SPONSOR: Sen. Lockman & Rep. Longhurst

DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 168

AN ACT TO AMEND TITLE 21 RELATING TO PEER-TO-PEER CAR SHARING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 86, Title 21 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8601. Short Title.

This chapter shall be known as the Peer-to-Peer Car Sharing Program Act.

§ 8602. Definitions.

When used in this Chapter:

(1) "Car sharing delivery period" means the period of time during which a shared vehicle is being delivered to the location of the car sharing start time, if applicable, as documented by the governing car sharing program agreement.

(2) "Car sharing period" means the period of time that commences with the car sharing delivery period or, if there is no car sharing delivery period, that commences with the car sharing start time and in either case ends at the car sharing termination time.

(3) "Car sharing program agreement" means the terms and conditions applicable to a shared vehicle owner and a shared vehicle driver that govern the use of a shared vehicle through a peer-to-peer car sharing program. "Car sharing program agreement" does not mean rental agreement, or similar, as defined in § 2002(2) of Title 18. "Car sharing program agreement" is not a "lease" as defined in § 4302 of Title 30.

(4) "Car sharing start time" means the time when the shared vehicle becomes subject to the control of the shared vehicle driver at or after the time the reservation of a shared vehicle is scheduled to begin as documented in the records of a peer-to-peer car sharing program.

(5) "Car sharing termination time" means the earliest of any of the following events:

a. The expiration of the agreed upon period of time established for the use of a shared vehicle according to the terms of the car sharing program agreement if the shared vehicle is delivered to the location agreed upon in the car sharing program agreement.

b. When the shared vehicle is returned to a location as alternatively agreed upon by the shared vehicle owner and shared vehicle driver as communicated through a peer-to-peer car sharing program, and the alternatively agreed upon location shall be incorporated into the car sharing program agreement.

c. When the shared vehicle owner, or the shared vehicle owner's authorized designee, takes possession and control of the shared vehicle.

(6) "Peer-to-peer car sharing" means the authorized use of a vehicle by an individual other than the vehicle's owner through a peer-to-peer car sharing program. "Peer-to-peer car sharing" does not mean rental car or rental activity as defined in § 2002 of Title 18. "Peer-to-peer car sharing" does not include "lease of a motor vehicle" as used in § 4302(b) of Title 30.

(7) "Peer-to-peer car sharing program" means a business platform that connects vehicle owners with drivers to enable the sharing of vehicles for financial consideration. "Peer-to-peer car sharing program" does not mean rental company as defined in § 2002(3) of Title 18. "Peer-to-peer car sharing program" does not mean "Motor vehicle lessor" as defined in § 4301 of Title 30. "Peer-to-peer car sharing program" does not mean "motor vehicle lessor" as defined in § 2112 of this title.

(8) "Shared vehicle" means a vehicle that is available for sharing through a peer-to-peer car sharing program. "Shared vehicle" does not mean rental car or rental vehicle as defined in § 2002(5) of Title 18.

(9) "Shared vehicle driver" means an individual who has been authorized to drive the shared vehicle by the shared vehicle owner under a car sharing program agreement. "Shared vehicle driver" does not mean "motor vehicle lessee" as defined in § 4301 of Title 30.

(10) "Shared vehicle owner" means the registered owner, or a person or entity designated by the registered owner of a vehicle made available for sharing to shared vehicle drivers through a peer-to-peer car sharing program. "Shared vehicle owner" does not mean "motor vehicle lessor" as defined in § 4301 of Title 30. "Shared vehicle owner" does not mean "motor vehicle lessor" as defined in § 2112 of this title.

§ 8603. Insurance Coverage During Car Sharing Period.

(a) A peer-to-peer car sharing program shall assume liability, except as provided in subsection (b) of this section, of a shared vehicle owner for bodily injury or property damage to third parties or uninsured and underinsured motorist or personal injury protection losses during the car sharing period in an amount stated in the peer-to-peer car sharing program agreement which amount may not be less than the minimum limits set forth in § 2118 of this title.

(b) Notwithstanding the definition of "car sharing termination time" as set forth in this chapter, the

assumption of liability under subsection (a) of this section does not apply to any shared vehicle owner in either of the following circumstances:

(1) A shared vehicle owner makes an intentional or fraudulent material misrepresentation or omission to the peer-to-peer car sharing program before the car sharing period in which the loss occurred.

(2) A shared vehicle owner acting in concert with a shared vehicle driver who fails to return the shared vehicle pursuant to the terms of car sharing program agreement.

(c) Notwithstanding the definition of "car sharing termination time" as set forth in this chapter, the assumption of liability under subsection (a) of this section would apply to bodily injury, property damage, uninsured and underinsured motorist, or personal injury protection losses required by § 2118 of this title.

(d) A peer-to-peer car sharing program shall 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 minimum amounts set forth in § 2118 of this title and does 1 of the following:

(1) Recognizes that the shared vehicle insured under the policy is made available and used through a peer-to-peer car sharing program.

