kenny Montilla, Turo; Sean Vinck, Turo.

CON: Kelly Fukai.

OTHER: Jon Noski, Office of the Insurance Commissioner; Michael Walker, Office of the Insurance Commissioner; Jeff Gombosky, Enterprise Holdings; Eric ffitich, Port of Seattle.

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