(2) Does not exclude use of a shared vehicle by a shared vehicle driver.

(e) The insurance described under subsection (d) may be satisfied by motor vehicle liability insurance maintained by any of the following:

(1) A shared vehicle owner.

(2) A shared vehicle driver.

(3) A peer-to-peer car sharing program.

(4) Any combination of a shared vehicle owner, a shared vehicle driver, or a peer-to-peer car sharing program.

(f) The insurance described in subsection (e) of this section that is satisfying the insurance requirement of subsection (d) of this section shall be primary during each car sharing period. In the event that a claim occurs during the car sharing period in another state with minimum financial responsibility limits higher than those set forth in § 2118 of this title, the coverage maintained under subsection (e) shall satisfy the difference in minimum coverage amounts, up to the applicable policy limits.

(g) The insurer, insurers, or peer-to-peer car sharing program providing coverage under (d) or (e) of this section shall assume primary liability for a claim in either of the following circumstances:

(1) A dispute exists as to who was in control of the shared motor vehicle at the time of the loss and the peer-to-peer car sharing program does not have available, did not retain, or fails to provide the information required by § 8606 of this title.

(2) A dispute exists as to whether the shared vehicle was returned to the alternatively agreed upon location as required under § 8601(5) of this title.

(h) If insurance maintained by a shared vehicle owner or shared vehicle driver in accordance with subsection (e) of this section has lapsed or does not provide the required coverage, insurance maintained by a peer-to-peer car sharing program shall provide the coverage required by subsection (d) of this section beginning with the first dollar of a claim and have the duty to defend such claim except under circumstances as set forth in subsection (b) of this section.

(i) Coverage under an automobile insurance policy maintained by the peer-to-peer car sharing program shall not be dependent on another automobile insurer first denying a claim nor shall another automobile insurance policy be required to first deny a claim.

(j) Nothing in this section does either of the following:

(1) Limits the liability of the peer-to-peer car sharing program for any act or omission of the peer-to-peer car sharing program itself that results in injury to any person as a result of the use of a shared vehicle through a peer-to-peer car sharing program.

(2) Limits the ability of the peer-to-peer car sharing program to, by contract, seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

§ 8604. Notification of Implications of Lien.

At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program shall notify the shared vehicle owner that, if the shared vehicle has a lien against it, the use of the shared vehicle through a peer-to-peer car sharing program, including use without physical damage coverage, may violate the terms of the contract with the lienholder.

§ 8605. Exclusions in Motor Vehicle Liability Insurance Policies.

(a) An authorized insurer that writes motor vehicle liability insurance in the State may exclude any and all

coverage beyond the minimum requirements contained in this title and the duty to defend or indemnify for any claim afforded under a shared vehicle owner's motor vehicle liability insurance policy, including any of the following:

(1) Liability coverage for bodily injury and property damage.

(2) Personal injury protection coverage as described in § 2118 of this title.

(3) Uninsured and underinsured motorist coverage.

(4) Comprehensive physical damage coverage.

(5) Collision physical damage coverage.

(b) Nothing in this chapter invalidates or limits an exclusion contained in a motor vehicle liability insurance policy, including any insurance policy in use or approved for use that excludes coverage for motor vehicles made available for rent, sharing, or hire, or for any business use.

(c) Nothing in this Chapter invalidates, limits, or restricts an insurer's ability under existing law to underwrite any insurance policy, or to cancel and non-renew policies.

§ 8606. Recordkeeping; Use of Vehicle in Car Sharing.

A peer-to-peer car sharing program shall collect and verify records pertaining to the use of a vehicle, including times used, car sharing period pick-up and drop-off locations, fees paid by the shared vehicle driver, and revenues received by the shared vehicle owner, and provide that information upon request to the shared vehicle owner, the shared vehicle owner's insurer, the shared vehicle driver, or the shared vehicle driver's insurer to facilitate a claim coverage investigation, settlement, negotiation, or litigation. The peer-to-peer car sharing program shall retain the records for a time period not less than the applicable personal injury statute of limitations.

§ 8607. Exemption; Vicarious Liability.

A peer-to-peer car sharing program and a shared vehicle owner shall be exempt from vicarious liability consistent with 49 U.S.C. § 30106 and under any state or local law that imposes liability solely based on vehicle ownership.

§ 8608. Contribution against indemnification.

A motor vehicle insurer that defends or indemnifies a claim against a shared vehicle that is excluded under the terms of its policy shall have the right to seek recovery against the motor vehicle insurer of the peer-to-peer car sharing program if the claim meets all of the following conditions:

(1) The claim is against the shared vehicle owner or the shared vehicle driver for loss or injury that occurs during the car sharing period.

(2) The claim is excluded under the terms of its policy.

§ 8609. Insurable Interest.

(a) Notwithstanding any other law, statute, rule, or regulation to the contrary, a peer-to-peer car sharing program shall have an insurable interest in a shared vehicle during the car sharing period.

(b) Nothing in this section creates liability on a peer-to-peer car sharing program to maintain the coverage mandated by § 8603 of this title.

(c) A peer-to-peer car sharing program may own and maintain as the named insured 1 or more policies of motor vehicle liability insurance that provides coverage for any of the following:

(1) Liabilities assumed by the peer-to-peer car sharing program under a peer-to-peer car sharing program agreement.

(2) Any liability of the shared vehicle owner.

(3) Damage or loss to the shared motor vehicle.

(4) Any liability of the shared vehicle driver.

§ 8611. Disclosures.

Each car sharing program agreement made in the State shall disclose to the shared vehicle owner and the shared vehicle driver:

(1) Any right of the peer-to-peer car sharing program to seek indemnification from the shared vehicle owner or the shared vehicle driver for economic loss sustained by the peer-to-peer car sharing program resulting from a breach of the terms and conditions of the car sharing program agreement.

(2) That a motor vehicle liability insurance policy issued to the shared vehicle owner for the shared vehicle or to the shared vehicle driver does not provide a defense or indemnification for any claim asserted by the peer-to-peer car sharing program.

(3) That the peer-to-peer car sharing program's insurance coverage on the shared vehicle owner and the shared vehicle driver is in effect only during each car sharing period and that, for any use of the shared vehicle by the shared vehicle driver after the car sharing termination time, the shared vehicle driver and the shared vehicle owner may not have insurance coverage.

(4) The daily rate, fees, and if applicable, any insurance or protection package costs that are charged to the shared vehicle owner or the shared vehicle driver.

(5) That the shared vehicle owner's motor vehicle liability insurance may not provide coverage for a shared vehicle.

(6) An emergency telephone number to personnel capable of fielding roadside assistance and other customer service inquiries.

(7) If there are conditions under which a shared vehicle driver must maintain a personal automobile insurance policy with certain applicable coverage limits on a primary basis in order to book a shared motor vehicle.

§ 8612. Driver's License Verification and Data Retention.

(a) A peer-to-peer car sharing program may not enter into a peer-to-peer car sharing program agreement with a driver unless the driver who will operate the shared vehicle meets 1 of the following requirements:

(1) Holds a driver's license issued pursuant to this title that authorizes the driver to operate vehicles of the class of the shared vehicle.

(2) Is a nonresident who meets both of the following requirements:

a. Has a driver's license issued by the state or country of the driver's residence that authorizes the driver in that state or country to drive vehicles of the class of the shared vehicle.

b. Is at least the same age as that required of a resident to drive.

(b) A peer-to-peer car sharing program shall keep a record of all of the following:

(1) The name and address of the shared vehicle driver.

(2) The number of the driver's license of the shared vehicle driver and each other person, if any, who will operate the shared vehicle.

(3) The place of issuance of the driver's license.

§ 8613. Responsibility for Equipment.

A peer-to-peer car sharing program shall have sole responsibility for any equipment, such as a GPS system or other special equipment that is put in or on the vehicle to monitor or facilitate the car sharing transaction, and shall agree to indemnify and hold harmless the vehicle owner for any damage to or theft of such equipment during the sharing period not caused by the vehicle owner. The peer-to-peer car sharing program has the right to seek indemnity from the shared vehicle driver for any loss or damage to such equipment that occurs during the sharing period.

§ 8614. Automobile Safety Recalls.

(a) At the time when a vehicle owner registers as a shared vehicle owner on a peer-to-peer car sharing program and prior to the time when the shared vehicle owner makes a shared vehicle available for car sharing on the peer-to-peer car sharing program, the peer-to-peer car sharing program must do all of the following:

(1) Verify that the shared vehicle does not have any safety recalls for which the repairs have not been made.

(2) Notify the shared vehicle owner of the requirements under subsection (b) of this section.

(b) (1) If the shared vehicle owner has received an actual notice of a safety recall, 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.

(2) If a shared vehicle owner receives an actual notice of a safety recall on a shared vehicle while the shared vehicle is made available on the peer-to-peer car sharing program, the shared vehicle owner must remove the shared vehicle as available on the peer-to-peer car sharing program as soon as practicably possible after receiving the notice of the safety recall and until the safety recall repair has been made.

(3) If a shared vehicle owner receives an actual notice of a safety recall while the shared vehicle is being used in the possession of a shared vehicle driver, the shared vehicle owner must notify the peer-to-peer car sharing program about the safety recall as soon as practicably possible after receiving the notice of the safety recall, so that the shared vehicle owner may address the safety recall repair.

Section 2. This Act takes effect 270 days after its enactment into law.

SYNOPSIS

This Act establishes a Peer-to-Peer Car Sharing Program that allows for companies to facilitate the shared usage of vehicles in Delaware.

Author: Senator Lockman